



City of Berlin

Governing Bodies Member Handbook

Adopted by Common Council
June 13th, 2023

TABLE OF CONTENTS:

Chapter 1: Local Government	Page 3
Chapter 2: Duties, Policies, and Practices	Page 8
Chapter 3: Staff	Page 25
Chapter 4: Finance & Taxation	Page 29
Chapter 5: Legal Issues	Page 34
Chapter 6: Land	Page 37
Chapter 7: Miscellaneous Information / Resources	Page 41
Appendix A: Attendance Policy	
Appendix B: Motions Guidance Chart	
Appendix C: Wisconsin State Statutes on Ethics	
Appendix D: Current Year General Fund Budget	

**City of Berlin
Green Lake & Waushara Counties
State of Wisconsin**

**Chapter 1:
Local Government Authority and Structure**

Introduction and Welcome

Welcome to the exciting world of being an official of the City of Berlin! You will find that a leadership position in municipal government can be both rewarding and challenging. This Handbook has been created to assist you with the transition into your position. It will provide an overview of Berlin and its government, your primary responsibilities, and how elected and appointed officials, as well as staff, can work together in the most efficient and effective way to best serve the Berlin community. While this Handbook is designed to answer many of the commonly asked questions of new City officials, it cannot begin to address all the topics and knowledge required for you to successfully fulfill your position. It is important that you develop relationships with other City of Berlin elected and appointed officials and staff, and feel free to ask any questions you may have.

This Handbook will at times include references to other policies, ordinances, or regulations. If there is any unintended conflict between what is set forth in this Handbook and any such referenced policy, ordinance, regulation, or statute, always defer to the actual referenced policy, ordinance, regulation, or statute.

City of Berlin's Municipal Authority

The City of Berlin is a Municipal Corporation with authority vested in the Common Council and the Mayor, who is the executive leader of the City. Berlin, like many other Wisconsin cities under the Home-Rule charter in Chapter 62 of Wisconsin law, has the power to govern itself regarding local matters except where the State has specifically prohibited that power. Berlin is one of 143 cities that is a 4th Class City, as Berlin has 9,999 or fewer residents. The City of Berlin is governed by the provisions of Wis. Stats. chs. 62 and 66, laws amending those chapters, other acts of the legislature and the state constitution.

Mayor-Common Council Form of Government (Sec. 2-1(a) of the City's Code of Ordinances)

The City of Berlin operates under the mayor-common council form of government under Wis. Stats. ch. 62. The City of Berlin's Mayor and Alderpersons are elected by the voters and must reside in the wards they are elected to. The Common Council is the legislative branch of City government. The Common Council consists of 6 ward Alderpersons and the Mayor. The primary business of the Common Council is the passage of laws in the form of ordinances or resolutions which shall prescribe what the law shall be, not only in relation to the particular facts existing at the time, but as to all future cases arising under it. The Common Council is also responsible to fix the salaries of all officers and employees of the City, and is charged with the official management and control of City property, finances, highways, streets, navigable waters and the public service, and shall have the power to act for the government and good order of the City, for its commercial benefit and for the health,

safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, forfeiture, imprisonment and other necessary or convenient means. The Common Council is also vested with all the powers of the City not specifically given to other officers, as well as any other powers set forth elsewhere throughout the City's Code of Ordinances. By ordinance, the Common Council meets the second Tuesday of each month at 7:00pm.

City of Berlin's Boards, Commissions and Committees

In addition to the Common Council, the City of Berlin has various other governing bodies, including boards, committees, and commissions. The duties and authority of these boards, committees, and commissions are established under Wisconsin Statutes or the City's Code of Ordinances or are delegated from the Common Council or other overseeing governing bodies. Many times, issues that arise before the City must be reviewed and acted upon in some way by a board, committee, or commission, before going to the Common Council for final action. The City has several permanently established boards, committees, and commissions, commonly referred to as "standing committees". Other boards, committees, or commissions may be created by act of the Common Council, or other overseeing governing bodies, to undertake a specific duty or project for a temporary period. Each board, committee, and commission function varies, and the City's Code of Ordinances offers guidance as to each. The proceedings of the below listed boards, committees, and commissions (which are all standing committees) are generally governed by the City's Code of Ordinances (mostly in Chapter 2) but may also be subject to rules established by the Common Council or each said governing body on its own. The Common Council, and all other boards, committees, and commissions must adhere to the requirements of open meetings laws.

Committee of the Whole (Sec. 2-45 of the City's Code of Ordinance)

The Committee of the Whole consists of all members of the Common Council, i.e., the Mayor and the six Alderpersons, but acts as a committee. The idea of the Committee of the Whole is for matters intended to be brought to the Common Council for action to be first discussed and deliberated in more detail prior to going to the Common Council. In larger legislative bodies, this process of advance review and deliberation would normally be done by various subcommittees, but since the City of Berlin Common Council is so small, it was decided that this activity would be done by one committee made up of the entirety of the Common Council. The City's Code of Ordinances (Sec. 2-45(b)) specifically provides:

All matters and business of the city that must be considered by the common council shall first be submitted to the committee of the whole for its recommendation unless recommendations have been received from the four standing commissions or two-thirds of the elected members thereof waiving the prior submission.

Further, pursuant to Sec. 2-45(c) of the City's Code of Ordinances, the Committee of the Whole meets the first Tuesday of each month at 7:00pm.

Plan Commission (Secs. 2-506 – 512 of the City's Code of Ordinance)

The Plan Commission consists of the Mayor, one Alderperson, the President of the Parks & Recreation Commission, and four residents of the City. Both the Mayor and the designated Alderperson are full, voting members. Additional Alderpersons are eligible to be appointed

to the Plan Commission as one or more of the required four residents of the City. The Plan Commission oversees all matters related to zoning, land use planning, and comprehensive planning, including but not limited to updates or changes to the Zoning Code, the Comprehensive Plan, and the Official City Map. The Plan Commission oversees a variety of issues related to economic development and public improvements. Many issues that are to be submitted to the Common Council must first mandatorily be referred to the Plan Commission, such as the location of memorials or acquisition of lands for parks, abandonment/vacation of roads or utilities, and proposed Certified Survey Maps, plats, and subdivisions. The Plan Commission also has exclusive authority to review and approve site plans for commercial developments. The Plan Commission meets on the last Tuesday of the month at 6:00pm.

Parks & Recreation Commission (Secs. 2-526 – 534 of the City’s Code of Ordinance)

The Parks & Recreation Commission consists of seven residents of the City of Berlin. Alderpersons are eligible to be appointed to the Parks & Recreation Commission as full voting members, subject to the requirements of Wis. Stat. §66.11(2), exclusive of a Common Council Liaison which is a nonvoting position (see more on Common Council Liaisons below in this Handbook and in Sec. 2-46 of the City’s Code of Ordinances). The Parks & Recreation Commission oversees all parks, playgrounds and recreational activities within the City. On a number of issues, the Parks & Recreation Commission has exclusive authority to make decisions, but on other issues the Parks & Recreation Commission has advisory or shared authority with the Common Council. For example, acquisitions which are structural in nature or will have a significant impact on the physical layout of any of the parks, and which exceed \$5,000.00 in value, are required to first be submitted to and approved by the Common Council. The Parks & Recreation Commission meets on the first Wednesday of the month at 4:30pm.

Library Board (Secs. 2- 246 – 247 of the City’s Code of Ordinance)

The Library Board is created and regulated pursuant to Wis. Stats. ch. 43 and consists of seven members. Not more than one member of the Common Council shall at any one time be a member of the Library Board. The Mayor appoints all members of the Library Board but must appoint the Berlin Area School District Superintendent or that Superintendent’s representative to the Library Board. The Library Board oversees the Berlin Public Library and Library Trust Fund. The Library Board meets on the second Tuesday of each month at 4:30pm.

Committee on Aging (Secs. 2-536 – 543 of the City’s Code of Ordinance)

The Committee on Aging consists of seven members, five of whom must be residents of the City of Berlin. The remaining two members may be nonresidents, if such persons are actively employed in the City in a managerial position in the field of aging. Alderpersons are eligible to be appointed to the Committee on Aging as full voting members, subject to the requirements of Wis. Stat. §66.11(2), exclusive of a Common Council Liaison which is a nonvoting position (see more on Common Council Liaisons below in this Handbook and in Sec. 2-46 of the City’s Code of Ordinances). The Committee on Aging oversees the Berlin Senior Center and serves in an advisory capacity to the Common Council for all aging related issues. However, the Common Council does have authority to take direct action (without recommendation from the Committee on Aging) on certain issues (such as accepting gifts with a fair market value of greater than \$2,500.00, the borrowing or lending of funds, and a variety of others) if the issue was referred to the Committee on Aging but

not acted on within 60 days. Further, the Common Council also has exclusive authority over a few issues (meaning no referral to the Committee on Aging is needed at all), including but not limited to the acceptance or conveyance of interests in real estate and investment of all aging related program accounts and funds, other than funds obtained through any public fundraiser or from donations, gifts, memorials, or bequests to any aging related program. The Committee on Aging meets the fourth Tuesday of each month at 9:30am.

Cemetery Board (Secs. 2-401 – 408 of the City's Code of Ordinance)

The Cemetery Board consists of seven residents of Berlin. Alderpersons are eligible to be appointed to the Cemetery Board as full voting members, subject to the requirements of Wis. Stat. §66.11(2), exclusive of a Common Council Liaison which is a nonvoting position (see more on Common Council Liaisons below in this Handbook and in Sec. 2-46 of the City's Code of Ordinances). The Cemetery Board oversees Oakwood Cemetery, the Cemetery Trust Funds, and the Cemetery Sexton. The Cemetery Board also serves in an advisory capacity to the Common Council on all cemetery related issues. However, the Common Council does have authority to take direct action (without recommendation from the Cemetery Board) on certain issues (such as accepting gifts with a fair market value of greater than \$2,500.00, the borrowing or lending of funds, and a variety of others) if the issue was referred to the Cemetery Board but not acted on within 60 days. Further, the Common Council also has exclusive authority over a few issues (meaning no referral to the Cemetery Board is needed at all), including but not limited to the acceptance or conveyance of interests in real estate and investment of all related program accounts and funds, other than funds obtained through any public fundraiser or from donations, gifts, memorials, or bequests to any Cemetery related program. The Cemetery Board meets the third Wednesday of each month at 6:00pm.

Board of Appeals (Secs. 82-116 – 127 of the City's Code of Ordinance)

The Board of Appeals is created and regulated pursuant to Wis. Stat. § 62.23(7)(e) and consists of five regular members and two alternate members. All members must be residents of the City of Berlin pursuant to Sec. 2-327 of the City's Code of Ordinances. Alderpersons are eligible to be appointed to the Board of Appeals as full voting members, subject to the requirements of Wis. Stat. §66.11(2). The Board of Appeals hears all appeals from any person aggrieved, or by any officer, department, board, or bureau of the City affected by any decision of the Zoning Administrator. A typical scenario is when the Zoning Administrator determines that a building is in violation of a zoning regulation, and the landowner appeals that determination to the Board of Appeals either to rule that the Zoning Administrator made an incorrect determination or to request a variance from the applicable regulation. The Board of Appeals also hears all applications for conditional use permits, special exception permits, and unclassified and temporary uses. The Board of Appeals is a quasi-judicial body, and not a legislative body, meaning it hears cases and applications that come before it which involve interpretations of zoning ordinances, but does not have the authority to pass any zoning regulation or ordinance. The UW-Extension in conjunction with the DNR have published a Zoning Board Handbook that contains more information and guidance for board members and staff. It is available at City Hall. The Board of Appeals meets as needed the third Tuesday of the month at 5:30pm.

Board of Review (Secs. 2-351 – 353 of the City’s Code of Ordinance)

The Board of Review consists of five regular members and two alternate members. All members must be residents of the City of Berlin pursuant to Sec. 2-327 of the City’s Code of Ordinances. None of the members may occupy any public office or be publicly employed by the City or employed in violation of Wis. Stat. § 70.46(1m). The Board of Review is also governed by Wisconsin Statutes 70.46 & 70.47. The Board of Review oversees the tax assessments on parcels within City Limits and approves the assessment roll for real and personal property. The Board of Review listens to all objections to valuations. One member of the Board of Review must receive training every year and the training materials are available at City Hall for all members to use as needed. The Board of Review meets on one day within 45 days of the last Monday in April typically for two hours.

Police & Fire Commission (Secs. 2-481 – 484 of the City’s Code of Ordinance)

The Police and Fire Commission consists of five residents of the City Berlin. The City of Berlin is one of only 15 communities in Wisconsin (at the time of drafting of this Handbook) that has adopted Optional Powers for its Police & Fire Commission, granting more authority to the Commission. The Police and Fire Commission oversees the Police Department and the Fire Department and meets the first Wednesday of the month at 6:30 pm. The League publishes a “Handbook for Wisconsin Police & Fire Commissioners” which provides detailed guidance and information for Police & Fire Commissioners, well beyond what is provided in this Handbook. A copy is provided to all members of the Commission and also may be obtained by contacting the City Administrator’s office.

Community Development Authority (Secs. 2-431 – 432 of the City’s Code of Ordinance)

The Community Development Authority consists of seven resident persons having sufficient ability and experience in the fields of urban renewal, community development and housing. Two of the Commissioners shall be members of the Common Council and shall serve during their term of office as members of the Common Council. The Community Development Authority is created and granted all of the power and privileges created by Wis. Stats. § 66.1335. More specifically, the purpose of the Community Development Authority is to carry out blight elimination, slum clearance, urban renewal programs and projects, and housing projects. The Community Development Authority may act as the agent of the City in planning and carrying out community development programs and activities approved by the Mayor and Common Council under the federal housing and community development act of 1974 and as agent to perform all acts, except the development of the general plan of the City, which may be otherwise performed by the Plan Commission under Wis. Stats. § 66.1105, 66.1301 to 66.1329, 66.1331, or 66.1337. The Community Development Authority meets as needed.

Sewer & Water Commission (Sec. 74-1 of the City’s Code of Ordinance)

The Sewer & Water Commission consists of five resident persons. The Sewer & Water Commission shall administer the sewer and water utilities of the City. Berlin’s Water operation is defined as a “Public Utility” under ch. 196 of Wis. Stats, and is regulated by the Public Service Commission. The Sewer and Water Commission meets the last Wednesday of each month at 4:30 pm.

NOTE: Agendas for all meetings of the above governing bodies and a municipal calendar are available on the City Website at www.cityofberlin.net/agendas-minutes/.

Chapter 2:

Duties, Policies and Practices of City of Berlin Public Officials

Much of the responsibility of serving as an elected official, or an appointed member of a governing body, lies in learning and understanding exactly what is expected of you. This chapter defines some of the basic duties associated with being an elected official, or an appointed member of a governing body, and provides a guide to some of the more common operations you will encounter.

In order to be effective, all public officials must work as part of a team to establish a shared vision for the future, develop goals and plans that make that future possible, and work with their colleagues and constituents to enact the local policies and laws that will ultimately lead to accomplishment.

Holding a public office is an act of service to the public – that is, service to all the residents of the City, not just those who share your views or voted for you. It is a challenge that will require you to rise above the fray, to reach beyond your comfort zones, and to work with others with whom you may have significant differences. Rising to that challenge is what makes democracy work.

To govern well, City leaders must help each other, and the public stay focused on the future and the common good. That can be an uphill struggle when the passions of the movement lead to demands for instant solutions, or when there is a deep division over a single issue that threatens to push longer-term problems aside. There will always be occasions when public officials differ among themselves. But the mark of leadership is the ability to handle those differences in ways that move the agenda forward, build trust, and create a civic culture of mutual respect that makes progress possible.

Legislative vs. Executive Authority

The City of Berlin's Common Council, and nearly all of boards, committees, and commissions, are governing bodies. Governing bodies are usually legislative bodies (exceptions would be the Board of Appeals and Board of Review which are quasi-judicial bodies), and the Common Council is the primary legislative body for the City. Legislative bodies make policy decisions and are involved in the process of reviewing and/or approving budgets, resolutions, and/or ordinances. The basic job of public officials is to find balance among themselves and represent the City's residents' best (and sometimes competing) interests, while also taking non-resident taxpayer and visitor interests into account.

While governing body members make policies via legislative authority, executive authority contemplates the implementation and administration of those policies. Learning the difference between these two key functions and respecting the boundaries is critical to a well-run government. In the City of Berlin, the executive authority (day-to-day oversight over departments and employees) lies with the Mayor and the City Administrator. The separation of legislative and executive authority serves not only as a check on the exercise of authority between the two branches of local government, but also promotes efficient day-to-day operation and staff direction.

Mayoral Powers & Duties (Sec. 2-43 of the City's Code of Ordinances)

The City of Berlin Mayor has the following duties and powers:

- The Mayor presides at common council meetings and votes on matters before the Common Council only in cases of a tie.
- While the Mayor is a member of the Common Council, the Mayor is not counted in determining whether a quorum is present at a Common Council meeting.
- The Mayor shall be elected in odd-numbered years for a term of two years.
- The Mayor shall be the chief executive officer of the City.
- The Mayor shall ensure that ordinances and laws are observed and enforced, and that all boards, committees and commissions discharge their duties.
- The Mayor shall give the Common Council such information and recommend such measures as deemed advantageous to the City.
- The Mayor shall have veto power as to all acts of the Common Council, except such as to which it is expressly or by necessary implications otherwise provided. All such acts shall be submitted to the Mayor by the City's Clerk-Treasurer, and shall be enforced upon the Mayor's approval, evidenced by the Mayor's signature, or upon the Mayor's failing to approve and disapprove within five days, which fact shall be certified thereon by the Clerk-Treasurer. If the Mayor disapproves, the Mayor shall file the Mayor's objection with the Clerk-Treasurer, who shall present it to the Common Council at its next meeting.
- The Mayor shall have such other duties and responsibilities as prescribed by statute. See Wis. Stat. § 62.09(8).

Presiding Officer (Secs. 2-44 & 2-55 of the City's Code of Ordinances)

At Common Council and Committee of the Whole meetings, the Mayor is the presiding officer. At the Common Council's organizational meeting the third Tuesday in April, the Common Council shall choose a President. If the Mayor is unable to attend a meeting, the President of Common Council becomes the presiding officer. All other governing bodies of the City will need to appoint a presiding officer to preside over their meetings, unless a presiding officer is specified by ordinance or statute (such as in the case of the Plan Commission, for which the Mayor is the presiding officer). The presiding officer has the important duty of preserving order at meetings. The presiding officer shall also preserve decorum, decide all questions of order and conduct the proceedings of the meeting in accordance with the parliamentary rules contained in most current edition of Robert's Rules of Order, Newly Revised, unless otherwise provided by statute or by such rules. Any member shall have the right to appeal a decision of the presiding officer. An appeal shall be sustained by a two-thirds vote of the members present, excluding the presiding officer.

Common Council Powers & Duties (Secs. 2-1(b), 2-41, 2-44 & 2-47 of the City's Code of Ordinances)

The Mayor and Alderpersons of the City shall constitute the Common Council. The Common Council has the following powers and duties:

- The Common Council shall be vested with all of the powers of the City not specifically given to another officer.
- Except as otherwise provided by law, the Common Council shall have the management and control of City property, finances, highways, streets, navigable waters and the public service, and shall have the power to act for the government and good order of the City, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, forfeiture, imprisonment and other necessary or convenient means.
- The Common Council may acquire property, real or personal, within or outside the City, for parks, libraries, historic places, recreation, beautification, streets, waterworks, sewage or waste disposal, harbors, improvement of watercourses, public grounds, vehicle parking areas and for any other public purpose; may acquire real property within or continuous to the City, by means other than condemnation, for industrial sites; may improve and beautify such property; may construct, own, lease and maintain buildings on such property for instruction, recreation, amusement and other public purposes; and may sell and convey such City-owned property, except dedicated, platted parks.
- The Common Council is authorized to acquire by gift, purchase or condemnation, under Wis. Stats. ch. 32, any and all property rights in lands or waters, including rights of access and use, negative or positive easements, restrictive covenants, covenants running with land, scenic easements and any rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public or for any public purpose, including the exercise of powers granted under Wis. Stats. § 62.23; and may sell and convey such easements or property rights when they are no longer needed for public use or protection.
- The Common Council may levy and provide for the collection of taxes and special assessments; may refund any tax or special assessment paid, or any part thereof, when satisfied that such tax or special assessment was unjust or illegal; and generally, may manage the City's finances.
- The Common Council may join with other cities, towns or villages in a cooperative agreement to execute any power or duty in order to attain greater economy or efficiency.

Conduct of Deliberations of Governing Bodies (Sec. 2-59 of the City's Code of Ordinances)

In the City of Berlin's Code of Ordinances, it outlines procedural rules that apply to Common Council meetings. For issues not covered by a specific rule in the Code of Ordinances, or in Wisconsin Statutes, the most current edition of Robert's Rules of Order, Newly Revised shall govern. The following are some rules of conduct that apply to the Common Council:

- No Alderperson shall address the Common Council until that Alderperson has been recognized by the presiding officer. Such Alderperson shall address only the presiding officer directly and confine that Alderperson's remarks to the question under discussion.

- When two or more Alderpersons simultaneously seek recognition, the presiding officer shall name the Alderperson who is to speak first.
- No person other than an Alderperson shall address the Common Council except under order of business, except that citizens may address the Common Council with the permission of the presiding officer as to matters which are being considered by the Common Council at the time.
- No motion shall be discussed or acted upon unless and until it has been seconded. No motion shall be withdrawn or amended without the consent of the person making such motion and the person seconding it.
- The Mayor shall not vote except in the case of a tie. When the Mayor does vote in the case of a tie, the Mayor's vote shall be counted in determining whether a sufficient number of the Common Council has voted favorably or unfavorably on any measure.
- A majority vote of all of the members of the Common Council in favor of any proposed ordinance, resolution or appointment shall be necessary for passage or approval, unless a larger number is required by ordinance or statute. Except as otherwise provided, a majority vote of those members present shall prevail in other cases.
- When a question is under discussion, the following motions shall have precedence in the order listed:
 - o To adjourn.
 - o To recess.
 - o To lay on the table.
 - o To move the previous question.
 - o To postpone to a day certain.
 - o To refer to a committee.
 - o To amend.
 - o To postpone indefinitely.

Although the above rules generally refer to the Common Council, these rules should be similarly applied to all the City's governing bodies unless otherwise specified in an ordinance or statute. As an example of such an exception, although the Mayor is the presiding officer of the Plan Commission, the Mayor still has authority to vote per Sec. 2-508 of the City of Berlin Code of Ordinances. The key is to be aware of all special rules of conduct which may apply to your governing body. Only if there is no special rule, then the most current edition of Robert's Rules of Order, Newly Revised can be consulted for guidance.

Decorum Policy for Governing Body Members

Purpose

It is the policy of the City of Berlin to uphold, promote, and demand the highest standards of ethics from its elected and appointed officials. Accordingly, City of Berlin governing body members shall maintain the utmost standards of personal integrity, trustfulness, honesty, and fairness in carrying out their public duties, avoid any improprieties in their roles as

public servants, comply with all applicable laws, and never use their City position to disparage, harass or abuse others.

The City of Berlin and its elected officials share a commitment to ethical conduct and service to the city and its residents. By adoption of this Policy, it is the hope and expectation of the Common Council that all governing body members individually, and governing bodies as a whole, will aspire to these high standards. If these shared objectives are not met in any instance, self-correction will occur in most every case, with alternative enforcement measures a rare and last option.

Scope and Covered Behaviors

The expectation is that all governing body members shall treat their colleagues, City employees and members of the public in a welcoming, fair, respectful, and equitable manner.

This Policy applies to the conduct of governing body members at and during meetings, but also at any other location or on any platform that can be reasonably regarded as an extension of the workplace, including but not limited to the use of a telephone, voicemail, text messages, and/or any social media or online platforms.

Governing body members shall refrain from engaging in any types of inappropriate conduct (bullying, discrimination, harassment, intimidation, retaliation, etc.) directed at their colleagues, City employees or members of the public.

Governance of the City relies on the cooperative efforts of governing body members who set policy and the City staff who implement and administer such policy. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each other for the good of the community.

At public meetings, governing body members must follow all applicable rules of order and decorum. Individual governing body members shall only speak when recognized or otherwise entitled to speak under applicable rules of order and decorum. Speaking over or at the same time as another governing body member so that it is difficult or impossible to discern what each governing member is saying shall never be allowed. Individual governing body members shall refrain from addressing each other directly, but rather communicate to the entire body by addressing the presiding officer. Governing body members shall refrain from disparaging or personally attacking another governing body member.

Governing body members shall treat all City staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each staff member is expected. Disrespectful behavior toward staff is not acceptable. Governing body members shall never demean or personally attack an employee regarding the employee's job performance in public.

A governing body's authority resides in its actions as a body; thus individual governing body members shall not give orders to any City employee. Individual governing body members may make requests of City staff and City staff may act upon those requests within the context of department priorities, work plans, and directives of the applicable department head or the City Administrator.

Nothing in this section shall be construed, however, as prohibiting a governing body, while in session, from fully and freely discussing with or suggesting to department heads or City employees anything pertaining to the City's affairs or interests, within the context of that governing body's scope of authority and responsibility.

No City elected official should solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, collection of petition signatures, etc.) from City staff. City staff may, as private citizens within their constitutional rights, support political candidates, but all such activities must be done away from the workplace. Photographs of uniformed City employees shall not be used in political ads.

Making the public feel welcome is an important part of the democratic process. One of the City's strategic objectives is to increase desired public participation and encourage diverse viewpoints. No signs of partiality, prejudice, or disrespect should be evident on the part of individual governing body members toward an individual participating in a public hearing. Every effort should be made to be fair and impartial in listening to public testimony. Governing body members are expected to demonstrate, both publicly and privately, their honesty and integrity, and to be an example of appropriate and ethical conduct. All governing body members should convey to the public their respect and appreciation for the public's participation, input, and opinions.

For many citizens, speaking in front of a governing body is a new and difficult experience. Under such circumstances, many are nervous. Governing body members are expected to treat citizens with care and respect during public hearings. Council members should commit full attention to speakers or presenters. Comments and non-verbal expressions should be appropriate, respectful, and professional.

Only the presiding officer, not other governing body members, should interrupt a speaker during that speaker's remarks. However, other governing body members may ask the presiding officer for a point of order if the speaker is off the topic or exhibiting behavior or language the governing body member finds does not meet standards of conduct. Questions directed by individual governing body members to members of the public testifying should seek to clarify or expand information, not to criticize or debate.

Internal Powers of the Common Council as to Election and Qualification of Members, Attendance, and Neglect of Duty (Sec. 2-49 of the City's Code of Ordinances)

The Common Council shall be the judge of the election and qualification of its members and may compel their attendance and may fine or expel for neglect of duty.

Attendance of Meeting Requirements for Governing Body Members (refer to Attachment A: Attendance Policy for Common Council, Boards, Committees, & Commission)

Section 2-49 of the City of Berlin's Code of Ordinances provides that the Common Council may compel attendance of its members and may fine or expel for neglect of duty. The Code of Ordinances does not provide any special provisions relating to attendance of members of other governing bodies. Therefore, the Common Council adopted, by resolution, an Attendance Policy for Common Council, Boards, Committees, & Commissions. The Attendance Policy provides a definition of acceptable attendance and a process to be

followed to remedy problematic attendance situations. Attendance is important to ensure the utmost effectiveness and representation of the full membership for recommendations and decisions of our local government.

It is vital to acknowledge that most boards, committees and commissions are made up of citizens volunteering their time in doing their civic duty. On occasion, the Mayor, Alderpersons, and members of other boards, committees, and commissions will have work or other personal circumstances that may interfere with meeting attendance. The Attendance Policy is not meant to address an occasional absence for legitimate purposes. The Attendance Policy is meant to provide direction to the Common Council and other boards, committees, and commissions on how to “compel attendance” when situations arise where a member has consistently poor attendance, or has unexcused absences, which affects their contributions to the governing body.

General Enforcement of Governing Body Policies and Procedures

Unless expressly limited by another provision in this Handbook, a City resolution or ordinance, or a separately adopted City policy, all violations by a governing body member of any provision of this Handbook, including but not limited to all City policies established or referenced in this Handbook, shall be subject to the following general enforcement policies and procedures. Further, if a separately adopted City policy contains special or alternative penalties or enforcement procedures that conflict with these general enforcement policies and procedures, then such special or alternative penalties or enforcement procedures shall take precedence. However, in the absence of such a conflict, these general enforcement policies and procedures shall be deemed supplementary to, and not in lieu of, any such special or alternative penalties or enforcement procedures stated in a separately adopted City policy.

This Handbook, and all City policies referenced herein, are intended to be self-enforcing by each applicable governing body. All governing body members, upon entering office, shall be provided a copy of this Handbook, and all policies referenced herein, and shall sign an acknowledgement of receipt certifying that they have read and understand this Handbook, and all policies referenced herein, and pledge to comply with all requirements therein.

Violations of any policies or rules of decorum or order during a public meeting may be noted promptly after their occurrence by rising to a point of order and stating the violation or concern. The presiding officer of the meeting shall rule on the point of order, which does not need a second and is not debatable. The presiding officer’s decision shall stand unless challenged and reversed by a majority vote of the members present and voting during an open session.

Any governing body member who feels a violation of this Handbook, or any City policy referenced herein, has occurred during or outside of a public meeting may raise the issue privately with the governing body member whose actions are in question. Attempts should be made to resolve any issue in a professional, private manner. If unsuccessful, either governing body member may ask for the assistance of the normal presiding officer of that applicable governing body in mediating the issue or conflict. That presiding officer may also request that the Mayor, Common Council President, City Administrator, or appropriate City staff assist in attempting to resolve the matter. In the event that the applicable

presiding officer, Mayor, or Common Council President is involved in the dispute, any of the others of such persons shall attempt to mediate the issue or conflict.

Any City employee who feels a violation of this Handbook, or any City policy referenced herein, has occurred during or outside of a public meeting may consult with their department head or the City Administrator, and together they may raise the issue privately with the governing body member. Any member of the public who feels a violation of this Handbook, or any City policy referenced herein, has occurred during or outside of a public meeting may raise the issue privately with the governing body member. Attempts should be made to resolve any issue in a professional, private manner. If unsuccessful, the governing body member, City employee or member of the public may ask for the assistance of the normal presiding officer of that applicable governing body in mediating the issue or conflict. That presiding officer may also request that the Mayor, Common Council President, City Administrator, or appropriate City staff assist in attempting to resolve the matter. In the event that the applicable presiding officer, Mayor, or Common Council President is involved in the dispute, any of the others of such persons shall attempt to mediate the issue or conflict.

The censure process is anticipated to be rare and shall be utilized only after the methods of resolution outlined above are attempted. If the matter remains unresolved, the complaining governing body member, City employee or community member may file a sworn written complaint with the City Clerk. The Clerk shall provide a copy of the complaint to the party alleged to be in violation. Complaints shall first be heard by the applicable governing body of which the alleged violating party is a member and to which the complaint relates, giving each party to the dispute the opportunity to be heard. If the applicable governing body, by majority vote (which may include the vote of the alleged violating party if present as part of the quorum), so recommends, a Censure resolution shall be prepared by the City Attorney stating the findings as directed by such governing body. Such censure resolution shall be presented to the Common Council. Such resolution shall be adopted only upon a 3/4th or greater vote of all members of the Common Council.

Another possible sanction for violation of this Handbook, or any City policies referenced herein, shall be removal from office. The procedure for removing city officers is set forth in Wis. Stat. § 17.12 and varies depending on whether the office is elective or appointive, and whether the officer's appointment was subject to Common Council confirmation. These factors will determine whether the officer can be removed at pleasure or can only be removed for cause. "Cause" is defined as "inefficiency, neglect of duty, official misconduct or malfeasance in office."

The Common Council can remove elective City officers for cause and may remove appointive officers for cause, regardless of who appointed them. With the exception of Police & Fire Commissioners, appointive officers appointed by the Common Council may be removed by the Common Council at pleasure. Police & Fire Commissioners may be removed by the Common Council only for cause. Officers appointed by any other officer or body without Common Council confirmation or concurrence, may be removed at pleasure by the appointing officer or body. Although the statute does not expressly state this, the implication is that officers appointed subject to Common Council confirmation may only be removed by the Common Council.

An additional procedure for having the Circuit Court remove any board of review member is set forth in Wis. Stat. § 17.14.

Removals by the Common Council require an affirmative vote of $\frac{3}{4}$ or more of all the members thereof. Removals by any other governing body consisting of three or more members, require an affirmative vote of $\frac{2}{3}$ or more of all the members thereof. Any officer lawfully removed from office is ineligible to appointment or election to fill the vacancy caused by the person's removal.

The Mayor may summarily suspend from office any City officer whose removal is being sought and against whom charges have been filed and may appoint an officer to discharge the duties of that office until such charges have been disposed of. If such charges are dismissed, the suspended officer must be restored to his or her office and is entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended.

No employment or disciplinary action will be taken against any governing body member, City employee, or member of the public who makes a good faith complaint pursuant to this Handbook, or any City policy referenced herein, even if the process fails to substantiate the allegations of the complaint. However, no governing body member or City employee may file a complaint in bad faith. No City employee shall be discouraged from filing a complaint under this Handbook, or City policy referenced herein. Prohibiting or discouraging an employee from filing a complaint under this Handbook, or City policy referenced herein, by a governing body member of the City is itself a prohibited behavior subjecting such party to the complaint process and possible sanctions hereunder.

Common Council Liaison Responsibilities (Sec. 2-46 of the City's Code of Ordinances)

The Mayor shall appoint Common Council liaisons annually at the organizational meeting, where each Alderperson is to be appointed as a Common Council liaison to a commission, board or committee of the City, or any other organization, subject to confirmation by a majority of the Common Council. Common Council liaisons shall not be voting members of commissions, boards or committees to which they are appointed, unless required by another statute or ordinance. The primary purpose of a liaison is to facilitate and maintain communication for mutual understanding and cooperation between the Common Council and the City's other Boards, Committees and Commissions.

Council Liaisons have the following duties and expectations:

- An Alderperson acting as a liaison to a Common Council advisory committee or other body (a "Committee") is not a member of the Committee. Rather, the Alderperson is a positive resource to support the Committee in the completion of its work or direction given to it by the Common Council.
- A Common Council member liaison is acting as a representative of the full Common Council and, as such, has no authority to provide any direction or guidance to the committee other than direction or guidance that clearly represents direction or guidance of the full Common Council.
- A Common Council member liaison shall not attempt to influence the work or recommendations of the committee. More specifically,

- the Common Council member shall not take part in the committee's deliberations or discussions unless
 - the committee requests the Common Council member's participation in a particular discussion (in this situation, the Common Council member must expressly state that such Common Council member is speaking for that Common Council member individually, not for the entire Common Council) or
 - the Common Council member determines that such Common Council member must speak up in order to remind the committee of the Common Council's direction, City policies, or laws, including the Open Public Meetings Act and the Public Records Act;
- the Common Council member shall not take part in any votes or decision making of the committee, unless required by another statute or ordinance.
- The Common Council member liaison shall work to ensure that the committee is only taking actions or doing work that is within the scope of the committee's work as determined or approved by Common Council. The liaison can do this by, for example, reminding the committee as needed of the scope of work that the Common Council set for the committee.
- The Common Council member liaison shall bring to the Common Council any requests from the committee.
- The Common Council member liaison shall work to ensure that the Common Council is regularly updated on the work of the committee as needed.

Agenda Packet & Minutes Responsibilities

A governing body's meeting agendas and the supporting materials are an important element in preparing for a meeting of that governing body. For most governing bodies, the Clerk-Treasurer, or other City staff member, compiles the agenda with final approval by the Mayor or other presiding officer and gathers all pertinent information that should be addressed by the governing body members. Governing body members may request the Mayor (as to the Common Council or Committee of the Whole) or the applicable presiding officer to add a particular topic to an agenda. Alternatively, governing body members may notify the Clerk-Treasurer, or other applicable City staff member, of any particular topics that they would like to be included on an agenda, understanding that any such topics will be added only upon approval of the Mayor or presiding officer as applicable. Also, topics may be directed to be added to an agenda of a future meeting (even over the approval of the presiding officer) by a majority vote of the applicable governing body at a meeting. Many governing bodies have standing agenda items called "New Business" and "Old Business" which may be used for this purpose. Also, see Sec. 2-57 regarding special procedures for introduction of business, resolutions and ordinances to the Common Council.

The Clerk-Treasurer, or other applicable City staff member, will be responsible for originating the agenda and supporting documents. The agenda and packet are compiled electronically, and the agenda will be posted to the City's website the week before a meeting (or otherwise in compliance with open meeting laws advance posting requirements, which is generally 24 hours but can be reduced to 2 hours in emergencies). Agendas are posted at

the Bulletin Board at the entrance to City Hall, on the City Website and sent to the Berlin Journal for publication. An important part of a governing body member's role is to review agenda materials prior to the governing body's meeting so that all are adequately informed of the topics to be discussed and can ask questions prior to the meeting and make decisions in an educated manner.

Following each governing body meeting, the Clerk-Treasurer, Deputy Clerk, or other applicable City staff member, will compose the minutes from that meeting, unless another person is directed by the governing body to take minutes. For example, closed session minutes sometimes have to be kept by a member of the actual governing body, because no other persons are allowed in the session. The minutes are used to record attendees present and document important decisions that took place at the meeting. At the beginning of each governing body meeting, that governing body will generally be asked to approve the minutes from that governing body's previous meeting(s).

Other Miscellaneous Parliamentary Procedures & Responsibilities

Quorums & Open Public Meetings:

It is important that a quorum is present at any governing body meeting so that action can be taken. By ordinance, two-thirds of the members of the Common Council are required to constitute a quorum (meaning four members of the six-member Common Council), but a lesser number may adjourn or compel the attendance of absent members. The Mayor shall not be counted in computing a quorum of the Common Council. For all other governing bodies, a quorum is generally established by a majority of the members, but some governing bodies have special requirements established by statute or ordinance. A quorum will be determined at the start of each meeting, with a roll call vote. No action shall be taken unless a quorum is present. Additionally, for some issues such as budget matters, a special number of Common Council members need to be present in order to vote on the items. A decision made by a governing body at a meeting in which a quorum is not present may not be considered valid.

It is also important to understand that any time more than two members of a governing body are together in any public or private location, a meeting of Council may technically be taking place under the Wisconsin Open Meetings law if City-related business is discussed. Governing body members must also do their best to avoid creating a "walking quorum" which is when two governing body members meet and discuss City-related items, and then one of those members talks separately to another member, who may then talk to another member, and so on. This effectively results in an unauthorized meeting, despite everyone not being in the same room or location at the same time. Meetings can also similarly occur by telephone, social media, or e-mail, so all governing body members are discouraged from discussing City-related business with other members of their governing body by using these types of media. For example, an inadvertent violation could easily occur if a member sent out a mass email to the rest of the members of the governing body, and then one of those members "replied to all."

All meetings of governing bodies must be open and public, no matter where or when they are held. All Common Council proceedings must be recorded by the Clerk-Treasurer or Deputy Clerk. Be aware that Wisconsin's Open Meetings law guarantees the public's right to be present at meetings but does not guarantee a right of the public to participate in the

conduct of government business or speak at meetings. Some items, such as amendments to zoning ordinances, require a “public hearing”, which means public participation must be allowed, but the vast majority of business items do not require public input. On the other hand, many governing bodies include items on their agendas called “Public Appearances” (or something similar) at which the public is invited to speak. Further, the presiding officer, unless otherwise directed by a majority of the governing body, may allow participation by any speaker on a subject if it is relevant. The point is that allowing public participation is certainly not discouraged (and in fact is encouraged), but it is not required by statute for most items because governing bodies need to be allowed to get their work completed. The members of governing bodies are intended to be representatives of the public so that direct and time-consuming public input is not needed on each and every matter.

Because of the necessity for a quorum, it is important to be present at all meetings. Also see the Attendance Policy referenced earlier in this Handbook. If, due to an illness or other important reason, you are unable to attend a scheduled governing body meeting, please notify the Clerk-Treasurer at City Hall (920)-361-5400, or other applicable City staff member, prior to the meeting time.

Closed Session Exceptions (Wis. Stat. § 19.85):

Except as provided in Wis. Stat. § 19.85 in relation to closed sessions, all meetings of the governing bodies of the City are required to be open to the public pursuant to Wisconsin Open Meetings law. While the public is prohibited from attending closed sessions, notice must still be made of their occurrence and the applicable closed session exception set forth in Wis. Stat. § 19.85(1) must be identified on the agenda for the meeting. The motion to go into closed session must also be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. Also, no motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under Wis. Stat. § 19.85(1) by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. The following is the list of closed session exceptions set forth in Wis. Stat. § 19.85(1):

- Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.
- Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, and the taking of formal action on any such matter.
- Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- Considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

- Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
- Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.
- Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.
- Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

Closed sessions may be attended by all of that governing body's members and those nonmembers whose presence is necessary for the specific item of business being discussed. Once in closed session, the governing body must be very careful to discuss only the subject matter(s) identified in the motion to go into closed session.

Types of Motions:

There are several ways a governing body can take action during a meeting. The most common way is to make a motion. There are two types of Motions: Formal and Procedural motions. Formal Motions are used to approve policy, establish procedures, or provide direction to staff members relating only to topics listed on the agenda. Governing body members may make a motion by stating, "I move that..." Most formal motions need to be "seconded." This is done when a member other than the one who made the motion states, "I second that motion," or "second."

Before moving on to a new topic, a pending motion must be resolved in one of three ways:

- (1) The original member making the motion may withdraw that member's motion at any time during the discussion.
- (2) The motion may be "tabled." Tabling a motion is a procedural act (see below) that requires a vote. A tabled item can be brought back into debate with a motion to remove it from the table at the same meeting or the next regular meeting of that governing body. If a tabled item is not brought back into debate, it dies.
- (3) The Council can take a vote on the motion.

Procedural Motions are made to determine the proceedings of a meeting. They, like formal motions, require a "second" and can order the adjournment of a meeting, the tabling of a motion for later discussion, a temporary recess, or a number of other procedural events. A widely accepted guide to meeting procedures is Robert's Rules of Order, which further explains procedural motions and other rules of public meetings. The City of Berlin Council Chambers has two Roberts Rules of Order's books available for use during meetings.

The process of making motions and voting can be a bit confusing at first, but over time, governing body members will become more familiar with the process. If ever confused as to the action being requested in a motion or vote, please ask the presiding officer or person taking minutes to repeat a motion or explain what is being acted on. Attachment B has a more detailed guide as to other motions.

Consent Agenda Items:

A consent agenda is a practice commonly used by governing bodies by which mundane and non-controversial board action items, items which have been thoroughly discussed, and items which have been recommended for approval by another governing body, are organized apart from the rest of the agenda and approved as a group. In the City of Berlin, only the Common Council regularly uses a consent agenda, but this practice may be used by other governing bodies. A single member of the governing body may pull any item from the consent agenda if that member wishes it to be separately considered. Members only need to state that the member wishes to have an item removed from the consent agenda. No motion, second, or vote is required to remove an item from the consent agenda.

Abstaining from Voting:

The public has a right to have its representatives exercise their duties free from any personal or pecuniary interest which might affect their judgment. Every governing body member should vote on all matters. However, a member has the right to abstain from voting whenever that member so desires or when that member is ethically compelled to do so. For example, members should abstain from any vote whenever that member has a conflict of interest. See more information on ethics rules later in this Handbook.

Tie Votes:

Except for the Common Council, the presiding officer of each governing body of the City is authorized to vote on all matters. This is not necessarily consistent with Roberts Rules of Order, because that book generally calls for presiding officers to not vote unless there is a tie. However, in representative government, it can be important for each member, including the presiding officer, to record a vote that represents that member's constituents. As mentioned, the Common Council is an exemption. In the event of a tie vote of the Common

Council, the Mayor will cast the deciding vote. The Mayor otherwise does not vote on Common Council actions. The Mayor's tie vote is counted in determining whether a sufficient number of the Council has voted favorably on any measure. The Mayor cannot be compelled to break a tie vote. If the Mayor refuses to break a tie, the measure fails for lack of majority.

Mayoral Veto:

The Mayor's approval of a Common Council adopted measure constitutes an executive action of a legislative measure. The Mayor's veto power extends to all legislative (as opposed to administrative) acts of the Common Council, except if that authority has been expressly or by necessary implication otherwise withdrawn. The Mayor does not have the power of partial veto. Thus, the Mayor cannot veto parts of a budget, but must veto the entire budget and explain the objectionable parts. If the Mayor vetoes a Common Council measure, the Mayor must present the objections to the Clerk-Treasurer, who, in turn, must present them to the Common Council at its next meeting. The Common Council may override the Mayor's veto by a two-thirds vote of all its members.

Types of Legislation:

The Common Council has wide latitude in determining the form its legislative or administrative actions shall take. The Common Council generally exercises its authority and responsibilities through the enactment of resolutions and ordinances. This authority to enact resolutions and ordinances is not without limitations. State law may expressly prohibit or restrict a City's exercise of legislative power within a particular area of concern.

- An **ordinance** is used when:
 - o Amending repealing or modifying an existing ordinance
 - o Required by State Law
 - o The act is of general application and intended to be reasonably permanent
- A **resolution** is used when:
 - o Amending, repealing or modifying an existing resolution
 - o Required by State Law
 - o The action is temporary in nature, or not of general public concern
 - o The act is an order or directive relating primarily to internal City affairs
 - o The act confirms a previous action of a City officer or body not properly authorized by the Common Council
 - o The act is an order or directive requiring a specified officer, agency, or person to comply with its directions.
- A **proclamation** is used to announce something of great importance officially.

Public Comments:

This is the public's opportunity to address a governing body on any item, whether such item is listed on the agenda or not. Because of Open Meetings Law requirements, a governing body cannot take action on any topic brought up during public comments which is not listed on the agenda for that meeting. Topics may, however, be placed on future agendas for discussion and/or action. If multiple individuals wish to speak regarding the same topic, the

presiding officer may request that comments be subject to a reasonable time limit, determined by the presiding officer or by vote of a majority of the governing body.

Public Hearings:

Public hearings are required on certain matters required by law or ordinance, such as adoption of the annual budget and amending a zoning ordinance. Public hearings may be held as standalone meetings, or a part of a regularly scheduled governing body meeting. Public hearings are opportunities to inform the general public about a topic and for any individual to speak on that topic while the hearing is open. Once a public hearing is closed, the public will no longer be able to comment on the topic during the meeting unless approved to do so by the presiding officer or a majority of the governing body.

Promotion of Civic Pride:

City officials also serve as champions for civic achievement. City officials may receive requests to attend ribbon-cuttings for new businesses and other civic events. By appearing at ribbon-cuttings, participating in charity events, and attending celebrations, City officials bring recognition and attention to the values of civic engagement and individual accomplishment. This is an important part of how City officials bring out the best in their community and help us all strengthen the traditions that build civic pride.

Ethics (Secs. 2-606 – 2-609 of the City’s Code of Ordinance, Wis. Stat. §§ 19.41 – 19.59, and Wis. Stat. § 946.13):

As public officials, it is required that you act in an independent and impartial way that is responsible to the general public. In order to protect these values and so that the public may maintain confidence in the integrity of its government, Wisconsin Statutes and the City’s Code of Ordinances outlines ethics requirements for all elected and appointed employees, including Common Council members, staff and members of boards and committees. These Statutes and the City’s code establishes guidelines and rules for ethical conduct for all officials and employees.

The state ethics code establishes minimum standards of ethical conduct that prohibit local public officials from using their office to benefit themselves, their immediate families, or organization officials are associated with. This means that elected officials may not vote, or otherwise use their office, on a matter that would have a personal benefit or financial impact on them, members of their immediate family, or an organization they’re associated with. This prohibition does not include matters that have a general impact, such as taxes or utility rates. Local public officials are also prohibited from offering or receiving anything of value that could reasonably be considered to influence an official’s vote or judgment or be a reward for official action or inaction. The statutes don’t define “anything of value,” but it is broadly construed. Officials required to abstain from voting in a matter due to a conflict of interest should not participate in any discussion or deliberation concerning the matter.

With limited exceptions, Wisconsin law prohibits public officials and employees from having a private financial interest in a public contract. This includes contracts for employment, sales, leases, and purchases. Public officials and employees should ensure they understand and avoid violation this law for two important reasons. First, it is a felony criminal statute. Second, it is a strict liability statute meaning one does not have to violate the statute intentionally or knowingly to be found guilty; accidental violations may still result in conviction. The law establishes two primary prohibitions. The first, found in Wis. Stat. §

946.13(1)(a), prohibits officials and employees, in their private capacity, from negotiating, bidding for, or entering into a public contract in which the official or employee has a direct or indirect financial interest if the official or employee is authorized or required by law to participate, in their official capacity, in the making of that contract. Abstention from voting does not prevent a violation because the important part is whether the person is authorized to participate in the vote, not whether they actually do so. The second, found in Wis. Stat. § 946.13(1)(b), prohibits officials and employees from participating in the making of a contract in their official capacity or performing some function requiring the exercise of discretion regarding a municipal contract if the official or employee has direct or indirect financial interest in the contract. This is a prohibition against taking official action, so abstaining from voting or otherwise participating or exercising discretion regard the contract will prevent a violation.

Ethical conduct is an extremely important part of a governing body member's role as a representative of the City of Berlin, and these Statutes and the City's Code should be read carefully and referred to often during a tenure as a governing body member. If you have a question about ethics, you may contact the City Attorney or Clerk-Treasurer.

Acting as a Part of a Body, not as an Individual

Individual members of the City's Common Council or other governing body have no individual authority to make decisions on behalf of the City, nor do they have the individual ability to direct staff unless that member has been given specific authority from the Common Council, or the governing body of which that member is a part, acting as a whole.

Chapter 3: Staff

While the Common Council and other governing bodies of Berlin make a majority of policy decisions and guide the actions of staff members through those policies, those staff members then take on the responsibility of implementing those policy decisions. It is important that the Common Council understands and respects the role staff plays and that an open line of communication exists between all parties.

Departments Overview

The City of Berlin employs individuals in different departments including Clerks Department, Police Department, Ambulance Department, Fire Department, Emergency Services Department, Economic Development, Senior Center, Library, Recreation, Public Works Department and the Sewer & Water Department. In addition to those departments, the City hires election workers, volunteers, seasonal employees and contractors. There is a City Directory maintained in the Clerk's Office that lists all Department Heads, Elected Officials, and Board, Committee, and Commission Members. Staff also maintains a designated page on the city website for Elected Officials, and Board, Committee, and Commission Members.

Role of the City Clerk-Treasurer (Sec. 2-199 of the City's Code of Ordinances)

The City Clerk-Treasurer is responsible for the administration of the central office located within the confines of City Hall. This position works closely with and exercises control over other full and part-time employees in this office. This position provides direction for the efficient operation of the general office affairs. This position also serves as secondary back up for accounts payable, accounts receivable, payroll, and utility billing.

The City Clerk-Treasurer shall be responsible for performing those duties as required by Wis. Stat. § 62.09(11) regarding Clerk's duties, by Wis. Stat. § 62.09(9) regarding Treasurer's duties, the following duties listed under the City's job description for the position, as well as other duties identified in the job description:

- Provide suggestions for increased effectiveness and enhanced productivity for the continued improvement of the general office structure, while establishing organizational structure of the business office as needed.
- Shall manage the record-keeping functions of the City, administer the development of document imaging of permanent City records, maintain storage and filing systems, and keep all papers and records open to inspection at reasonable hours.
- Provide assistance in dealing with the public and respond to needs and concerns of City residents; serve as the focal point for the transaction of business affairs as well as public relations.
- Oversee election administration.
- Collect all City, County, and State taxes, and pay out accordingly.

- Shall keep detailed ledger activity of all financial transactions involving City funds, reconcile all statements, and maintain open books for inspection at reasonable hours. Such information shall be reported to the Common Council as necessary.
- Project plans of long-term financing and investments for the City.
- Be responsible for providing budget structure and detail to City departments, as well as prepare city budget with City Administrator.
- Maintain Fixed Asset system for City inventories and utilize tracking features for non-inventoried items. Determine depreciation schedules and fixed asset allocation in conjunction with auditor suggestion and/or direction.
- Work with the Economic Development Director with block grants and maintain accounts for the various grants.
- Organize audit process between Staff and auditors and implement monthly and annual auditing procedures.
- Record-keeping for Tax Incremental Districts in the City.

Role of the City Administrator (Sec. 2-123 of the City's Code of Ordinances)

The City Administrator shall serve as the chief administrative officer of the City and shall be responsible to and under the general direction of the Mayor and Common Council and shall be responsible for the proper administration of all activities of the City.

The City Administrator shall have the following duties and responsibilities with more listed in the City's Code of Ordinances:

- Be responsible for effectuating all actions of the Common Council which require administrative implementation or where the Mayor or the Common Council have directed the City Administrator to act.
- Be responsible for directing, coordinating and expediting the day-to-day operations of the City and activities of all City departments, except where such authority is vested by state law in officers, boards and commissions.
- Direct and control, through appropriate, organizational channels, the efficient performance of all City employees' duties.
- Be responsible for developing budgeting procedures and preparing or supervising the preparation of the annual operating budget. The City Administrator shall also be responsible for coordinating financial and economic data for the City's long-range financial plan. In addition, the City Administrator shall make such reports as the Mayor and the Common Council may require as to the current status of budgeted items and shall review and report to the mayor and the Common Council any variations in the operation of the City budget.
- Work closely with all department heads to assure that they and other City employees receive adequate opportunities for training within budgetary allowances prescribed by the Common Council to improve their knowledge and skills. The City Administrator shall act as the approving authority for all requests by City employees to attend conferences, meetings, training schools, etc., pertaining to their employment.

- Prepare reports and recommendations for the Mayor, the Common Council, any advisory boards and commissions on operational or policy matters before them, and on any other actions necessary to improve the overall health, safety and welfare of the City.
- Act as public information officer for the City with the responsibility of assuring that the news media are kept informed about the operations of the City, and that all open meeting rules and regulations are followed.
- Promote the economic well-being and growth of the City through public and private sector cooperation.
- Assist with the administration of the Revolving Loan Fund, including processing receivables and payables and preparing financial statements for the RLF, BCDC, and BIDC when needed.
- Prepare applications for State and Federal grants related to community and economic growth and assist in the administration of such programs.

Role of the Deputy Clerk:

The Clerk-Treasurer hires Deputy Clerks as needed. The Deputy Clerk shall act under the Clerk-Treasurer's direction and who, during the temporary absence or disability of the Clerk-Treasurer or during a vacancy of such office, shall perform all the duties of Clerk-Treasurer as well as the others listed below:

- Process all General City Accounts Payable, ensuring that all necessary processing and approval procedures are followed, and report preparation as requested by departments, Staff and Council.
- Maintain an accurate general ledger, expense and revenue accounts for the City; perform monthly and yearly account reconciliations and report processing of accounts, including reconciling cash accounts to monthly bank statements.
- Serve as Election Administrator. Administer all aspects of election preparation and organization including ballots, publications, election workers, and testing voting machines. Other election duties as necessary and/or required.
- Monthly and annual audit pack preparation.
- Receive and deposit City collections as necessary, post receipts to ledger through POS system, and regularly review checking account balance to ensure account balance is sufficient for payable needs.
- Maintain Special Assessments receivable accounts and prepare Special Assessment letter requests that come in.
- Order supplies, reception duties, assist other Staff and departments as needed, and any other duties as assigned.

Administration and General Government Mission Statement:

Our mission is to ensure that the City of Berlin government provides the municipal services and infrastructure necessary for a high quality of life for all our citizens. This includes serving the citizens of Berlin by effective coordination of the fiscal management of the City

through efficiently providing timely, responsive and comprehensive financial/support services to all our residents.

Communication with Staff

While governing bodies are responsible for determining the policy of the City and providing direction for staff action, the City Administrator/Clerk-Treasurer is the Chief Administrative Officer for the City. Though governing bodies' requests and direction play an important role in determining employees' work plans, it is important that the City Administrator/Clerk-Treasurer be able to coordinate and monitor work efforts of all staff members. For this reason, all Common Council requests for staff action and task assignments should be conveyed to the City Administrator/Clerk-Treasurer except in cases of emergency. All similar requests from any other governing body should be conveyed to the staff member that assists such governing body at its meetings, whereby such staff member has delegated authority and acts under the direction of the City Administrator/Clerk-Treasurer. In this way, such requests will be fulfilled while the City Administrator/Clerk-Treasurer and all appropriate department heads maintain their supervisory authority and chain of command within the staff structure. This distinction is important as governing body members may not otherwise be aware of the most appropriate staff member to handle certain tasks or the current workload of individual employees. This process will help ensure that efficiency and order are maintained in City operations.

Similarly, if any governing body member has an issue with the performance of any individual employee, such concern should also be routed through the appropriate chain of command. No individual governing body member should ever communicate a performance issue about an employee directly to that employee. In most cases, the best route for any individual governing body member is to report performance issues relating to any City employee to the City Administrator/Clerk-Treasurer, who will be able to respond to the issue under his/her authority or route the issue through the correct investigative and disciplinary process within the City's local government system. In this way, governing body members can maintain an active role in municipal government while allowing the proper chain of command to remain intact.

Chapter 4: Finance & Taxation

Annual Budget Process

Municipal policy decisions are almost always tied to decisions about money. Common Council must allocate scarce resources to programs, services and capital assets through the budget process. Consequently, it is one of the most important activities undertaken by Common Council. The budget process is a continuous, year-round process that involves three main components: 1) preparation 2) consideration and adoption and 3) administration. State law requires all municipalities in Wisconsin to adopt an annual budget.

The City of Berlin follows an executive budget system. The City Administrator meets with staff beginning in August to discuss departmental budgets. Staff then present their suggestions to their respective boards, committees, and commissions with budgetary authority for insight and suggestions. Staff then brings those budget suggestions back to the City Administrator who considers the whole budget and may make reductions or additions. After this process, the City Administrator presents the recommended budget to the Common Council usually in October. This will allow any final edits or changes to be made before November. Often, the executive budget is accompanied by an executive budget message, which highlights the major goals of the budget and any significant anticipated or proposed changes in revenues or expenditures. Financial constraints have made the budgetary process more difficult. Public officials must note it is important to consider the needs, not wants, of the community first, and look at the budget as a long-term planning tool for the future of the community.

Budget Summary and Budget Hearing

The Common Council must, before adopting the annual budget, hold a public hearing on the proposed budget to allow citizen comment. The City must also publish a budget summary which must also include the percentage change between the current and proposed budgets. The public hearing on the proposed budget must be conducted no less than 15 days after the budget summary is published. At this meeting “any resident or taxpayer of the governmental unit shall have an opportunity to be heard on the proposed budget.” Usually, the Common Council will formally adopt the budget ordinance at the same meeting as the public hearing. A two-thirds vote of the entire Common Council is required to change an adopted budget.

State law does not set forth a specific date by which a municipal budget must be enacted. The City of Berlin operates on a calendar fiscal year; therefore, a budget must be adopted by the end of December. However, City of Berlin Policy is to adopt the budget by the end of November or, at the latest, the beginning of December. Otherwise, the City will be unable to comply with certain other deadlines relating to the property tax collection process.

Sources of Local Revenue

Wisconsin municipalities finance public services and capital assets through a combination of taxation, shared revenue and state aids, special assessments, user fees, license and permit fees and borrowing.

General Property Tax

The primary source of tax revenue for Wisconsin cities is the general property tax. The City of Berlin's property tax levy accounts for roughly 40 percent of the annual revenue. The City of Berlin currently administers real and personal property taxes and a room tax of four percent (state allowed maximum is eight percent).

The City Assessor determines the value of taxable property in the City and records the information in an assessment roll. Property in the state is assessed as of January 1, of each year, even though values may increase or decrease during the year. If a building is partially constructed on January 1, its partial value is used as the value for that assessment year. Value is determined from actual view or the best information that the City Assessor can practicably obtain. Assessment values can be disputed through the Open Book and Board of Review process. For more information on Board of Review, refer to Chapter 1, or reach out to the City Administrator/Clerk-Treasurer.

Since 1992, the ratio of assessed value to full value for each locally assessed major class of property, except agricultural land, must be within 10 percent of full value at least once every four years. Municipalities not meeting the requirement are notified and if the requirement is not met in the succeeding year, the municipality's assessment staff must participate in a training program sponsored by DOR. The Department must supervise the succeeding year's assessment of any municipality that does not meet the requirement over a six-year period. The City of Berlin is set for a revaluation year in 2024.

Although the Common Council for the most part is not directly involved in the process of administering the general property tax laws, it does establish the tax levy, which, together with the assessed value of taxable property in the community, determines the local property tax rate. The tax levy is set for the next year during the budget process. The City of Berlin's tax levy is very similar every year, unless there has been a change in services offered to residents. A reduction in services equates to a reduction in tax levy. However, a municipality is allowed to increase its levy over the amount it levied in the prior year by the percentage increase in equalized value from net new construction. If no net new construction occurred in the municipality, the allowable levy increase would be zero percent.

The municipality acts as the billing and collection agent for the following other taxing jurisdictions: county, school district and technical college district. After these jurisdictions determine their levies, they notify the municipality of the amount that must be paid by property owners in that municipality. The jurisdictions apportion their levies to the municipality based on the municipality's share of the jurisdiction's equalized value. The municipality spreads its tax levy and the municipality's share of the other jurisdictions' apportioned levies to individual properties according to their assessed value. The municipal treasurer and the county treasurer are responsible for collecting the general property taxes, special assessments, special charges and special taxes shown in the tax roll.

State Aid

The state provides general, unrestricted aid to the City of Berlin through several programs. State aid makes up roughly 30 percent of the annual revenue. Unlike categorical aid, which must be used for a specific purpose, unrestricted state aid can be used for any activity approved by Common Council. Currently these programs include municipal aid (shared aid

to be used as needed), utility aid (compensation for costs incurred by providing services to public utilities), expenditure restraint (the City of Berlin must restrict its year-to-year growth in its budget by a statutory formula to receive this aid), and state aid for tax exempt property (computer aid). Additional state aid the City of Berlin receives is transportation aid. This aid amount changes every year and is based on a formula relating to the amount of road construction completed in a community. There are a variety of other smaller state and federal aids the City of Berlin receives, which are all visible in the annual budget under revenues. For more information about those, reach out to the City Administrator/Clerk-Treasurer.

Licenses, Fees, and Permits

The City of Berlin manages and maintains a variety of licenses including alcohol licenses, tobacco licenses, animal licenses, and more. Permits are issued for a variety of things, including building permits, street permits, and sidewalk permits. A Fee Schedule is passed by the Common Council every year that updates the amount charged for certain services.

City Funds Overview

The City of Berlin has a variety of Funds that are managed. The most comprehensive one is the General Fund, which accounts for all revenues and expenditures that are not required to be accounted for in other funds. The General Fund includes major property-tax based services such as police and fire. Below outlines the other funds the city maintains with a brief summary as to what the funds are for:

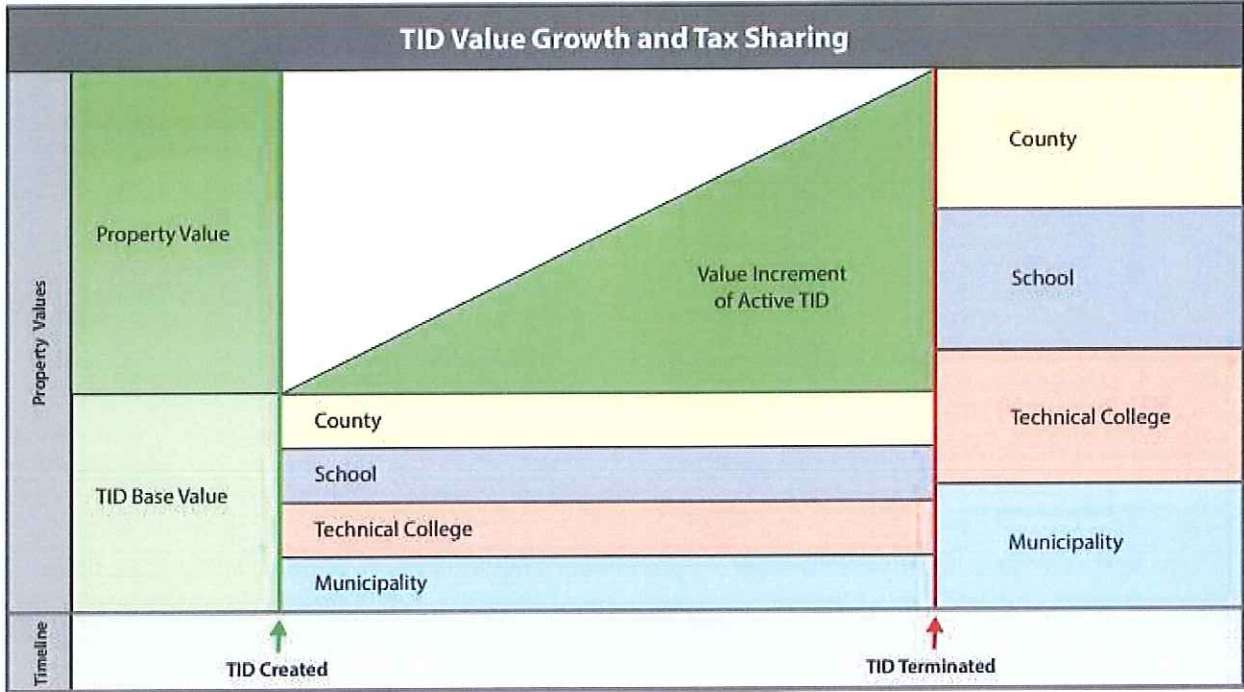
- Capital Fund: for large capital (asset) purchases
- ARPA Fund: to administer ARPA funds allocated
- TID Funds: there are currently four active TIDs
- Debt Fund: any debt the city has is managed in this fund
- Internal Fund: used for employee benefits and insurance
- Cemetery Fund: maintains the Cemetery Trust funds
- Senior Center Fund: maintains the Senior Center memorial account funds
- Library Fund: maintains the Library Trust funds
- Ambulance Fund: manages the Ambulance Department's expenses and revenues
- Sewer Utility Fund: manages the Sewer Department's expenses and revenues
- Water Utility Fund: manages the Water Department's expenses and revenues
- Retirement Fund: used to keep track of retirement funds

The City also maintains funds that are set aside for special purposes. These non-lapsing funds must be categorized as assigned, committed, or restricted. Examples of these funds include saving for a fire truck, assessment revaluation year, police vehicles, and other items. Municipalities are not allowed to keep more funds on hand than what is needed for a typical year's expenses. The year-end balance for the City, if not designated for any particular purpose, must be considered "funds on hand" under Wis. Stat. sec. 65.90(1) and used to defray budgetary costs and reduce the tax levy for the ensuing year.

Tax Incremental Districts (TID)

The City of Berlin has had a variety of TIDs in the past, and at the time of this publication has four TIDs. When the City of Berlin creates a TID, the municipality and other taxing jurisdictions agree to support their operation from the existing tax base within the TID.

They agree the municipality will use the taxes on the value increase in the TID to pay for the investment. The chart below explains how the tax base is shared:



When the municipality creates a TID, it establishes the base value of all the taxable property within the defined boundaries. The county, school, technical college and municipality in the chart above, make up the overlying taxing jurisdictions for the property in the base value. The overlying taxing jurisdictions share the tax revenue collected on this portion of the property value. After the TID is created, this tax revenue is allocated the same way as before the TID was created. In the chart, the county, school, technical college and municipality collect taxes on the property in the TID base. Any new construction or investment in the TID property increases the value. The municipality collects the taxes on the growth in value of the property (the value increment) as tax increment revenue. The municipality can only use this revenue to pay for the improvements it made to the property in the TID according to the approved project plan.

Annual Audit

The City of Berlin has combined the position of City Clerk and City Treasurer. It is advisable for municipalities that combine these offices to participate in an annual audit of records by a Certified Public Accountant. The City of Berlin’s audit usually begins in November and runs through February. The Auditors present a report to the Common Council in May of every year.

City Borrowing & Debt

The City of Berlin finances capital projects through three means: (1) locally raised revenues; (2) grants and other forms of intergovernmental assistance; and (3) municipal borrowing. In the past, the City relied on all three options to finance projects. However, as budgets have grown tighter, reliance on municipal borrowing has grown.

The City of Berlin has a legal debt limit – 5% of the equalized valuation of the City. As of 2022, the debt limit is \$19,188,665. The current debt (as of publication date) is roughly \$4,865,000. The debt payment each year averages \$565,000 and is mainly for previous street projects. For more information on the exact debt amounts and what the projects were for that are remaining, please reach out to the City Administrator/Clerk-Treasurer.

Chapter 5: Legal Issues

Role of the City Attorney (Secs. 2-176 – 2-177 of the City’s Code of Ordinances and Wis. Stat. § 62.09(12))

The office of City Attorney is an appointed position. The Mayor shall annually appoint a City Attorney, subject to confirmation by a majority of the members of the Common Council. The City Attorney's term shall be for a one-year period and shall commence on May 1st succeeding his or her appointment.

The City’s Code of Ordinances and Wisconsin Statutes provide that the City Attorney shall conduct all the law business in which the City is interested. When requested by City officers, the City Attorney must give written legal opinions, which shall be filed with the City Clerk-Treasurer. The City Attorney shall draft ordinances, bonds and other instruments as may be required by City officers. The City Attorney shall examine the tax and assessment rolls and other tax proceedings and advise the proper City officers in regard thereto. The City Attorney may appoint an assistant, who shall have power to perform the City Attorney’s duties and for whose acts the City Attorney shall be responsible to the City. Such assistant shall receive no compensation from the City, unless previously provided by ordinance. The Common Council may employ and compensate special counsel to assist in or take charge of any matter in which the City is interested.

The Common Council has established a policy for the City Attorney, whereby individual City officers, employees, and governing body members are to refrain from making direct requests to the City Attorney (outside of a public meeting at which the City Attorney is present) without directing such requests through the City Administrator/Clerk-Treasurer. The intention of this policy is to allow the City Administrator/Clerk-Treasurer to monitor and control fiscal expenditures for the City’s legal services for budgetary purposes, as well as prioritize such requests based on urgency and importance.

Municipal Court

Because the City of Berlin lies within both Green Lake County and Waushara County, both Green Lake County Circuit Court and Waushara County Circuit Court have jurisdiction over municipal code and traffic violations occurring in the City of Berlin. However, for most such matters, the City of Berlin participates in a Municipal Court, called Lakeside Municipal Court located in North Fond du Lac, Wisconsin. The Municipal Court judge is elected by a majority of the population of the communities that are part of the Municipal Court. Lakeside Municipal Court contains multiple municipalities in our area. Each community’s participation in Lakeside Municipal Court is governed by an Agreement that has been approved by each municipality.

Municipal Court is different from a Wisconsin Circuit Court. Municipal courts are not courts of record and are thus more informal. Cases are generally processed quicker, and the fees are significantly less than Circuit Court fees. However, Municipal Courts have limited jurisdiction.

The majority of Municipal Court cases involve traffic, parking, and ordinance matters, including first-time drunken driving offenses. Juvenile matters, such as truancy, underage drinking, drug offenses and curfew violations are also a significant part of Municipal Court caseloads. The laws governing Municipal Courts include Wisconsin Statutes Chapter 800, Municipal Court Procedure and Wisconsin Statutes Chapter 755, Municipal Court.

Transparency

Public Records

Wisconsin Public Records Law entitles the public to “the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” To that end, the law grants the public the right to access government records, including record of elected officials, subject to certain limited exceptions. The law is construed with a strong presumption favoring public access and declares that denial of access is generally contrary to the public interest. “Record” is defined broadly and includes documents, electronic data, and other materials. The law requires governmental authorities, including elected officials, to respond to requests “as soon as practicable and without delay.” What is reasonable will depend on various factors such as staff resources and the content of the request, but Wisconsin Department of Justice policy views 10 working days as generally a reasonable time frame for responding to a simple request. Requesters can be charged actual, necessary, and direct costs for locating and copying records, but not for any redaction required before the release.

Subject matter, and not location, determines whether something is a record. This means that text messages and emails sent from personal devices or accounts may still be considered a record subject to disclosure if the subject matter contemplates municipal business.

The City has a document management and retention policy that governs all City records. To consult or get a copy of this policy, please contact the City Administrator/Clerk-Treasurer’s Office.

Open Meetings

Wisconsin’s Open Meetings Law entitles the public to the “fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” To that end, the law requires that all meetings of governmental bodies be preceded by at least 24-hours public notice, be held in places reasonably accessible to the public, and always be held in open session unless a specific statutory exemption (based on the subject matter to be discussed) authorizes meeting in closed session. More on open meetings and closed session exemptions is discussed in Chapter 2 of this Handbook.

Violations

Municipal officials are responsible for understanding and complying with these open government laws. Violations of these laws erode public trust in local government and can result in significant legal and financial consequences. Open Meeting Law violations can result in personal forfeitures and ignoring or improperly denying public records requests can be very costly, resulting in imposition of forfeitures and/or punitive damages and, in certain instances, an award of attorney’s fees to the requester.

More Information

The Wisconsin Department of Justice publishes free Open Records Law and Public Records Law compliance guides explaining the laws in detail. They can be accessed at the following link: <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>.

Mutual Aid Agreements

The City of Berlin has entered into a number of mutual aid agreements. Police, fire, dispatch and EMS services are perhaps the most common type of local government service that is delivered in collaboration with other units of government, yet mutual cooperation includes many facets of public services, including: libraries, data and public records, snow plowing, public health, emergency communications, waste, water and sewer, and nursing home services. Such arrangements referred to as “intermunicipal cooperation,” “shared services,” “mutual aid,” etc.

One State agency provided a general definition: “In general terms, intergovernmental cooperation is any arrangement by which officials of two or more jurisdictions communicate visions and coordinate plans, policies, and programs to address and resolve issues of mutual interest. It can be as simple as communicating and sharing information, or it can involve entering into formal intergovernmental agreements and sharing resources such as equipment, buildings, staff, and revenue. It can even involve consolidating services, jurisdictions, or transferring territory.”

The significant role that public construction contracts and intergovernmental agreements play in local government administration requires some special attention. This collaboration with other municipal governments requires all City staff, elected and appointed officials to be extra careful when communicating with other governments. Remember that things said may be interpreted as the position of the entire City even if you are just speaking your own opinion.

Chapter 6: Land

Planning and zoning are methods of achieving the orderly physical development of a community. Planning lays out the intended path of development for Berlin and is typically done through a formal comprehensive plan. Common Council and Plan Commission make decisions regarding the planned development of public infrastructure in Berlin through the adoption of the Comprehensive Plan and other long-range plans. The land use function of local government involves decision making that impacts the lives and property of citizens and businesses in the city. The results of these decisions are often felt in the community for decades, a level of permanence not found in some of the other functions of local government.

Wis. Stat. § 62.23 grants the City land use authority. Berlin has adopted a Zoning Ordinance, Chapter 82 of the City's Code of Ordinances to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the city under that authority. These ordinances are the legal way to facilitate good development and aid long-range plans. They regulate use of land and structures, lot coverage, population distribution and density, and the size and location of structures to promote the safety of citizens and efficient use of public infrastructure. Zoning districts permit various uses, including residential, business, industry, and Planned Unit Developments.

There are other requirements under the City Zoning Code. Property owners must apply for a zoning permit and pay any applicable fees whenever a change or update in zoning is requested. Their request for a zoning designation or change will first be brought before the Plan Commission, who will make a recommendation to Common Council. Owners must also apply for a building permit and pay a fee when completing any construction or significant remodeling of property.

Plan Commission, Board of Appeals & Common Council Administration

Responsibilities for the administration of the land use function in any city or village are generally divided among the Common Council, the Plan Commission and other bodies like Community Development Authority, the Board of Appeals, and planning and zoning staff. The Common Council adopts and amends plans, and land use ordinances (such as zoning and subdivision ordinances) based on the recommendations from Plan Commission. In addition, the Common Council has responsibilities to budget for the land use function. It appropriates funds for capital improvements (like roads and public buildings) and for the acquisition of land. It also creates positions and appropriates funds for the planning and zoning staff. It can also authorize the use of eminent domain to acquire property following the procedures in Wis. Stat. Chapter 32.

The Plan Commission reviews proposed subdivision plats, the location of statues and memorials, architectural design of public buildings, the location, extension and abandonment of land for streets, parks, airports, parking lots, other public grounds, utilities, and public housing. Failure to refer certain actions to the Plan Commission before the Common Council takes final action can invalidate the action.

The Board of Appeals handles variances from the zoning ordinance and administrative appeals when there is an alleged error in an order, requirement, decision or determination made by the zoning administrator in the enforcement of the local zoning ordinance.

Lastly, the City employs planning and zoning staff to advise the above bodies, help prepare plans and ordinances, decide certain permit questions, and monitor compliance and initiate enforcement actions.

Zoning Code

Zoning ordinances regulate the use of property to advance public health, safety, and welfare. A zoning ordinance regulates the height, bulk, and use of land within a city or village. The ordinance creates different use zones or districts within a community. Zoning ordinances consist of two parts — the map and the text. The zoning map displays where the zoning district boundaries are and the text describes what can be done in each type of district. The districts are based on different categories of uses. Within each category, there are often several levels of intensity of the use allowed. For instance, a residential (R1) district might allow only single-family detached units, while residential two (R2) might allow both single-family and multi-family units. Typical zoning districts may include land zoned for residential use, commercial use, industrial use, government and institutional use, recreational use, conservancy, and agricultural uses. Zoning ordinances can also include mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form.

Each district has a list of permitted uses, which are uses that are desirable in a district and standards that apply to the uses. Each district may also contain a list of special uses, sometimes called conditional uses, which are allowed under certain circumstances, and require review by a local body to be allowed. A conditional use allows a property owner to put property to a use that the ordinance expressly permits if certain conditions specified in the zoning ordinance are met. Plan Commission oversees all applications for conditional use permits.

Amending the Zoning Code (Secs. 82-65 to 66 of the City’s Code of Ordinances)

Rezoning is a formal change in the text or map of the zoning ordinance. They can be site-specific, or they can be general or community-wide in effect. The process of rezoning occurs through an amendment to the zoning ordinance. Rezoning must be referred to the Plan Commission. The Common Council approves rezoning by a majority vote.

Nonconformities (Secs. 82-601 to 605 of the City’s Code of Ordinances)

Nonconformities arise when the applicable zoning ordinance is changed so existing development no longer conforms to the requirements of the ordinance. Wisconsin law provides some protections for nonconformities. These protections need to be considered when administering a zoning ordinance. Nonconformities generally fall into three general categories: nonconforming uses, nonconforming structures, and nonconforming lots.

Variances (Sec. 82-126 of the City Code of Ordinances)

Residents and business owners are able to apply for variances from the Zoning Ordinance when they desire to use land or buildings in a way that doesn’t conform to the Zoning Ordinance. This application is to be filed with the Zoning Administrator. The Board of

Appeals will be responsible for granting a variance if the desired action meets certain criteria. A variance authorizes the use or development of a specific site in a manner which is prohibited by the zoning ordinance when a property owner can show unique, localized physical problems which give rise to hardship that can be overcome by varying the application of the ordinance without harming the purpose and intent of the ordinance. Decisions on whether or not to grant variances from the Zoning Ordinance depend on the facts in a given case. A variance should not be granted solely as a convenience to the property owner.

Floodplain and Shoreland Wetland Zoning (Secs. 82-841 to 962, and Secs. 82-1051 to 1054 of the City's Code of Ordinances)

Wisconsin law requires that cities adopt floodplain zoning ordinances. The minimum standards that local floodplain ordinances must meet are specified in rules developed by the Wisconsin Department of Natural Resources. The ordinances are designed to protect individuals, private property and public investments from flooding and flood damage. In order to participate in the Federal Emergency Management Agency's National Flood Insurance Program, Berlin had to enact floodplain zoning ordinances that also comply with applicable federal standards. Wisconsin law also requires that cities place wetlands of five acres or greater located within the shorelands in a conservancy zoning district.

Planned Unit Developments (PUD) (Secs. 82-511 to 521 of City's Code of Ordinances)

Cities have the authority under Wisconsin law to establish "planned development districts" (also referred to as planned unit developments). Sec. 62.23(7)(b). Planned unit development (PUD) is planned and built as a unit within which a variety of compatible land uses may be developed at varying densities and subject to more flexible setback, design, and open space requirements than afforded by traditional zoning. State statutes provide that cities can only establish PUDs with the consent of the property owners. The law also specifies that the regulations governing each district do not have to be uniform.

Comprehensive Plan (Secs 52-1 & 62-88 of City's Code of Ordinances)

Comprehensive planning provides an assessment of a community's needs, a statement of a community's values, the community's long-term goals and objectives, and measurable steps which can be taken to achieve one or more goals. The plans are comprehensive in that all elements encompass many of the functions that make a community work such as wastewater treatment, transportation, housing, and land use. Comprehensive plans need to consider the interrelationships of those functions and help coordinate the various plans and programs of a community. Implementation of the comprehensive plan must be linked to ordinances such as zoning and subdivision, the local budget, cooperation with other units of government, and the needs and capabilities of the private sector.

Wis. Stat. § 66.1001(2) defines a comprehensive plan to include, at a minimum, the following nine elements: issues and opportunities; housing; transportation; utilities and community facilities; agricultural, natural and cultural resources; economic development, intergovernmental cooperation; land use; and implementation. While the comprehensive plan serves as a blueprint for the community's physical development, the plan must also attempt to clarify the relationship between physical development policies and social and economic goals. The plan provides a long-term perspective to guide short-term community

decisions. A comprehensive plan is also not a static document. It needs to be continually updated as conditions change.

Berlin most recent Comprehensive Plan was first passed in 2003 and amended in 2011. It has had small periodic updates since then. Copies of Berlin's Comprehensive Plan are available at City Hall.

Official City Maps

Common Council, through recommendation from Plan Commission, has adopted several City Official Maps, that are included in the City Comprehensive Plan. These maps, adopted by ordinance or resolution, show existing and planned streets, zoning, highways, historic districts, parkways, parks, playgrounds, waterways and public transit facilities. Any changes to the Official City Maps require a Public Hearing. These maps are available at City Hall upon request.

Properties owned by City

The City of Berlin owns a variety of properties throughout the Community, as needed, to provide services to community members.

Properties open to Members of the Public:

Nine City Parks, Walkush Conservatory, & Berlin Wildlife Area

Municipal Parking Lots (4)

Oakwood Cemetery

City Hall – 108 N. Capron St.

Berlin Public Library – 121 W. Park Ave.

Berlin Senior Center – 142 Water St.

Berlin Aquatic Center – 255 Webster St.

Berlin Compost Site – White Ridge Rd. (entrance is shared with Berlin Conservation Club)

Other Properties:

Department of Public Works – 241 Spring St.

Fire Station – 226 Spring St.

Waste Water Treatment Plant – 770 N. Wisconsin St.

Water Wells (6)

North Industrial Park land

South Industrial Park land

Page Property Donation (slated for Canoe/Kayak Launch)

Safeguard Site

Special Situation Properties:

ThedaCare Berlin EMS House – 134 W. Park Ave. (ThedaCare owns and allows us to use)

Chapter 7: Miscellaneous Information / Resources

Governing Body Member Compensation:

Each Common Council member receives a monthly payment of \$250 and the Mayor shall receive a monthly payment of \$500. New Alderpersons should check in at City Hall to make sure all required paperwork is on file. Members of all other governing bodies are unpaid, volunteer positions.

Oath (Sec. 2-8 of the City's Code of Ordinance):

Every person elected or appointed to any statutory office shall take and file an official oath within ten days after the notice of their election or appointment. The oath is administered by the City Clerk, or a Deputy Clerk.

Mail:

Occasionally City Hall will receive mail on behalf of Common Council members. Staff will reach out if it is resident correspondence that might need a timely response. All other items will be held until the next Common Council meeting and presented to members there.

City Website/Social Media Pages:

The City of Berlin hosts a website with a variety of information for residents at www.cityofberlin.net. Staff is constantly updating it as time permits. The Library has its own website hosted by Winnefox at www.berlinlibrary.org. Departments maintain their own Facebook page through staff or volunteers and are listed below:

- City of Berlin, Wisconsin
- Berlin Aquatic Center
- Berlin EMS
- Berlin Fire Department
- Berlin Public Library
- Park & Recreation Department Berlin WI
- Berlin, WI Police Dept
- Berlin Senior Center

City of Berlin Municipal Code:

On the City website, there is a link to access Berlin's Code of Ordinances. It is also available at https://library.municode.com/wi/berlin/codes/code_of_ordinances. The City pays to maintain this separate page and it is usually updated 2-3 times a year, depending on how many ordinances are passed by Common Council. There are also paper versions of the City Code available in several locations at City Hall, including Common Council Chambers.

Roberts Rules of Order: (Sec. 2-59(b) of the City's Code of Ordinance)

State Statutes do not address rules of parliamentary procedure. Each city must determine what rules of procedure are applicable to its governing bodies. Berlin has adopted Robert's Rules of Order Newly Revised for Common Council. Although the City's ordinances do not specify that Robert's Rules of Order must be used for all other governing bodies, that should be presumed when that governing body has not otherwise expressly adopted a contrary rule

or policy on decorum or meeting order. Under Section 2-59(b) of the City's Code of Ordinances, it states,

“Except as provided in this subsection, the common council shall, in all other respects, determine the rules of its procedure, which shall be governed by the most current edition of Robert's Rules of Order, Newly Revised, which is incorporated by reference in this subsection, unless otherwise provided by ordinance or statute, except when otherwise limited or modified in this Code.”

League of Wisconsin Municipalities and Other Reference Materials:

There are a variety of reference materials available at the Clerk's Office and in Council Chambers to assist all elected and appointed officials. These items cover a variety of topics and include the titles of *Conduct of Common Council Meetings*, a *Handbook for Wisconsin Municipal Officials*, a *Handbook for Wisconsin Police & Fire Commissioners*, a *Local Government 101 Resource Book*, the *Powers & Duties of Wisconsin Mayors*, a *Zoning Board Handbook*, a *Board of Review Training Manual*, and more. The City has also passed a variety of Policies that are available on the City's website including a Comprehensive Plan, Open Space & Recreation Plan, Financial Policy, TID Plans, Housing & Economic Development Plan and more. There is a wealth of information available, please check with the Clerk's office or other City Staff member for more information.

Appendix List:

Appendix A: Attendance Policy

Appendix B: Motions Guidance Chart

Appendix C: Wisconsin Statutes on Ethics

(1) Wis. Stats. § 946.10, Bribery of Public Officers and Employees.

(2) Wis. Stats. § 946.11, Special Privileges From Public Utilities.

(3) Wis. Stats. § 946.12, Misconduct in Public Office.

(4) Wis. Stats. § 946.13, Private Interest in Public Contract Prohibited.

Appendix D: Current Year General Fund Expenditures & Revenue Budget



**ATTENDANCE POLICY FOR COMMON COUNCIL,
BOARDS, COMMITTEES, & COMMISSIONS
Approved: September 9, 2014**

PURPOSE: Section 2-49 of the Code of Ordinances indicates that the Common Council may compel attendance of its members, and may fine or expel for neglect of duty. The Code of Ordinances does not provide any special provisions relating to attendance of members of other boards, committees, or commissions. This policy provides a definition of acceptable attendance and a process to be followed to remedy problematic attendance situations. Attendance is important to ensure the utmost effectiveness and representation of the full membership for recommendations and decisions of our local government.

It is vital to acknowledge that most boards, committees and commissions are made up of citizens volunteering their time in doing their civic duty. On occasion, the Mayor, Alderpersons and members of other boards, committees, and commissions will have work or other personal circumstances that may interfere with meeting attendance. This policy is not meant to address the occasional absence for legitimate purposes. This policy is meant to provide direction to the Common Council and other boards, committees, and commissions on how to "compel attendance" when situations arise where a member has consistently poor attendance, or has unexcused absences, which affects their contributions to the governing body.

DEFINITION OF SATISFACTORY ATTENDANCE: Satisfactory attendance is meeting attendance of $\frac{3}{4}$ or more of regularly scheduled meetings over any one-year period. Only regularly scheduled meetings will be counted towards the $\frac{3}{4}$ expected attendance. Also, unexcused absences are not acceptable under any circumstances.

PROCEDURE: As a matter of procedure, the following practice will be used to address attendance problems with the Common Council and all other governing bodies of the City:

1. The chairperson of each governing body shall monitor attendance of members of that chairperson's governing body. The vice-chairperson or other member of the applicable governing body having authority to stand in for the chairperson in his or her absence shall monitor the attendance of the chairperson.
2. When the attendance of a member of a governing body falls below satisfactory attendance levels, or if a member has one or more unexcused absence in the determination of the person responsible for monitoring the attendance of that member, then that monitoring person shall report the issue to the Mayor (unless the monitoring person is the Mayor himself/herself).

3. The Mayor shall review the issue and determine the next appropriate action, which could include discussing the issue with the member in an effort to improve attendance, or presenting the matter before the appropriate governing body for discussion and action on removal or any other remedy.

SATISFACTORY ATTENDANCE REQUIRED FOR CONFERENCES: Any member of a governing body who doesn't maintain satisfactory attendance (as defined above), or has one or more unexcused absence, as determined by the person responsible for monitoring that member's attendance and concurred to by the Mayor, shall be denied qualification for attendance at conferences or other events at the City's expense. Such member may appeal such denial and have such determination reviewed as provided in Wis. Stats. ch. 68.

Appendix B: Motions Guidance Chart

	To Do This	Say This	Does This Motion Interrupt?	Do You Need a Second?	Is It Debatable?	Can it Be Amended?	What Vote Is Needed?
1	Make a motion	I move that...	No	Yes	Yes	Yes	Majority
2	Change a motion	I move to amend by...	No	Yes	Yes***	Yes	Majority
3	Extend/Limit debate - pending question	I move to limit/extend debate as follows...	No	Yes	No	Yes	2/3
4	Lay on the table	I move to table...	No	Yes	No	No	Majority
5	Reconsider a previous action	I move to reconsider the vote on... <i>(must be made within time limits)</i>	Yes	Yes	Yes***	No	Majority
6	Take up a matter previously tabled	I move to take from the table...	No	Yes	No	No	Majority
7	Rescind/Repeal previously adopted motion	I move to rescind...	No	Yes	Yes	Yes	Majority w/ notice***
8	Postpone indefinitely	I move to postpone the motion indefinitely.	No	Yes	Yes	No	Majority
9	Postpone to time certain	I move to postpone the motion until...	No	Yes	Yes***	Yes	Majority
10	Refer/commit	I move to refer/commit the matter to the [...] committee...	No	Yes	Yes***	Yes	Majority
11	Suspend rules	I move to suspend the rules to...	No	Yes	No	No	2/3***
12	End debate	I move the previous question.	No	Yes	No	No	2/3
13	Verify vote results	I move for a division of the assembly.	Yes	No	No	No	No vote
14	End meeting	I move to adjourn.	No	Yes	No	No	Majority
15	Enforce rules	I rise to a point of order...	Yes	No	No***	No	Chair**
16	Challenge a ruling of the chair	I appeal the chair's decision.	Yes***	Yes	Yes***	No	Majority
17	Take a break - no question pending	I move to recess for/until...	No	Yes	Yes	Yes	Majority
18	Request information	Point of information...	Yes	No	No	No	Chair**
19	Request rules help	Parliamentary inquiry...	Yes	No	No	No	Chair**
20	Complain about heat, noise...	I rise to a question of privilege...	Yes	No***	No	No	Chair**

* Based on *Robert's Rules of Order 12th Edition*

** The chair does not vote but responds to the inquiry or requests assistance for a response.

*** See RONR for additional information

946.03 CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

Updated 21–22 Wis. Stats. 2

learning that the premises are being so used, permits such use to be continued is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.06 Improper use of the flag. (1) Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag; or

(b) Exposes to public view a flag upon which has been placed or attached a word, mark, design, or advertisement not properly a part of such flag; or

(c) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) Uses the flag for commercial advertising purposes.

(2) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are no unauthorized words or designs on such flag and provided the flag is not connected with any advertisement.

(3) In this section “flag” means anything that is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Wisconsin state flag, or a copy, picture, or representation of any of them.

History: 1977 c. 173; 2003 a. 243.

A flag misuse statute was unconstitutional as applied to a flag hung upside down with a peace symbol affixed. The context imbued the display with protected elements of communication. *Spence v. Washington*, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).

The Washington flag desecration statute held unconstitutional in *Spence*, 418 U.S. 405 (1974), when applied to a mere display of an altered flag in the absence of a disturbance of the peace, was identical in all essential ways to this section. *Koser v. County of Price*, 834 F. Supp. 305 (1993).

SUBCHAPTER II

BRIBERY AND OFFICIAL MISCONDUCT

946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class H felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer’s or employee’s lawful duty transfers or promises to the officer or employee or on the officer’s or employee’s behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer’s or employee’s lawful duty.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Circumstantial evidence supported an inference that the defendant intended to influence a public official’s actions. *State v. Rosenfeld*, 93 Wis. 2d 325, 286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). *State v. Sammons*, 141 Wis. 2d 833, 417 N.W.2d 190 (Ct. App. 1987).

946.11 Special privileges from public utilities.

(1) Whoever does the following is guilty of a Class I felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any

person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.

(2) In this section:

(a) “Free pass” means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty.

(b) “Privilege” means anything of value not available to the general public, but does not include compensation or fringe benefits provided as a result of employment by a public utility to a regular employee or pensioner when the following conditions are satisfied:

1. The regular employee or pensioner is not compensated specifically for services performed for a purpose related to the election or nomination for election of an individual to state or local office, the recall from or retention in office of an individual holding a state or local office, or for the purpose of payment of expenses incurred as a result of a recount at an election.

2. The regular employee or pensioner is not compensated in excess of that provided to other regular employees or pensioners of like status.

(c) “Public utility” has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(3) This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than \$300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

History: 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496; 2001 a. 109; 2015 a. 117; 2017 a. 365 s. 111.

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class I felony:

(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer’s or employee’s office or employment within the time or in the manner required by law; or

(2) In the officer’s or employee’s capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer’s or employee’s lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer’s or employee’s official capacity; or

(3) Whether by act of commission or omission, in the officer’s or employee’s capacity as such officer or employee exercises a

discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Sub. (5) prohibits misconduct in public office with constitutional specificity. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person who is not a public officer may be charged as a party to the crime of official misconduct. State v. Tronca, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. State v. Schmit, 115 Wis. 2d 657, 340 N.W.2d 752 (Ct. App. 1983).

Sub. (3) is not unconstitutionally vague. It does not fail to give notice that hiring and directing staff to work on political campaigns on state time with state resources is a violation. A legislator's duty under this section may be determined by reference to a variety of sources including the Senate Policy Manual, applicable statutes, and legislative rules and guidelines. The Senate Policy Manual and senate guidelines restricted political campaigning with public resources. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Sub. (3) regulates conduct and not speech and is not subject to an overbreadth challenge under the 1st amendment. Legislators or their employees are not prohibited from doing or saying anything related to participation in political campaigns so long as they do not use state resources for that purpose. Legitimate legislative activity is not constrained by this statute. The line between "legislative activity" and "political activity" is sufficiently clear to prevent any confusion as to what conduct is prohibited under this statute. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Enforcement of sub. (3) against a legislator does not violate the separation of powers doctrine. Enforcement does not require the courts to enforce legislative rules governing the enactment of legislation. Rather, the courts are asked to enforce a penal statute that relates to the duties of a legislator. A court may interpret an internal legislative rule to determine criminal liability if, when applied to the facts of the specific case, the rule is not ambiguous. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Sub. (3) provides, as separate elements of the crime, the requirement that the conduct be inconsistent with the duties of one's office and the requirement that the conduct be done with intent to obtain a dishonest advantage. Although both elements may be proved through the same transaction, there must nevertheless be proof as to both elements. The state is required to prove beyond a reasonable doubt that the defendant exercised his or her discretionary power with the purpose to obtain a dishonest advantage. Guilt of misconduct in office does not require the defendant to have acted corruptly. State v. Jensen, 2007 WI App 256, 06-2095. See also State v. Schultz, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823, 06-2121.

946.13 Private interest in public contract prohibited.

(1) Any public officer or public employee who does any of the following is guilty of a Class I felony:

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

(2) Subsection (1) does not apply to any of the following:

(a) Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than \$15,000 in any year.

(b) Contracts involving the deposit of public funds in public depositories.

(c) Contracts involving loans made pursuant to s. 67.12.

(d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.

(e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.

(f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.

(g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under s. 91.13, 2007 stats., or s. 91.60 or subch. IX of ch. 71, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2 percent of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined in s. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than \$10,000 per year, merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7) (a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

946.13 CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

Updated 21–22 Wis. Stats. 4

(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than \$10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2 percent of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

(12) (a) In this subsection:

1. "Research company" means an entity engaged in commercial or nonprofit activity that is related to research conducted by an employee or officer of the system or to a product of such research.

2. "System" means the University of Wisconsin System.

(b) Subsection (1) does not apply to a contract between a research company and the system or any institution or college campus within the system for purchase of goods or services, including research, if the interest that a system employee or officer has in the research company has been evaluated and addressed in a management plan issued by the individual or body responsible for evaluating and managing potential conflicts of interest and the management plan complies with the policy adopted under par. (d).

(d) The board shall adopt a policy specifying the contents required for a management plan under par. (b).

History: 1971 c. 40 s. 93; 1973 c. 12 s. 37; 1973 c. 50, 265; 1977 c. 166, 173; 1983 a. 282; 1987 a. 344, 378, 399; 1989 a. 31, 232; 1993 a. 486; 1995 a. 27, 225, 227, 435; 1997 a. 35, 248; 1999 a. 9, 85; 1999 a. 150 s. 672; 2001 a. 109; 2005 a. 417; 2009 a. 28; 2019 a. 36.

A county board member did not violate sub. (1) by accepting a job as airport manager while he was serving as a county board member for a county that was co-owner of the airport when he was appointed pursuant to advice and approval of the county corporation counsel. *State v. Davis*, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense. It does not include the element of corrupt motive. *State v. Stoehr*, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).

The defendant could not have had a pecuniary interest in, or have negotiated in his private capacity for, a position that had not yet been posted. *State v. Venema*, 2002 WI App 202, 257 Wis. 2d 491, 650 N.W.2d 898, 01–2502.

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education [now Technical college] may not bid on and contract for the construction of a building project for a vocational–technical district that would entail expenditures exceeding \$2,000 in any year, when availability of federal funds for use on such project is subject to his approval as a member of the board. 60 Atty. Gen. 310.

Discussing conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

This section applies to county board or department purchases aggregating more than \$5,000 from a county supervisor–owned business. 76 Atty. Gen. 178.

When the village board administers a community development block grant program, a member of the village board would violate this section if he or she obtained a loan in excess of \$5,000 under the program. Acting as a private contractor, the board member would violate sub. (1) if he contracted to perform the construction work for a third person who obtained a loan under the program. 76 Atty. Gen. 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors, or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

A municipality's zoning decision is not a contract under sub. (1) (a), and therefore the statute does not apply to an official's participation in a zoning decision. OAG 9–14.

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity

directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.16 Judicial officer collecting claims. Any judicial officer who causes to be brought in a court over which the officer resides any action or proceeding upon a claim placed with the officer as agent or attorney for collection is guilty of a Class B misdemeanor.

History: 1977 c. 173.

946.17 Corrupt means to influence legislation; disclosure of interest. Any person who gives or agrees or offers to give anything of value to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of the measure, or who receives, or agrees to receive anything of value for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, attempts in any manner to influence any member of the legislature for or against the measure, without first making known to the member the real and true interest he or she has in the measure, either personally or as such agent or attorney, is guilty of a class A misdemeanor.

History: 1977 c. 278 s. 1; Stats. 1977 s. 946.17; 1993 a. 213.

946.18 Misconduct sections apply to all public officers. Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

History: 1977 c. 278; 1979 c. 110.

SUBCHAPTER III

PERJURY AND FALSE SWEARING

946.31 Perjury. (1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class H felony:

- (a) A court;
- (b) A magistrate;
- (c) A judge, referee or court commissioner;
- (d) An administrative agency or arbitrator authorized by statute to determine issues of fact;
- (e) A notary public while taking testimony for use in an action or proceeding pending in court;
- (f) An officer authorized to conduct inquests of the dead;
- (g) A grand jury;
- (h) A legislative body or committee.

(2) It is not a defense to a prosecution under this section that the perjured testimony was corrected or retracted.

History: 1977 c. 173; 1979 c. 110; 2001 a. 109.

An arbitrator selected from a list provided by the Wisconsin Employment Relations Commission is authorized by s. 111.10 to arbitrate as provided in ch. 298 [now ch. 788] and so is "authorized by statute" within meaning of sub. (1) (d). *Layton School of Art & Design v. WERC*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).

Perjury consists of a false statement that the defendant knew was false, was made under oath in a proceeding before a judge, and was material to the proceeding. Materiality is determined by whether the trial court could have relied on the testimony in making a decision, not on whether it actually did. *State v. Munz*, 198 Wis. 2d 379, 541 N.W.2d 821 (Ct. App. 1995), 95–0635.