



Committee of the Whole MEETING AGENDA

May 23, 2023 - 6:00 PM
Council Chambers
3805 S. Casper Drive

Agenda Amended & Published: 5/22/2023 @ 11:35 AM
Agenda Published: 5/19/2023

AGENDA

1. **CALL MEETING TO ORDER**
2. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
3. **APPROVAL OF MINUTES**
 - A. May 9, 2023 Committee of the Whole
4. **UTILITY & FINANCE**
 - A. Discussion and recommendation to the Common Council approval of the May 24th, 2023 Water Utility claims in the amount of \$27,731.08, Sewer Utility claims in the amount of \$9,355.54 and General City claims in the amount of \$1,296,360.80. We Energies EFT of \$59,593.03
5. **LICENSES & PERMITS**
 - A. Discussion and recommendation to the Common Council approval of the alcohol license applications for the licensing year of July 1st, 2023 to June 30th, 2024 per the list as presented
 - B. Discussion and recommendation to the Common Council to approve the Extension of Premise application for Mary's Caddyshack on June 17th (2pm - 8pm), July 15th (1pm - 8pm), and September 24th (2pm - 8pm) for the parking lot area
 - C. Discussion and recommendation to the Common Council approval of a Loudspeaker Permit extension to 11:00 pm for Chris Czarnecki of 12820 W Ohio Drive for a graduation party to be held on July 15, 2023
 - D. Discussion and recommendation to the Common Council approval of a Loudspeaker Permit extension to 11:00 pm for St. Elizabeth Ann Seton located at 12700 W. Howard Avenue for the Fun Fest Celebration to be held on July 28, July 29, and July 30, 2023
 - E. Discussion and recommendation to the Common Council approval of a Loudspeaker Permit extension to 11:00 pm for Ojibwa Bowhunters located at 30455 S. Johnson Road for a pig roast event on June 17th and a birthday party event on June 24th, 2023
6. **MISCELLANEOUS**
 - A. Discussion and recommendation to the Common Council re: the RAS for the approval of Ordinance No. 2671, an Ordinance to amend Chapter 24 of the City of New Berlin Municipal Code relative to Emergency Management
 - B. Discussion and recommendation to the Common Council re: the RAS for the approval of Ordinance No. 2672, an Ordinance to amend Chapter 133 of the City of New Berlin Municipal Code relative to Hazardous Material
7. **ADJOURN**

Supplemental Information:

- *The meeting agenda and agenda packet are available online at www.NewBerlin.org. The minutes are published online and are approved at the next regularly scheduled meeting.*
- *It is possible that action will be taken on any of the items on the agenda and that the agenda may be discussed in any order.*
- *You may provide comments to the City Clerk via email at CitizenComments@NewBerlin.org. Comments will be forwarded to the Mayor and members of the governing body. Emailed comments are not read during the meeting.*
- *The City of New Berlin strives to host inclusive, accessible meetings that enable all individuals to engage and participate fully. Any person who has a qualifying disability under the Americans with Disabilities Act that requires that the meeting be accessible, please contact City Clerk Rubina R. Medina at (262) 786-8610 or via email at CityClerk@NewBerlinWI.gov at least 48 hours before the scheduled meeting time. Efforts will be made to accommodate the needs of disabled individuals through appropriate aids and/or services.*
- *It is also possible that members of and possibly a quorum of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to in the above notice.*



Committee of the Whole MEETING MINUTES

May 9, 2023 - 6:00 PM
Council Chambers
3805 S. Casper Drive

Please note: Minutes are unofficial until approved at the next regular scheduled meeting.

MINUTES

1. CALL MEETING TO ORDER

Mayor Ament called the meeting to order at 6:01 PM.

2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk Rubina R. Medina took the roll call as follows:

Present: Alderperson Hopkins, Alderperson La Fever, Alderperson Maxey, Alderperson Harenda, Alderperson Horbinski, Alderperson Kroupa

Excused: Alderperson Stribl

Staff Present: City Attorney Mark Blum, City Clerk Rubina Medina

3. APPROVAL OF MINUTES

A. April 25, 2023 Committee of the Whole

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Horbinski
Motion 6-0

4. UTILITY & FINANCE

A. Discussion and recommendation to Common Council approval of the May 10th, 2023 Water Utility claims in the amount of \$259,847.36, Sewer Utility claims in the amount of \$21,236.20 and General City claims in the amount of \$447,680.23. US Bank Visa EFT of \$35,191.51 and We Energies EFT of \$65,364.74.

MOTION: Motion to approve

VOTE: Motion by: Maxey
Second by: Hopkins
Motion 6-0

5. LICENSES & PERMITS

A. Recommend to the Common Council approval of the alcohol license applications for the licensing year of July 1st, 2023 to June 30th, 2024 per the list as presented.

MOTION: Motion to approve the list as presented

VOTE: Motion by: Hopkins
Second by: Horbinski

Motion 6-0

6. MISCELLANEOUS

- A. Recommend to the Common Council that a joint public hearing be set for July 10, 2023 at 6:00 p.m. to be held before the Plan Commission to amend the Future Land Use Map within the City's Comprehensive Plan from Rural Commercial and Suburban Residential to Rural Commercial and Suburban Residential AND rezone from B-2 and R-3 to B-2 and R-3 for the properties located at 18335 W. National Ave (Tax Key #: 1262.961), Tax Key #: 1262.962 (located behind 18335 W. National Avenue) and 18395 W. National Ave (Tax Key #: 1262.963).

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Hopkins
Motion 6-0

- B. Recommend to Common Council that a joint public hearing be set for July 10, 2023 at 6:01 p.m. to be held before the Plan Commission to amend the Future Land Use Map within the City's Comprehensive Plan from Suburban Commercial to Suburban Commercial, Mixed Residential and Institutional with a Planned Unit Development Overlay AND rezone from I-1 and C-2 to B-1/PUD, Rm-1/PUD, I-1 PUD & C-2 for approximately 34.5 acres for the parcels located at 1750 S. Moorland Road (includes Tax Keys #'s listed from north to south, beginning at the intersection of Greenfield Avenue south along the east side of Moorland Road, up to the New Berlin Recreation Trail): 1158-990; 1158-991-001; 1158-993, 1158-994, 1158-989, 1158-991 & a portion of 1158-992).

MOTION: Motion to approve

VOTE: Motion by: Hopkins
Second by: Horbinski
Motion 6-0

7. ADJOURN

MOTION: Motion to adjourn at 6:07 PM.

VOTE: Motion by: Maxey
Second by: Kroupa
Motion 6-0

*Respectfully Submitted,
Rubina R. Medina, City Clerk*

RENEWAL ALCOHOL LICENSE APPLICANTS

Council Meeting Date: May 23, 2023

The below individuals hereby make application to the Common Council of the City of New Berlin for an Alcohol License and premise description as described below subject to Wisconsin Statutes and City of New Berlin Ordinances for the period ending June 30, 2024. Licenses are issued by the City Clerk pending all requirements are met and fees paid.

Page: 1

Trade Name	Invited Agent	Applying for License
1. Clark National Inc. Location:	Jaffer Bhimani Premise Description: Gas station with beer, wine and liquor. Coolers within establishment.	"Class A" Retail - Combo
2. Bobbleheads Pub, LLC Location:	Daniel W. Petrie PREMISE DESCRIPTION: OUT BUILDING, GROUNDS, TAVERN, BASEMENT	"Class B" - Combo
3. Cleveland Pub, Inc. Location:	Joseph L. Griese PREMISE DESCRIPTION: MAIN BUILDING, UPPER AND LOWER PATIOS	"Class B" - Combo
4. Cocina Real Inc. Location:	Rafael Escamilla PREMISE DESCRIPTION: ALL LIQUOR AND BEER IS KEPT LOCKED IN OFFICE, IN THE KITCHEN, BEHIND THE BAR TO PREPARE COCKTAILS AND SERVE THEM AT THE BAR, AND DINING ROOM AREA WHICH IS ADJACENT TO THE BAR, AND WITHIN BARRIERS OF PATIO AREA	"Class B" - Combo
5. Veterans Of Foreign Wars Post 5716 Location:	David M. Chappell PREMISE DESCRIPTION: SOLD, SERVED, CONSUMED AND STORED IN TWO BANQUET HALLS (ONE ON MAIN LEVEL, ONE DOWNSTAIRS), AND TAVERN ON MAIN LEVEL. CONSUMED ON DESIGNATED PATIO AREA. BEER STORED IN COOLER ON MAIN LEVEL AND ALCOHOL STORED IN CABINETS ON MAIN LEVEL.	"Class B" - Combo
6. Lagniappe Brasserie LLC Location:	Andrew P. Tenaglia PREMISE DESCRIPTION: STORED IN LOCKED STORAGE ROOM. SERVED AND CONSUMED AT BAR, IN DINING ROOM AND DESIGNATED OUTDOOR PATIO.	"Class B" - Combo
7. Matty's Bar & Grille Inc. Location:	Matthew L. Anderson PREMISE DESCRIPTION: 1ST & 2ND FLOOR OF PREMISES, OUTDOOR PATIO, FRONT SIDEWALKS, TENTED AREAS & SURROUNDING GRASS AREAS AND YARD	"Class B" - Combo
8. Bluemound Lanes, Inc. Location:	Tracy J. Posnanski PREMISE DESCRIPTION: BAR ROOMS, CONCOURSE HALL, BASEMENT, COOLER, BOWLING HALL	"Class B" - Combo
9. Ultra Mart Foods LLC Location:	John Stachowiak PREMISE DESCRIPTION: SINGLE STORY GROCERY AND LIQUOR STORE; INCLUDING THE EXTERIOR PARKING STALLS SPECIFICALLY DESIGNATED FOR THE ONLINE MERCHANDISE ORDER & PICKUP SERVICE AND THE PATHWAY UTILIZED TO ACCESS THE PARKING STALLS	"Class A" Retail - Combo

ZONING PERMIT 2300761

ISSUE DATE: 5/10/2023

EXPIRATION DATE: 1 year from date issued

OWNER:

SCHETTLE REVOCABLE TRUST DTD 2/8/96
16001 W RIVERA RD
NEW BERLIN, WI 53151

APPLICANT:

MARTY PAKULA
MARY'S CADDYSHACK
15500 W CLEVELAND AVENUE
NEW BERLIN WI 53151

ADDRESS: 1959 S 124TH ST

FOR: ADMIN UA TEMP USE - TEMP USE – EVENTS: BIRTHDAY PARTY W/BAND OUTSIDE 6/17/23 & CADDYFEST PARTY W/BAND OUTSIDE 7/15/23 & GOLF OUTING 9/24/23

1. Applicant shall adhere to the submitted Plan of Operation:
 - a. Applicant shall adhere to event dates as outlined in the Plan of Operation. Dates:
 - Birthday with Band – June 17th – Event from 2:00 PM to 8:00 PM; Band from 3:00 PM to 6:00 PM
 - Caddy Fest with Band – July 15th - 1:00 PM to 8:00 PM
 - Golf Outing - September 24th - 3:00 PM to 8:00 PM, no band.
 - b. Event may include outdoor amplified music, live music, and food.
2. Applicant shall not allow noise levels to rise to a level that creates a public nuisance as defined in Chapter 175 and/or Chapter 171 of the Municipal Code.
3. Applicant shall apply for and receive individual Sign Permits for all event signage and banners prior to installation.
4. The City of New Berlin reserves the right to review any substantiated complaints and take appropriate action including, but not limited to, revocation of zoning permit or loud speaker permit, if necessary.
5. Any substantiated complaints this year will be immediately evaluated for nuisance and may result in immediate revocation of your permit. Staff has the ability to revoke your Zoning Permit based on your failure to abide by the conditions set forth herein. If your permit is revoked, you would have the opportunity to appear before the Plan Commission to remedy the concerns.
6. All event parking shall be contained on-site. If parking is to be located at off-site properties, letters from those property owners shall be on file with the City. Additional parking will be available at Butch's lot on 124th and Greenfield Avenue. **Please make patrons aware of this and how you will plan to shuttle people.**
7. Sanitation and fresh water facilities shall be adequate for the actual number of people using the site as required by Waukesha County Health Department.
8. A loudspeaker permit shall be required from the Police Department for the live music.
9. Applicant shall obtain a temporary extension of premise permit from the Clerk's Office.
10. If any sales or solicitation of business will occur with vendors on site, a Direct Sellers Permit will be required from the Clerk/Community Relations office.
11. Sound shall not exceed 70 dBA LAeq(1h).

526 BUILDING INSPECTION

12. Do NOT block building EXITS.

511 ENGINEERING

13. Maintain through traffic lane on Park Ave. Plan of Operation states the parking on Park Ave. will be on one side only.
14. Do not block driveways or access to neighboring properties.
15. Provide traffic control barricades at the entrance and exit to the parking lot.
16. The plan shows that two adjacent properties are ok with the party. Please provide a letter from these property owners.
17. Applicant shall contact the Police Department to request temporary "No Parking" signs from the Police Department. Please do this in advance of the event.

This Zoning Permit authorizes the above establishment to conduct business or operate in accordance with all approved plans on file, any and all applicable City, State and Federal codes, and as described below:

Expiration date: A zoning permit shall expire if, within 12 months of the date of the approval, the proposed construction, activity, or preparation of land has not substantially commenced. Substantial commencement is demonstrated by reasonable physical alteration of the site in conformance with approved plans. The Director of Community Development may grant a 12-month extension, if requested prior to expiration, provided that the applicant demonstrates a valid cause acceptable to the Department. Additional extensions may only be approved by the Plan Commission or Community Development Authority if all applicable fees are paid and the applicant demonstrates a valid and acceptable cause. Requests submitted after permit expiration shall not be considered.

Occupancy Permit: Per New Berlin Municipal Code 275-26(B)(4), "The Director shall inspect the building, site, or premises for compliance with all current codes, plans, specifications, and conditions of approval prior to issuance of an occupancy permit. No occupancy shall be allowed if any other outstanding violations exist on the site. As-built plans may be required to substantiate or verify that certain conditions of the zoning permit, use approval, conditional use permit, developer's agreement, or building permit have complied with."

Building Permit: Per New Berlin Municipal Code 275-25(A) "No building or structure shall be erected, altered, relocated, moved, extended, or enlarged until a building permit has been issued by the Director, certifying that such building, as proposed, would be in compliance with the provisions of this chapter and with the adopted City Building Code. (B), Application. In addition to the requirements of Sections COMM 20.04 and COMM 50.03, WI Adm. Code, applications for a building permit for new construction and for additions to existing construction shall include all information and supporting materials as specified by the permit application center." A separate fee is required prior to the start of any construction. Follow Codes and instructions of the Building Inspection Division when applying.

Signage: Per New Berlin Municipal Code 275-61(B)(1) " No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered, nor shall the face of a sign or color be changed without a Sign Permit and conforming with the provisions of this chapter. No Sign Permit shall be issued to a business or property that does not have a Zoning Permit." Signs require separate applications and approval.

Other Permits: Per New Berlin Municipal Code 275-26(C) "It is the responsibility of the permit applicant to secure all other necessary permits required by any federal, state, or local agency. This includes, but is not limited to, a water use permit pursuant to Chapter 30 or 31, WI Stats, or a wetland fill permit pursuant to Section 404 of the Federal Water Pollution Control Act."

Transferability: Per New Berlin Municipal Code 275-24(F) "Zoning permits are not transferable from one applicant to another without approval of the Plan Commission. Zoning permits are site specific and thus are not transferable from one site to another under any circumstances." "If the business plans to add more employees, make physical changes to the outside of the building, and/or any other deviations to the approved plan of operation the applicant shall follow all applicable City processes."

Compliance: Failure to comply with conditions of the Zoning Permit may be enforced pursuant to New Berlin Municipal Code 275-68 (B), "Whenever an order of the Director, Building Inspector, City Engineer, or other city official, pursuant to this chapter, has not been complied with, or where written agreements for compliance have not been made by the property owner, the City Attorney shall institute appropriate legal action or proceedings to prohibit the owner, agent, or occupant from using such structure, land, or water. The City may seek a court order in the nature of mandamus, abatement, or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation."

Permit Authorized By:



NIKKI JONES, DEPUTY DIRECTOR

Date: 5/10/2023



City of New Berlin
Loudspeaker Permit Application



Submit this application to the New Berlin Police Department, 16300 W. National Ave., New Berlin, WI 53151, not less than 14 days prior to the event. If you have any questions, call the New Berlin Police Department at (262)782-6640.

Background Information:

Organization/Individual Name: CHRIS CZARNECKI
Address: 12820 W OHIO DR NEWBERLIN, WI 53151
Applicant representing this event:
Name: CHRIS CZARNECKI Work Phone: _____
Address: 12820 W OHIO DR Home Phone: _____
Date of Birth: 12/31/1976 Cell Phone: 414-460-7865
Email Address: CHRISTOPHER.CZARNECKI@MS.COM

Event Information:

Name of Event: MARY HS GRADUATION PARTY
Address of Event: 12820 W OHIO DR

Dates of Event (no more than 3 days in a row): 7/15/23

Estimated Number of Participants: 30

Hours of Loudspeaker Operation:

Start: 8 PM a.m./p.m.

Finish (no later than 10p.m.): 11 PM a.m./p.m. * All city parks with the exception of Malone Park close at dusk*

Number of Loudspeakers to be used: 1

Please check the type of sound to be emitted:

☐ Speech

☒ Recorded Music

☐ Live Music

☐ Other PO

Applicant's Statement of Agreement:

I hereby affirm that the above information is true and correct in describing the intent of this application. I, CHRIS CZARNECKI, the undersigned, agree to use the loudspeaker in a careful and prudent manner so as not to cause complaints from neighbors and I agree to lower or terminate the amplification levels when requested by neighbors or police.

Applicant Signature: _____

Date: 5/9/23

FOR OFFICE USE ONLY

☐ Approved ☐ Not Approved. Reason for denial: _____

Issued by: _____

5-8-23



City of New Berlin Loudspeaker Permit Application



Submit this application to the New Berlin Police Department, 16300 W. National Ave., New Berlin, WI 53151, not less than 14 days prior to the event. If you have any questions, call the New Berlin Police Department at (262)782-6640.

Background Information:

Organization/Individual Name: St. Elizabeth Ann Seton
Address: 12700 W. Howard Ave. New Berlin, WI 53151
Applicant representing this event:
Name: Jim Schutte Work Phone: () _____
Address: 10018 W. Whitnell Edgebrook Home Phone: () _____
Date of Birth: 7-25-1967 Cell Phone: 414 339-1070

Event Information:

Name of Event: Fynfest Celebration
Address of Event: 12700 W. Howard Ave New Berlin, WI 53151
Dates of Event (no more than 3 days in a row): 7-28 - 7-29 - 7-30 - 2023
Estimated Number of Participants: 500
Hours of Loudspeaker Operation:
Start: 5:00 a.m./(p.m.)
Finish (no later than 10p.m.): 11:00 a.m./(p.m.)
Number of Loudspeakers to be used: 6-8

Please check the type of sound to be emitted:

☒ Speech ☐ Recorded Music ☒ Live Music ☐ Other _____

Applicant's Statement of Agreement:

I hereby affirm that the above information is true and correct in describing the intent of this application. I, Jim Schutte, the undersigned, agree to use the loudspeaker in a careful and prudent manner so as not to cause complaints from neighbors and I agree to lower or terminate the amplification levels when requested by neighbors or police.

Applicant Signature: _____

FOR OFFICE USE ONLY	
☐ Approved	☐ Not Approved. Reason for denial: _____
Issued by: _____	



City of New Berlin

Loudspeaker Permit Application



Submit this application to the New Berlin Police Department, 16300 W. National Ave., New Berlin, WI 53151, not less than 14 days prior to the event. If you have any questions, call the New Berlin Police Department at (262)782-6640.

Background Information:

Organization/Individual Name: Ojibwa Bowhunters

Address: 3045 S. Johnson Road

Applicant representing this event:

Name: Rod Szmania Work Phone: 920-980-1433

Address: 16301 W. Vogel Dr Home Phone: _____

Date of Birth: 8/21/53 Cell Phone: 920-980-1433

Email Address: roddszmania@icloud.com

Event Information:

Name of Event: Pig Roast June 17th / Birthday Party June 24

Address of Event: 3045 S. Johnson Rd

Dates of Event (no more than 3 days in a row): _____

Estimated Number of Participants: 350

Hours of Loudspeaker Operation:

Start: 11am (a.m./p.m.)

Finish (no later than 10p.m.): 11 a.m./p.m.

* All city parks with the exception of Malone Park close at dusk*

Number of Loudspeakers to be used: 4

Please check the type of sound to be emitted:

☐ Speech ☐ Recorded Music ☒ Live Music ☐ Other _____

Applicant's Statement of Agreement:

I hereby affirm that the above information is true and correct in describing the intent of this application. I, Rod Szmania, the undersigned, agree to use the loudspeaker in a careful and prudent manner so as not to cause complaints from neighbors and I agree to lower or terminate the amplification levels when requested by neighbors or police.

Applicant Signature: Rod Szmania Date: 5/12/22

FOR OFFICE USE ONLY	
☐ Approved	☐ Not Approved: Reason for denial: _____
Issued by: _____	

roddszmania@icloud.com
Jun 17th & Jun 24th Both dates until 11:00 pm



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development 

RE: Requested Action Statement for the approval of Ordinance #: 2671 amending Chapter 24 (Emergency Management) of the Municipal Code.

DATE: May 23, 2023

REQUESTED ACTION: Requested Action Statement for the approval of Ordinance #: 2671 amending Chapter 24 (Emergency Management) of the Municipal Code.

FISCAL IMPACT: The amendment to the Chapter 24 does not, in-and-of-itself, have a direct fiscal impact but this ordinance will amend the authorized expenditure thresholds for Emergency Management staff and the Mayor in the case of a declared emergency in order to expedite the City's response and deployment of resources. See additional background below.

SOURCE OF FUNDS: Not Applicable

RATIONALE / BACKGROUND: Ordinance #: 2671 amends the existing language in Chapter 24 in order to align the most recent updates to City's Emergency Management Plan and Continuity of Operations Plans. Based upon advice from the City Attorney regarding open records laws and the confidential nature of these documents the Common Council will only see the ordinance changes effectuating the changes and extend the authority to the Mayor and Director of Emergency Management (i.e. Director of Community Development) the authority to implement and/or modify these documents.

In 2022, updates were initiated for the City's **"Emergency Management Plan" (CEMP)** and **"Continuity of Operations Plans (COOP)."** The last City CEMP was adopted in June of 2011 while the COOPs were developed in 2004. Since that time, there have been a number of changes at the staff & department levels and other allied agencies of have updated their emergency operations plans. These City plans were outdated as a result and did not align well (or at all) with other agency plans such as Waukesha County's Emergency Management Plan, and also needs to reflect the organizational changes recently adopted by the Mayor and Common Council via *Ordinance #: 2657* to Chapter 24 of Municipal Code.

The purpose of the **"City of New Berlin Emergency Management Plan" (CEMP)** is to: 1) Serve as the coordinating document reflecting the overall strategy and organization for managing an incident response to major disasters, to assess damages, identify mitigation opportunities and to implement recovery efforts, 2) Facilitate the protection of lives, property and the environment for all incidents regardless of the nature and 3) Serve as a supporting document for individual department standard operating procedures (SOP's).

Since 2004, the **"City of New Berlin's Continuity of Operation Plan" (COOP)** has become outdated for a variety of reasons. The COOP establishes policy and guidance to enable the continuity of essential City functions when a "planned/non-emergency" and "unplanned/emergency" situation or incident arises or an event occurs that may severely impact a departments or City's ability to operate as usual and/or may require the relocation of selected personnel and functions of any city facilities in the City of New Berlin. The plan also ensures that: 1) the City of New Berlin is prepared to respond to emergencies, recover from them, and mitigate against their impacts and 2) the City of New Berlin is prepared to provide critical services in an environment that is threatened, diminished or incapacitated. It is the policy of the City of New Berlin to provide emergency organization and resources to minimize the long-term effects of disasters or planned/unplanned incidents, and to undertake activities that will ensure the continuity of

essential City services to the public and among City departments.

To this end, the City's has developed these Continuity of Operations Plans (COOP), incorporating all of its departments and divisions within those departments, collectively constructing the COOP framework for City government.

Each City department is directed to maintain a department COOP that will:

- Delineate department essential services and activities;
- Specify lines of department succession and delegations of authority;
- Outline a department COOP decision process;
- Recommend safekeeping of vital department (City) records;
- Include procedures for employee advisories, alerts and COOP activation, with instructions for relocation with and without warning;
- Provide for attaining department essential services operational capability within 12 hours; and
- Establish processes and procedures to acquire resources necessary to continue essential services and sustain operations for up to 30 days.

ORDINANCE NO. 2671

**ORDINANCE TO AMEND CHAPTER 24
OF THE CITY OF NEW BERLIN MUNICIPAL CODE
RELATIVE TO EMERGENCY MANAGEMENT**

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

SECTION I

Section 24-2, B, (4), of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

(4) The Emergency Management Manager, in collaboration with the Director of Community Development, shall prepare a comprehensive general plan for the emergency management of the City, as well as a continuity of operations plan, and shall present such plans to the Mayor for review and approval. The Director of Community Development and the Mayor are hereby authorized to approve the continuity of operation plan and comprehensive general plan for the emergency management of the City and to inform all City Staff of such plans and to provide training for said Staff to facilitate the implementation of the plans. It shall be the duty of all municipal agencies and all emergency managements forces of the City to perform the duties and functions assigned by the emergency management plan and continuity of operations plan as approved. The plans may be modified by the Mayor and Director of Community Development in consultation with the Emergency Management Manager from time to time as necessary. The continuity of operations plan and the emergency management plan shall be updated no less than once every five years, and shall be integrated into the City's overall comprehensive plan where appropriate.

SECTION II

Section 24-4 of the Municipal Code of the City of New Berlin shall be amended to include the following language at the end of this Section:

The Mayor, and in his absence, the Common Council President and/or the Common Council acting collectively, may suspend or modify the City procurement policies, the process for application for demolition permits, zoning permits and building permits during the existence of a State of Emergency as declared by the City, Waukesha County, the State of WI or the Federal government. The modification and/or suspension of such policies shall only be permitted in so far as they are allowed within the discretion of the officers of the City of New Berlin and do not otherwise conflict with city, state, federal or Waukesha County regulations.

The Continuity of Operations Plan Unit Team shall have the authority to implement the continuity of operations plan at such time as the Mayor directs that the continuity of operations plan be implemented.

SECTION III

Section 24-8 of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

24-8 Expenses of emergency management.

Except as expressly provided hereunder, no person shall have the right to expend any public funds of the City in carrying out any emergency management activity authorized by this chapter without prior approval by the Common Council, nor shall any person have any right to bind the City by contract, agreement or otherwise without prior and specific approval of the Common Council and/or per the City's procurement or contract policies. Notwithstanding the foregoing, the Mayor and the Director of Community Development shall have the authority under the City's procurement policy to purchase supplies, equipment or services as may be necessary to address a current emergency as declared by the Mayor, Common Council President or Council of the City of New Berlin in a total amount not to exceed \$100,000.00. The Emergency Management Manager or Director of Community Development shall have the authority to purchase supplies, equipment or services as may be necessary to address a current emergency situation as declared by the City in an amount not to exceed \$50,000.00; however, the total amount spent shall not exceed \$100,000.00 unless authorized by the Common Council. Any expenses incurred under this paragraph shall immediately be reported to the Mayor and the Finance Director.

SECTION IV

Section 24-10 of the Municipal Code of the City of New Berlin is hereby created to read as follows:

24-10 Public Event Safety.

From time to time, the City holds events for the benefit of the public, including activities such as the Fourth of July Festival, the Safety Saturday Event, as well as other City sponsored fairs, festivals, parades, walks, runs/marathons, markets, block parties, exhibitions, motion picture showings or other City sponsored events. These events shall be subject to the right of the City to shut down such an event that is in progress if the continuation of the event is deemed to be unadvisable due to a public safety hazard and/or public nuisance as determined by the Police Department, Fire Department and/or City of New Berlin Emergency Management. Any attendee and/or vendor at such events shall be required to abide by an order of the Police Department, Fire Department and/or Emergency Management to terminate the event and to leave the event location. Failure to abide by order or direction of these Police Department, Fire Department and/or Emergency Management shall be subject to citation in accordance with Section 1-18 of the City of New Berlin Municipal Code.

SECTION V

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

SECTION VI

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

SECTION VII

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this _____ day of _____, 2023.

APPROVED:

Countersigned:

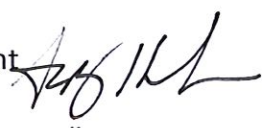
David Ament, Mayor

Rubina Medina, Clerk



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development 

RE: Requested Action Statement for the approval of Ordinance #: 2672 amending Chapter 133 (Hazardous Waste) of the Municipal Code.

DATE: May 23, 2023

REQUESTED ACTION: Requested Action Statement for the approval of Ordinance #: 2672 amending Chapter 133 (Hazardous Waste) of the Municipal Code.

FISCAL IMPACT: The amendment to the Chapter 133 does propose to codify financial penalties for violations of this chapter. This ordinance change proposes an initial fine of \$1,000 for the discharge/spill; however, each day the discharge/spill continues shall be considered a separate offense, with the second day and thereafter being assessed a forfeiture of \$5,000 per day and if the site is not cleaned up within 5 days, a forfeiture of \$10,000 per day for each day thereafter shall be assessed against the party responsible for the hazardous material discharge/spill.

SOURCE OF FUNDS: Not Applicable

RATIONALE / BACKGROUND: Based upon recent environmental spill events the proposed Chapter 133 amendments outlined in Ordinance #: 2672 broadens the definition of hazardous waste to include those, by definition, that are considered hazardous materials; updates the language with regards to the City's ability to inspect private property in order to enforce this chapter and to ascertain the public health risk regarding hazardous material storage. It also provides for protocols for City staff to contain, cleanup, restore, access and deploy protective measures to protect the public health.

The ordinance also provides the framework for the City to pursue enforcement and civil liability against a responsible party. Lastly, Ordinance #: 2672 establishes a penalty and financial forfeiture framework against parties responsible for hazardous waste discharges and/or spills.

ORDINANCE NO. 2672

**ORDINANCE TO AMEND CHAPTER 133
OF THE CITY OF NEW BERLIN MUNICIPAL CODE
RELATIVE TO HAZARDOUS MATERIAL**

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

SECTION I

Section 133-1 of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

Section 133-1 Purposes. The purposes of this Chapter are:

- A. To ensure safe and effective hazardous material management; and
- B. To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous materials in the City.

SECTION II

Section 133-2 of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

Section 133-2 Findings. The City finds that:

- A. Increasing production and consumption rates, continuing technological development and energy requirements have led to the generation of greater quantities of hazardous materials;
- B. The problems of disposing of hazardous materials are increasing as a result of air and water pollution controls and a shortage of available landfill sites; particularly, those certified to receive hazardous materials;
- C. While it is technologically and financially feasible for hazardous material generators to dispose of their materials in a manner which has less adverse impact on the environment than current practices, such knowledge is not being utilized to the extent possible;
- D. Even though the City is not heavily industrialized, there is a significant daily hazardous material management and disposal problem; and
- E. The public health and safety and the environment are threatened where hazardous materials are not managed and disposed of in an environmentally sound manner.

SECTION III

Section 133-3 of the Municipal Code of the City of New Berlin is hereby amended to strike the definition of "Hazardous Waste" and shall be replaced with the following:

133-3 Hazardous Material.

Any material, waste or combination of materials of a solid, liquid, contain gaseous or semisolid form which, because of its quantity, concentration or physical, chemical or

infectious characteristics, and which are defined as hazardous substances pursuant to Chapter 292 of the Wisconsin Statutes, as well as hazardous material and waste as identified by the US EPA, the State of Wisconsin DNR, the United States DOT, OSHA, the US Center for Disease Control or the US Nuclear Regulatory Commission, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Such materials include, but are not limited to, those as defined above, inclusive of those which are toxic, carcinogenic, flammable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous material or waste.

With regard to the remainder of the definitions under this Section, wherever the term “hazardous waste” is referenced, the term “hazardous material” shall be substituted in its place.

SECTION IV

Section 133-4, Permit Required, of the Municipal Code of the City of New Berlin is hereby amended to provide that wherever the term “hazardous waste” is referred to, the term “hazardous material” shall be substituted in its place.

SECTION V

Section 133-4, C, of the Municipal Code of the City of New Berlin is hereby created to read as follows:

133-4 Permit required.

- C. As a condition of the issuance of the permit provided for hereunder, the individual or entity which operates any hazardous material treatment or disposal site or facility, or transports, treats or disposes of any hazardous material, grants permission to the City of New Berlin and its authorized representatives to enter their property to determine compliance with the permit and any applicable hazardous material management or processing activities.

SECTION VI

Section 133-6 of the Municipal Code of the City of New Berlin shall be amended to read as follows:

133-6 Inspection and Right of entry.

For the purpose of enforcing this chapter or any rule or regulation promulgated pursuant hereto, the City may request, within reasonable limits, and in a reasonable manner, upon presenting appropriate credentials to the owner, operator or agent in charge, permission to enter any property within the City where hazardous materials are generated, stored, treated and/or disposed of; and to inspect and obtain samples of any hazardous material or

substance used in the treatment of hazardous material and to inspect and copy any records, reports, information or test results relating to the purposes of this chapter. In the event the owner of the property refuses to permit access for the purposes set forth herein, representatives of the City may apply for a Special Inspection Warrant pursuant to Wisconsin Statute Sec. 66.0119. In the event the City believes hazardous material is being generated or processed in a manner which presents an imminent danger to the public health, safety or welfare and the protection of the public health, safety and welfare requires emergent action to be taken to prevent injury to persons or damage to property, the City may enter the premises to promptly address the public health, safety and welfare threat.

SECTION VII

Section 133-9, Failure to Immediately Discontinue Violation; Injunction, of the Municipal Code of the City of New Berlin is hereby amended to provide that wherever the term “hazardous waste” is referred to, the term “hazardous material” shall be substituted in its place.

SECTION VIII

Section 133-11 of the Municipal Code of the City of New Berlin shall be amended to read as follows:

Section 133-11 Discharge of Hazardous Materials Prohibited

No person shall discharge, or cause to be discharged, leak, leach or spill upon any public street, alley or public property, or onto the ground, surface waters, subsurface waters or aquifers, or on any private property except those areas specifically licensed for hazardous material disposal or landfill activities, within the City, any hazardous materials as defined by Section 133-3.

- A. Containment, cleanup and restoration. Any person in violation of this section shall, upon direction of any emergency government officer or staff, Police or Fire, Department Representative, begin immediate actions to contain, clean up and remove to an approved repository, the offending hazardous material and restore the site to its original condition. Should any person fail to engage or complete the requirements of this section, the office of emergency management may order the required actions to be taken by public or private resources, with all costs incurred by the city to be reimbursed by anyone violating this section, including, but not limited to, the imposition of a lien against the offending property as a special charge for current services.
- B. Access. Access to any site, public or private, where a prohibited discharge is indicated or reasonably probable will be provided to Police, Fire, Emergency Management Staff or Officers for the purpose of evaluating the threat to the public and monitor containment, cleanup and restoration activities. If permission for such access is requested and not granted, the City reserves the right to pursue a Special Inspection Warrant or other Warrant under the State of Wisconsin Criminal Code as may be required by law.
- C. Public protection. Should any prohibited discharge occur that reasonably causes a threat to the life, health, safety or welfare of the public, the Mayor or Director of Emergency Management, or in his/her absence, the Deputy Director of Emergency Management, the City Fire Department or Police Department, may order an evacuation of the area or take other appropriate protective measures as may be necessary to deal with an eminent threat to the public health, safety or welfare.

- D. Enforcement. The Director of Emergency Management or his/her deputies, and the City Police and Fire Departments, shall have authority to issue citations or complaints under this Section.
- E. Civil Liability. Any person in violation of this section shall be liable to the City for any expenses incurred by the City or loss or damage sustained by the City by reason of such violation and to any individual whose person or property was damaged by such violation. The City may assess the costs of the cleanup or management of any hazardous material discharge or spill against the owner of the property where the discharge or spill took place, which shall be assessed as a special charge for current services under the Wisconsin Statutes Sec 66.0627. The individual or entity which caused the discharge or spill or where the spill is located shall be also responsible for the costs related to the cleanup and proper disposal of the spilled or discharged hazardous materials.

SECTION IX

Section 133-12 of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

133-12 Violations and penalties.

Except where otherwise provided herein, any person or entity who shall violate any provision of this chapter or any order, rule or regulation made hereunder, upon conviction thereof, shall be subject to a penalty as provided for by Section 1-18 of the Municipal Code of the City of New Berlin. With respect to hazardous material discharges or spills, however, the person responsible for the discharge/spill may be charged an initial fine of \$1,000.00 for the discharge/spill; however, each day the discharge/spill continues shall be considered a separate offense, with the second day and thereafter being assessed a forfeiture of \$5,000.00 per day and if the site is not cleaned up within 5 days, a forfeiture of \$10,000.00 per day for each day thereafter shall be assessed against the party responsible for the hazardous material discharge/spill.

SECTION X

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

SECTION XI

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

SECTION XII

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this _____ day of _____,
2023.

APPROVED:

Countersigned:

David Ament, Mayor

Rubina Medina, Clerk