



Common Council Meeting Agenda

March 11, 2025 - 6:05 PM
(Following the Committee of the Whole Meeting)
City Hall Council Chambers

Published: 3/7/2025

AGENDA

1. PRIVILEGE OF THE FLOOR

Each speaker is limited to 3 minutes. The session will conclude at 6:30 pm.

2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

4. APPROVAL OF MINUTES

- A. February 25th, 2025, Common Council Meeting Minutes

5. REPORTS

- A. City Clerk
B. Council President
C. Mayor

6. COMMUNICATIONS

7. PLAN COMMISSION

- A. KH DCD1-2500054 Zoning Code Updates.

8. UTILITY COMMITTEE

- A. UT 06-25 Recommend to the Common Council to award the professional services contract for the 2025 flow monitoring and I/I quantification project to raSmith to assist the Utility with the 2025 Sanitary Sewer Flow Monitoring Program.

9. FOURTH OF JULY COMMISSION

- A. Discussion and recommendation to the Common Council for approval of a contract with Area Tent for rentals and service from July 3rd through July 5th totaling \$21,821.15, as approved by the 4th of July Commission on January 22nd, 2025.
- B. Discussion and recommendation to the Common Council for approval of a contract with Chrome Fireworks in the amount of \$40,000 for 4th of July Fireworks as approved by the 4th of July Commission on January 22, 2025.
- C. Discussion and recommend to the Common Council approval of a contract with BCI Entertainment LLC in the amount of \$30,000 for 4th of July Festival Drone show on July 5th 2025.

- D. Discussion and possible action to recommend to the Common Council approval of a contract with Pat's Services, INC. in the amount of \$10,645 for 4th of July Festival for portable sanitation services for July 1st-July 6th 2025.

10. DEFERRED, REFERRED & TABLED ITEMS

11. ITEMS REMOVED FROM CONSENT AGENDA, if any

12. CONSENT AGENDA-----

Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.

13. MINUTES

- A. February 25, 2025, Committee of the Whole Meeting Minutes

14. UTILITY & FINANCE

- A. Discussion and possible action to recommend to the Common Council approval of the March 12th, 2025 Water Utility claims in the amount of \$24,916.03, Sewer Utility claims in the amount of \$158,573.68 and General City claims in the amount of \$796,409.18

15. LICENSES & PERMITS

- A. Discussion and possible action to recommend to the Common Council approval for a Change of Agent for Cool Golf, LLC, doing business as Sunny Slope Golf Course, appointing Stu Bloom as the new agent for the liquor licensing period ending June 30, 2025

16. MISCELLANEOUS

- A. Discussion and possible action to recommend to the Common Council approval of a Scope of Services to hire raSmith to conduct the bi-annual citywide roadway PASER evaluation in an amount not to exceed \$35,700

17. END CONSENT AGENDA-----

18. CLOSED SESSION

- A. *The City Council will convene in closed session pursuant to Section 19.85(1)(g) of the Wisconsin Statutes, to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted with respect to litigation in which it is or is likely to become involved, specifically:*
- B. Klein Claim

19. RECONVENE TO OPEN SESSION

- A. Possible discussion and action re: Klein Claim

20. ADJOURN

Additional Information

- The agenda packet with supplemental information related to the agenda items is available online at www.NewBerlinWi.gov. Once finalized by the governing body, approved meeting minutes are also posted online.
- The governing body may consider agenda items out of order
- Members, and potentially a quorum of other governmental bodies of the municipality, may be present at the meeting to gather information. No action will be taken by any governmental body other than the one referenced in this notice.
- With reasonable notice, accommodations will be provided under the Americans with Disabilities Act to meet the needs of individuals with disabilities through appropriate aids and services. For more information or to request assistance, please contact the Office of the City Clerk at (262) 786-8610.



Common Council MEETING MINUTES

February 25, 2025 - 6:05 PM
City Hall Council Chambers

MINUTES

1. PRIVILEGE OF THE FLOOR

Each speaker is limited to 3 minutes. The session will conclude at 6:30 pm.

No members of the public (or attendees) spoke during this portion of the meeting.

2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Ament called the Common Council meeting to order at 6:24 PM and led the Pledge of Allegiance.

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

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

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

Staff Present at the Dais: Mayor Dave Ament, City Attorney Thomas Schmitzer, City Clerk Rubina R. Medina

Other Staff Present: Human Resources Director, Melissa Beck

The City Clerk confirmed that a quorum was present and that the meeting was properly posted in compliance with open meetings law.

4. APPROVAL OF MINUTES

A. February 11th, 2025 Common Council Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Stribl
Motion 7-0

5. REPORTS

A. City Clerk

I thanked everyone who participated in the Primary Election and all the dedicated election officials who made it possible. We had a voter turnout of 14%. The next election is scheduled for April 1st. Absentee ballots will be mailed to all voters with requests on file starting March 11th. If you would like to request an absentee ballot, please visit the MyVote Wisconsin website at www.myvote.wi.gov

B. Council President

No Report.

C. Mayor

No Report.

6. COMMUNICATIONS

A. OAW Sports Complex Roof Collapse Incident; Notice of Intent to Mediate

This communication has been sent to the City Attorney for his review.

7. PARKS, BUILDINGS & GROUNDS COMMISSION

A. Discussion and possible recommendation to the Common Council for the approval of Resolution 2025-03 Amending the 2025 Capital Projects Budget to purchase two turf mowers.

MOTION: Motion to approve

VOTE: Motion by: La Fever
Second by: Maxey
Motion 7-0

B. Discussion and possible recommendation to Common Council to award the Fire Station #4 Generator Replacement Project to the most responsive and responsible bidder, Pieper Electric, Inc., in the amount of \$122,493.00. The total project cost, including contingencies, is not to exceed \$123,000.00 from account 04251300 61514 C2022.

MOTION: Motion to approve

VOTE: Motion by: La Fever
Second by: Stribl
Motion 7-0

8. MAYORAL APPOINTMENTS

A. Discussion and Possible Action to approve the Mayoral Appointments per the list as presented

MOTION: Motion to approve

VOTE: Motion by: Hopkins
Second by: Kroupa
Motion 7-0

9. DEFERRED, REFERRED & TABLED ITEMS

No items.

10. ITEMS REMOVED FROM CONSENT AGENDA, if any

No items removed from consent agenda.

11. CONSENT AGENDA-----

Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.

MOTION: Motion to approve the consent agenda

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

12. MINUTES

A. February 11th, 2025 Committee of the Whole Meeting Minutes

13. UTILITY & FINANCE

A. Discussion and possible action to recommend to Common Council approval of February 26th, 2025, Water Utility claims in the amount of \$236,561.94, Sewer Utility claims in the amount of \$6,776.58, and General City claims in the amount of \$1,799,427.61. WE Energies EFT of \$78,697.37

14. MISCELLANEOUS

A. Discussion and possible action to recommend to the Common Council approval of the Salary Study and proposed 2025 Employee Compensation Adjustments

15. END CONSENT AGENDA-----

16. CLOSED SESSION

A. *The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(e) of the Wisconsin State Statutes. (e) 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, more specifically:*

City Clerk Medina read the basis for entering closed session.

MOTION: Motion to enter into closed session at 6:33 PM

ROLL CALL Motion by: Stribl

VOTE: Second by: Kroupa
Motion 7-0

B. MOU between the City of New Berlin and the New Berlin Professional Fire Association

C. *The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(g) of the Wisconsin State Statutes. (g) 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, more specifically:*

D. Imperial Lithographing Claim

E. Miller Claim

F. Crosby Claim

G. Ethic Indoor Roof Collapse Claim

17. RECONVENE TO OPEN SESSION

MOTION: Motion to reconvene into open session at 7:01 PM

ROLL CALL Motion by: Stribl

VOTE: Second by: Maxey
Motion 7-0

A. Discussion and possible action re: MOU between the City of New Berlin and the New Berlin Professional Fire Association

MOTION: Motion to approve

VOTE: Motion by: Hopkins
Second by: Maxey
Motion 7-0

B. Discussion and possible action re: Imperial Lithographing Claim

MOTION: Motion to deny claim

VOTE: Motion by: Stribl
Second by: Hopkins
Motion 7-0

C. Discussion and possible action re: Miller Claim

MOTION: Motion to deny claim

VOTE: Motion by: Stribl

Second by: Horbinski
Motion 7-0

D. Discussion and possible action re: Crosby Claim

MOTION: Motion to deny claim

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

E. Discussion and possible action re: Ethic Indoor Roof Collapse Claim

No action.

18. ADJOURN

MOTION: Motion to adjourn at 7:03 PM

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

Respectfully Submitted,
Rubina R. Medina, City Clerk



MOTION SHEET

TO: Common Council
Mayor Ament
Ald. Stribl

FROM: Plan Commission/Joelle Erickson

DATE: March 11, 2025

RE: March 3, 2025, Plan Commission items requiring Common Council action

A.	KH DCD1-2500054 Zoning Code Update
<u>Council Motion:</u>	
	This item was considered at the Plan Commission meeting on March 3, 2025. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval of the adoption of Ordinance #2702 that approves the updates to the Zoning Code, Chapter 275.

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT/PROJECT:	Referral from the Code Committee (Sub – Committee of the Plan Commission) / Chapter 275, Zoning Code Updates
LOCATION:	Citywide
REQUEST:	Plan Commission hold a public hearing and recommend to the Common Council adoption of Ordinance # 2702 that approves the updates to the Zoning Code, Chapter 275.
D.R.C. RECOMMENDATION:	Plan Commission hold a public hearing and recommend to the Common Council adoption of Ordinance # 2702 that approves the updates to the Zoning Code, Chapter 275.

Background:

1. Staff has met with the Code Committee to review updates to the code.
2. The following changes are proposed to the Zoning Code:
 - a. § 275-13.1. Zoning districts. Correct reference to figure number.
 - b. § 275-17. Department of Community Development. Include Recreation to list of powers and duties.
 - c. § 275-22. Changes and amendments. Remove language as it relates to protest petitions.
 - d. § 275-26. Occupancy permits. Modify language on who is responsible for the issuance of occupancy permits.
 - e. § 275-29. Sign permits. Move text from § 275-61 as it relates to sign permits.
 - f. § 275-33. Residential districts. Add language to allow for detached garages in the Rd-1 Two-Family Residential District.
 - g. § 275-37. Special districts. Provide clarification for the development of land within an environmental corridor.
 - h. § 275-41. Use-specific regulations. Reword for clarification. Add language requiring animals to remain on the property to which they belong. Modify language regarding drive-through facilities allowed as a principal use. Add language prohibiting outdoor firing ranges.
 - i. § 275-42. Accessory uses and structures. Reword for clarification. Allow for DCD to regulate the architecture of agricultural accessory uses. Modify setbacks for generators from the district setbacks to 5' from the property line. Increase the allowable square footage for accessory buildings. Increase the allowable height for accessory buildings. Clarify language that requires ADU's to be attached to the principal building.
 - j. § 275-43. Temporary uses, structures and special events. Add language from § 152-23 that was adopted by ORD 2689 regarding special events.
 - k. § 275-44. Lot measurement and requirements. Add references to figure numbers.
 - l. § 275-45. Height measurement and requirements. Reword for clarification.

- m. § 275-46. Yard/setback measurement and requirements. Reword for clarification. Add references to figure numbers.
- n. § 275-53. Site plan review principles and standards. Reword for clarification.
- o. § 275-63. Nonmetallic mine reclamation. Correct edits that were missed in previous code update.
- p. § 275-65. Floodplain zoning. Add definitions per DNR requirement.
- q. § 275-70. Terms defined. Add references to § 275-65 per DNR requirement. Create definition for: eave, gazebo, indoor public recreation facilities, indoor recreation and amusement facilities, patio, pavilion, pergola, porch, accessory structure. Modify definitions for: accessory dwelling unit, assisted-living facilities, balcony, canopy, community living arrangements, deck, director, setbacks, story.

Next Steps:

1. Public hearing held before Plan Commission.
2. Plan Commission recommendation forwarded to the Common Council for final action.
3. Common Council review for final action.

Previous Action:

- | | |
|-----------|--|
| 1/21/2025 | Code Committee recommendation to forward the Zoning Code updates to the Plan Commission. |
| 1/28/2025 | Common Council set the public hearing date for March 3, 2025. |
| 2/3/2025 | Introduce Zoning Code updates to the Plan Commission. |

Attachments:

1/21/2025 Code Committee Minutes
Zoning Code Amendments
Draft Ordinance # 2702



Code Committee MEETING MINUTES

January 21, 2025 - 2:30 PM
Badger Conference Room
3805 S. Casper Dr.

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

MINUTES

1. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Community Relations Specialist Joelle Erickson took the roll call as follows:

Present: Mayor Ament, Alderperson Stribl

Excused: Commissioner Brian McGrath

Staff Present: DCD Director Greg Kessler, DCD Deputy Director Nikki Jones, Principal Planner Kelly Wall, Principal Planner Kristen Hogan, Community Relations Specialist Joelle Erickson

2. APPROVAL OF MINUTES

A. June 27, 2024 Meeting Minutes

MOTION: Motion to Approve Minutes

VOTE: Motion by: Alderman Stribl
Second by: Mayor Ament
Motion Passes 2-0

3. COMMUNICATIONS

None

4. OLD BUSINESS

None

5. NEW BUSINESS

A. KH DCD1-2500054 2025 Zoning Code Updates

MOTION: Motion to Approve as Presented With Changes

VOTE: Motion by: Alderman Stribl
Second by: Mayor Ament
Motion Passes 2-0

The following edit was made by the Code Committee to Chapter 275.

Modify language in § 275-41F(3) to exclude trap and skeet shooting.

Code Committee recommendation is to forward the zoning code updates to the Plan Commission.

6. TABLED ITEMS

None

7. UPDATES

None

8. CLOSED SESSION

None

9. RECONVENE TO OPEN SESSION

None

10. ADJOURN

MOTION: Motion to Adjourn at 3:36 PM

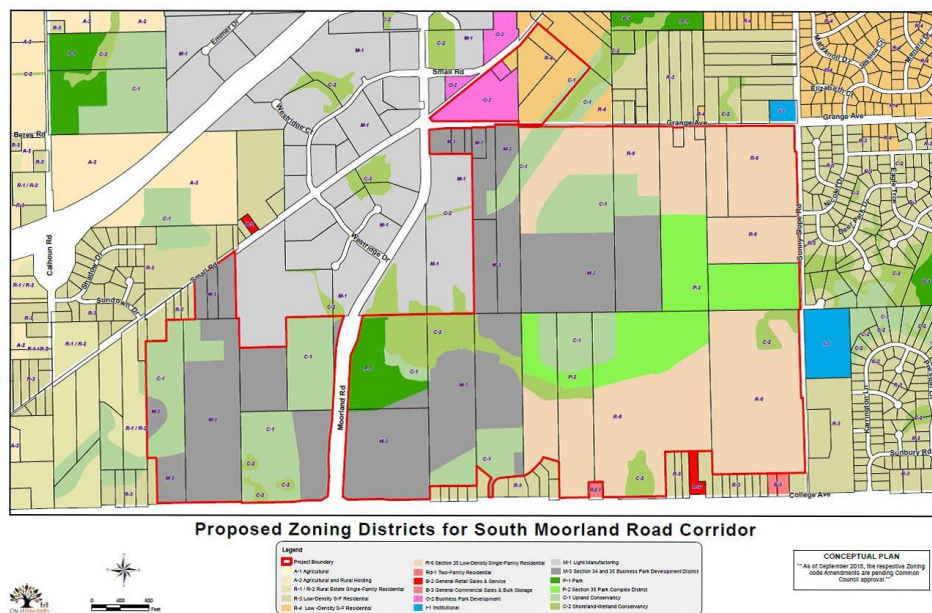
VOTE: Motion by: Alderman Stribl
Second by: Mayor Ament
Motion Passes 2-0

*Respectfully Submitted,
Joelle Erickson, Community Relations Specialist*

§ 275-13.1H(4). Zoning districts.

- (4) Section 34-35 transitional provisions: South Moorland Road Corridor. Section 35 is an area that is envisioned to be a mix of business park industrial, office, retail, residential, and passive and active park uses. In order to implement the conceptual neighborhood plan, the City has created three new zoning districts specifically for this geographic area. They include a new R-6 (Section 35 Low-Density Single-Family Residential), M-3 (Section 34 and 35 Business Park Development District) and P-2 (Section 35 Park Complex District). The City's Comprehensive Plan, Chapter 10, Land Use, Figure 10.54, identifies the future land uses for this area. Below, Figure I-1 identifies the pending designated zoning districts. All projects that require rezoning within this respective area shall be rezoned in accordance with Zoning Code Figure I-1 and future Plan Commission and Common Council actions. See map below.

Figure I-1 South Moorland Road Corridor Designated Zoning Districts



§ 275-17B(15). Department of Community Development.

(15) Recreation. Oversee the management and operations of all athletic and recreational facilities, including fees, scheduling and programming. Prepare contracts, leases and agreements involving recreation programming and leasing of equipment.

§ 275-22G. Changes and amendments.

G. Protest. [Amended 10-13-2020 by Ord. No. 2642] **Reserved**

- (1) In the event that a protest petition is submitted opposing a zoning change to the City, the Department of Community Development staff shall determine the petition's validity and its compliance with at least one of the criteria set below in the following manner:
 - (a) The petition is signed and duly acknowledged by the owners of 20% or more of the areas of land included in such proposed change; or
 - (b) The petition is signed and duly acknowledged by the owners of 20% or more of the area of the land immediately adjacent to the lands proposed to be changed extending 100 feet therefrom; or
 - (c) The petition is signed and duly acknowledged by the owners of 20% or more of the land directly opposite of the lands under a proposed change extending 100 feet from the street frontage of such opposite land(s) where a proposed change is applied for.
- (2) Each of these criteria shall be considered independently and are distinct for purposes of determining whether a valid protest has been made. In addition, the calculation of ownership shall be based solely on the ownership of the lands in the defined area, not of the broader parcels of which they may be a part.
- (3) For a protest petition to be considered valid, it shall contain the following verifiable information:
 - (a) The petition itself shall identify the property address(es) that are part of the submitted application for rezoning; and
 - (b) The petition itself shall identify the specifics of the proposed changes to including, but not limited to, the current zoning of the property(ies) and the proposed zoning change; and
 - (c) The property owner's name as identified in § 275-22C(1)(a), (b), or (c); and
 - (d) That said owners have duly acknowledged that they understand the proposed change; and
 - (e) That the owner(s) acknowledge that such proposed change would require a two-thirds vote of the entire membership of the Common Council before the proposed change may take effect (five of seven Aldermen);
 - (f) The protest petition must be filed with the Director of Community Development not later than 14 days of holding of the public hearing on the proposed rezoning.
- (4) No signatures from landowners and/or residents outside of those identified in § 275-22C(1)(a), (b), and (c) shall count towards satisfying the protest petition validity requirements. If the City determines that it has received a valid protest petition, such change(s) or amendment(s) shall not become effective except by the favorable vote of 2/3 of the entire membership of the Common Council (five of seven Aldermen) as to the proposed change. The term "signed and duly acknowledged" shall, for purposes of this subsection, be defined as meaning that the protestors (s)

have individually signed the document attesting to the fact that they have an ownership interest in lands which are eligible to protest the proposed rezoning under this subsection, that they declare and endorse the purpose of the petition and that they have signed the document attesting to said facts. The signature of each protestor need not be individually acknowledged but shall be notarized collectively by the circulator of the petition, stating that the collective signatures on the petition have been acknowledged and attested to. The name of each protestor, as well as their home address and the address of the property in which they have an ownership interest and which is eligible to protest under this subsection must be legibly printed. In the event that said information is not legible the Council may disregard the objection of such person.

Commented [KH1]: Act 16 - Remove language as it relates to protest petitions. 2/19/24 email MB

§ 275-26A. Occupancy permits.

- A. General requirement. No vacant land shall be occupied or used; and no building or premises shall be erected, altered, or moved, or a change in use created; and no new construction, additions to, or remodeling of structures or internal modifications of areas shall be occupied or reoccupied; and no nonconforming use shall be maintained, renewed, changed, or extended, until an occupancy permit has been issued by the Building Inspector Director of Community Development. Such occupancy permit shall show that the building, site, or premises or part thereof is in compliance with the provisions of this chapter and any conditions of approval as set forth by the City staff, Plan Commission or Common Council. Such permit shall be applied for at the time of occupancy of any land and/or building. For purposes of this section, an "internal modification" shall be a modification to an interior of a structure that requires a building permit under this chapter.

§ 275-29. Sign permits.

- A. Applicability. No sign shall be ~~erected, maintained, or used~~ located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a valid sign permit. Application for a sign permit shall be made on forms provided by the City and shall contain or have attached all information and supporting material as specified by the Department of Community Development. No sign permit shall be issued to a business or property that does not have a zoning permit.
- B. Review procedure. Applications for sign permits shall be filed with the permit application center. The review procedure shall follow the development review process set forth in §275-21, except for the following modifications:
- (1) Step 3: Staff review ~~and report. The Director shall review sign permit applications for completeness and accuracy and forward such applications to the Plan Commission, Architectural Review Committee, or Community Development Authority when necessary. The Department of Community Development shall review applications for completeness and has the authority to administratively approve such applications if it meets all the requirements of this chapter.~~
 - (2) Step 5: ~~Plan Commission public meeting, if applicable. Public meeting. Sign applications may be forwarded to the Plan Commission or Community Development Authority if the sign application does not meet the requirements of §275-61. Sign applications may be forwarded to the Architectural Review Committee to review the materials for construction and design integrity of signage.~~
 - (3) Step 6: ~~Plan Commission action. Upon the recommendation of the Department of Community Development, staff shall approve or deny a completed application within five business days of receipt from the applicant. The Department of Community Development shall issue a sign permit upon approval by staff. The permit shall become null and void if work authorized under the permit has not been completed within 12 months of the date of issuance. Action. The Department of Community Development shall approve or deny a complete application within five business days of receipt. A sign permit shall be issued upon approval.~~
- C. Approval criteria. Staff shall approve a sign permit unless they find that:
- (1) The requested permit is not in compliance with § 275-61; or
 - (2) If completed as proposed, the sign will not comply with one or more requirements of this chapter.
- D. Construction review. The Department of Community Development may refer a sign permit request to Building Inspection Services for review of construction details or specifications prior to approval.
- E. Inspection. The sign owner shall call the Department of Community Development for an electrical inspection (if applicable) upon completion of all permit requirements and installation.
- ~~F. Architectural review. The Department of Community Development may forward sign permit applications to the Architectural Review Committee to review the materials for construction and design integrity of signage.~~

Commented [KH2]: NO CHANGE - Moved from 275-61B

Commented [KH3]: NO CHANGE - Moved from 275-61B

Commented [KH4]: NO CHANGE - Moved from 275-61B

Commented [KH5]: NO CHANGE - Moved from 275-29F

Commented [KH6]: NO CHANGE - Moved to 275-29B(2)

F. Appeal. An applicant may appeal a decision made by staff to the Plan Commission or the Community Development Authority (where applicable) for determination. An additional review fee as determined by the Director shall be required for any sign application that is forwarded to the Plan Commission or the Community Development Authority (where applicable) for review.

G. Waiver. An applicant may request a waiver from the Plan Commission or Community Development Authority (where applicable) for the requirements set forth in this section. All sign waiver requests are subject to an application review fee as established by the Director.

Commented [KH7]: NO CHANGE - Moved from 275-61D

§ 275-33E(2)(c). Residential districts.

- (c) An attached ~~or detached~~ garage is required in the residential districts. The ~~attached~~ garage shall have a minimum floor area of 400 square feet. ~~A detached garage shall count toward maximum square footage as allowed under §275-42B.~~

Commented [KH8]: Consistent with single-family residential districts

§ 275-37D(3). Special districts.

(3) Conservation standards.

- (a) Where a property is proposed to be further subdivided, and a lot is located partially within a C-1 or C-2 District and partially within an adjoining zoning district, that area of the lot or parcel in the C-1 or C-2 District used to meet the lot area requirements of the adjoining zoning district shall be determined in accordance with § 275-44G.

(b) (Reserved)

- (c) ~~When a lot is entirely zoned C-1, a~~ single-family dwelling may be allowed within the C-1 District, or within lands containing PEC, SEC or INRA, subject to the issuance of an administrative use approval permit, provided that:

- [1] ~~The parcel is a minimum of five acres. The approved parcel of any size is not subject to any other restrictions as part of a plat or CSM.~~
- [2] For lots ~~five acres or greater~~, served with either public sewer service or with an approved off-lot private owner waste treatment system (POWTS), no more than 20,000 square feet of canopy cover can be removed within the C-1 District, or within lands containing PEC, SEC or INRA. This shall include the area for the house, driveway, walkways, POWTS, well and accessory uses. POWTS conveyance piping may not cross any public rights-of-way, and the POWTS' treatment itself should be located directly behind the lot or as close to that as practicable.
- [3] For lots ~~five acres or greater~~ with approved on-site POWTS, no more than 25,000 square feet of canopy cover can be removed ~~from a five-acre parcel~~ within the C-1 District, or within lands containing PEC, SEC or INRA. This shall include the area for the house, driveway, walkways, septic field, well and accessory uses.
- [4] The dwelling shall comply with the requirements for the R-1/R-2 District under the conventional subdivision requirements.
- [5] The owner shall ensure that any disturbances of the natural features on the site are kept to a minimum. In identifying the natural resource features, the applicant shall consider the City's Map of Potential Conservation Areas.
- [6] The remainder of the C-1 zoned lands , or lands containing PEC, SEC or INRA, shall be placed into a conservation easement.

Commented [KH9]: To include areas with environmental corridor

§ 275-41. Use-specific regulations.

The following are use-specific regulations for uses allowed in Article IV. These regulations apply to all districts except where specified.

A. Agricultural uses.

(1) General farm buildings.

- (a) General farm buildings shall not be used for the storage of nonagricultural equipment, including but not limited to snowmobiles, ATVs, automobiles, boats, campers, recreational equipment, construction equipment, and nonagricultural or industrial inventory.
- (b) The Plan Commission shall consider demonstrated agricultural needs in reviewing agricultural buildings.

~~(2) Keeping and raising of animals:~~

~~(a) The keeping and raising of animals in the A-1, A-2, R-1/R-2, G-1 and G-2 Zoning Districts shall be limited to the quantities in Table 275-41A and subject to provisions in Subsection A(2)(b) through (f) below and applicable zoning district regulations. The keeping and raising of animals in larger quantities than allowed by right shall be considered a conditional use (§ 275-27).~~

Commented [HK10]: NO CHANGE - Moved to 275-41A(2)

~~[1] When applying for a conditional use permit to keep additional animals, the burden of proof shall be placed on the applicant to demonstrate to the reasonable satisfaction of the City that additional carrying capacity exists to support the keeping and raising of the animals as applied for by the applicant. In reviewing the conditional use, the City will consider whether:~~

~~[a] Adequate facilities exist for housing and feeding the animals;~~

~~[b] Adequate measures exist to manage and dispose of waste products;~~

~~[c] The number of animals applied for will adversely impact neighboring properties, particularly residential ones, and/or whether the number of animals being applied for will adversely impact the environment (e.g., stormwater runoff, contamination).~~

Commented [HK11]: NO CHANGE - Moved to 275-41A(2)(b)[1][b]

Table 275-41A

Category	Minimum Lot Size (acres)	Number per acre	Type of Animal
Large livestock	3	1	Large livestock > 2 years
Large livestock	3	2	Large livestock < 2 years
Small livestock	2	8	Goats
Small livestock	2	8	Sheep
Small livestock	2	12	Pigmy goats

Table 275-41A			
Category	Minimum Lot Size (acres)	Number per acre	Type of Animal
Small livestock	2	8	Llamas, alpacas
Small livestock	2	8	Miniature horses
Small livestock	2	4	Potbellied pigs, other small-breed pigs under 300 pounds
	2	2	Ponies (under 40 inches)
Small livestock	2	Double allowable density	All small livestock offspring under 12 months
Small fowl	1	20	Over 4 months of age
Large fowl	2	4	Over 4 months of age
Rabbits	1	20	Over 4 months of age
Residential chickens	§ 275-41A(2)(g)	§ 275-41A(2)(g)	
NOTE: See § 275-41A(2)(f) for calculating animal combinations.			

Commented [HK12]: NO CHANGE - Moved to 275-41A(2)(b)[1]

(b) The following specific uses shall be considered conditional uses in the A-1 District only and shall meet the requirements of § 275-27:

- [1] Commercial egg production;
- [2] Commercial feedlots and livestock sale facilities; and
- [3] Commercial fur farms;

Commented [HK13]: NO CHANGE - Moved to Table 275-32-1

(c) Prohibited uses:

- [1] Concentrated commercial animal feeding operations are prohibited in all districts.
- [2] The keeping of hogs over 300 pounds is prohibited in all districts with the exception of the A-1 District.
- [3] Keeping of exotic animals are prohibited in all zoning districts.

Commented [HK14]: NO CHANGE - Moved to 275-41A(2)(c)

(d) The raising of animals shall be considered an accessory use in the R-1/R-2 Zoning District and shall meet the following requirements:

- [1] The raising of animals shall be for personal use only, with the exception of selling offspring and/or animal products.
- [2] No pasture constructed after January 12, 2010, shall be located within 50 feet of an existing residence on an adjacent residential parcel.
- [3] It shall be limited to the quantities in Table 275-41A. The keeping and raising of animals in larger quantities than allowed by right shall be considered a conditional use subject to § 275-41A(2)(a)[1].

- [4] ~~Animals outlined in Table 275-41A shall have adequate facilities for housing and feeding. Animals must be within a fenced-in area.~~
- (e) ~~Stables, boarding and riding academies are allowed in A-1, A-2, R-1/R-2, and C-1 Zoning Districts. Any new structure proposed within a C-1 District shall be a conditional use and regulated subject to § 275-27.~~
- [1] ~~They shall be limited to the quantities in Table 275-41A. The keeping and raising of animals in larger quantities than allowed by right shall be considered a conditional use subject to § 275-41A(2)(a)[1].~~
- (f) ~~Determining the maximum number of livestock and fowl. The calculation of the maximum number of livestock and fowl allowed applies to all subsections in § 275-41A(2). Different animal types may be combined, but the total calculated number of animals may not exceed the maximum per-acre density identified in Table 275-41A. For example, a five-acre lot will allow for five head of large livestock or 100 small fowl; or a three-acre lot can have one horse, eight sheep and 20 head of small fowl, or equivalent numbers not to exceed the maximum allowed.~~
- [1] ~~Contiguous land under the same ownership. The total acreage of parcels of land that are contiguous to each other, under that same ownership and have the appropriate zoning category may be used when calculating the maximum number of animals allowed. The minimum lot size for the keeping and raising of animals shall be met prior to additional animals being allowed for additional contiguous lands.~~
- [2] ~~Contiguous land that is leased. If contiguous land is being leased for agricultural purposes, the leased land area can be used when calculating the maximum number of animals allowed. Once the land is no longer being leased, the maximum number of animals allowed shall be adjusted. A written lease agreement, signed by all property owners, shall be required. The minimum lot size for the keeping and raising of animals shall be met prior to additional animals being allowed for additional contiguous lands. The leased land shall be used exclusively by the lessee.~~
- [3] ~~When determining the maximum number of animals allowed on contiguous lands, the land area can only be used once or by one property owner. Double counting is not allowed.~~
- (g) ~~The raising of chickens or ducks for personal use shall be considered an accessory use in all single-family residential zoning districts not included in § 275-41A(2)(a) through (f) above and shall meet the following requirements:~~
- [1] ~~Up to a total of four chickens and/or ducks allowed per single-family dwelling.~~
- [2] ~~No roosters.~~
- [3] ~~No slaughtering.~~
- [4] ~~Chickens and/or ducks shall be kept within a secure enclosure.~~

Commented [HK15]: NO CHANGE -Moved to 275-41A(2)(c)[4]

Commented [HK16]: NO CHANGE -Moved to 275-41A(2)(c)[6]

Commented [HK17]: NO CHANGE -Moved to 275-41A(2)(b)[1][a]

[5] Enclosures shall be located no closer than 25 feet to neighboring dwellings and a minimum of five feet from the property line.

Commented [HK18]: NO CHANGE -Moved to 275-41A(2)(c)[5]

(2) Keeping and raising of animals.

(a) General Requirements.

[1] All applicable zoning district regulations shall apply.

Commented [HK19]: NO CHANGE -Moved from 275-41A(2)(a)

[2] Animals must be within a fenced-in area and shall remain on the property to which they belong or property to which is leased.

[3] Adequate facilities shall exist for housing and feeding the animals.

(b) Quantities.

[1] The keeping and raising of animals in the A-1, A-2, R-1/R-2, C-1 and C-2 Zoning Districts shall be limited to the quantities listed in Table 275-41A and shall apply for all uses outlined in this section:

Commented [KH20]: NO CHANGE -Moved from 275-41A(2)(a)

Table 275-41A			
Type of Animal	Age	Minimum Lot Size (acres)	Number per acre
Large fowl	over 4 months	2	4
Small fowl	over 4 months	1	20
Large livestock	over 2 years	3	1
Large livestock	under 2 years	3	2
Alpacas, goats, llamas, miniature horses & sheep	over 12 months	2	8
Alpacas, goats, llamas, miniature horses & sheep	under 12 months	2	16
Pigmy goats	over 12 months	2	12
Pigmy goats	under 12 months	2	24
Ponies less than 40 inches	over 12 months	2	2
Ponies less than 40 inches	under 12 months	2	4
Potbellied pigs & other small-breed pigs under 300 pounds	over 12 months	2	4
Potbellied pigs & other small-breed pigs under 300 pounds	under 12 months	2	8
Rabbits	over 4 months	1	20

[a] Determining the maximum number of animals. The calculation of the maximum number of animals allowed applies to all subsections in § 275-41A(2). Different animal types may be combined, but the total calculated number of animals may not exceed the maximum per-acre density identified in Table 275-41A. For example, a five-acre lot will allow for five head of large livestock or 100 small fowl; or a three acre lot can have one horse, eight sheep and 20 head

of small fowl, or equivalent numbers not to exceed the maximum allowed.

[i] Contiguous land under the same ownership. The total acreage of parcels of land that are contiguous to each other, under that same ownership and have the appropriate zoning category may be used when calculating the maximum number of animals allowed. The minimum lot size for the keeping and raising of animals shall be met prior to additional animals being allowed for additional contiguous lands.

[ii] Contiguous land that is leased. If contiguous land is being leased for agricultural purposes, the leased land area can be used when calculating the maximum number of animals allowed. Once the land is no longer being leased, the maximum number of animals allowed shall be adjusted. A written lease agreement, signed by all property owners, shall be required. The minimum lot size for the keeping and raising of animals shall be met prior to additional animals being allowed for additional contiguous lands. The leased land shall be used exclusively by the lessee.

[iii] When determining the maximum number of animals allowed on contiguous lands, the land area can only be used once or by one property owner. Double counting is not allowed.

[b] The keeping and raising of animals in larger quantities than allowed by right shall be considered a conditional use. When applying for a conditional use permit to keep additional animals, the burden of proof shall be placed on the applicant to demonstrate to the reasonable satisfaction of the City that additional carrying capacity exists to support the keeping and raising of the animals as applied for by the applicant. In reviewing the conditional use, the City will consider whether:

[i] Adequate facilities exist for housing and feeding the animals;

[ii] Adequate measures exist to manage and dispose of waste products;

[iii] The number of animals applied for will adversely impact neighboring properties, particularly residential ones, and/or whether the number of animals being applied for will adversely impact the

Commented [HK21]: NO CHANGE -Moved from 275-41A(2)(f)

environment (e.g., stormwater runoff, contamination).

- [2] The keeping and raising of animals in the R-2E, R-3, R-4, R-4.5, R-5, R-6 and R-7 Zoning Districts shall be limited to a total of four chickens and/or ducks per property.

Commented [HK22]: NO CHANGE - Moved from 275-41A(2)(a)[1]

Commented [HK23]: NO CHANGE - Moved from Table 275-41A

(c) Specific Uses

- [1] Concentrated commercial animal feeding operations are prohibited in all districts.

- [2] Exotic animals. Keeping of exotic animals are prohibited in all zoning districts.

- [3] Hogs over 300 pounds. The keeping of hogs over 300 pounds is prohibited in all districts, with the exception of the A-1 District.

Commented [HK24]: NO CHANGE - Moved from 275-41A(2)(c)

- [4] Keeping and raising of animals. The keeping and raising of animals shall be considered an accessory use in the R-1/R-2 Zoning District.

[a] The raising of animals shall be for personal use only, with the exception of selling offspring and/or animal products.

[b] No pasture constructed after January 12, 2010, shall be located within 50 feet of an existing residence on an adjacent residential parcel.

Commented [HK25]: NO CHANGE - Moved from 275-41A(2)(d)

- [5] Keeping and raising of chickens and/or ducks. The keeping and raising of chickens and/or ducks for personal use shall be considered an accessory use in the R-2E, R-3, R-4, R-4.5, R-5, R-6 and R-7 Zoning Districts.

[a] Up to a total of four chickens and/or ducks allowed per property.

[b] No roosters.

[c] No slaughtering.

[d] Chickens and/or ducks shall be kept within a secure enclosure.

[e] Enclosures shall be located no closer than 25 feet to neighboring dwellings and a minimum of five feet from the property line.

Commented [HK26]: NO CHANGE - Moved from 275-41A(2)(g)

- [6] Stables, boarding and riding academies are allowed in the A-1, A-2, R-1/R-2, and C-1 Zoning Districts. Any new structure proposed within a C-1 District shall be a considered a conditional use.

Commented [HK27]: NO CHANGE - Moved from 275-41A(2)(e)

B. Residential uses.

(1) Elderly housing and assisted-living facilities.

- (a) The density of an elderly housing development shall not exceed 14 dwelling units per acre.

- (b) All buildings shall be 50 feet from any exterior lot line. The Plan Commission may, however, permit buildings to have covered walks or be attached to other related structures, such as senior centers, hospitals, clinics or shopping centers.
 - (c) Buildings shall be specifically designed for the elderly and handicapped. Projects shall include such features as central locked lobby entrances; common rooms and areas on every floor and wing within a building; elevators; wider hallways with hand railings; walking paths and outdoor sitting areas; and programs and activities designed for the elderly.
 - (d) Visitor and staff parking shall be provided. Underground or attached parking for residents shall be provided at a ratio consistent with expected automobile usage rates.
 - (e) All units in a project shall be rented or sold to the elderly or handicapped to qualify as an elderly project. Mixed projects shall be designed and built under the regular multifamily residential regulations.
 - (f) Nursing homes, true assisted-care elderly facilities, and community-based residential facilities (CBRF) may be constructed as conditional uses in an Rm-1 Zoning District; however, such uses are provided for as principal uses in the I-1 Institutional District.
 - (g) Minimum dwelling unit size for an individual living unit designed for a single-person-occupancy, one-bedroom unit shall be 600 square feet. An additional 100 square feet shall be required for each additional bedroom, with a maximum of five bedrooms per dwelling unit in cases of congregate living. Efficiency units shall be a minimum of 500 square feet. This requirement may be waived by the Plan Commission in the case of a building designed for congregate living, provided that the combination of the individual and common areas together meets the overall living space requirements for the number of people intending to occupy the building.
 - (h) Building exteriors shall incorporate maintenance-free materials, such as brick, stone, vinyl, etc., to the maximum extent practical.
 - (i) In addition, the Plan Commission shall establish separate building area, dwelling unit size, amenity, enclosed parking, screening, setback and yard and other requirements for the health, safety, and welfare for each housing-for-the-elderly project.
 - (j) Buildings or developments not determined to be true elderly or handicapped projects by the Plan Commission shall be subject to all requirements of the regular multifamily zoning district. Qualification as "elderly" under state or federal law does not automatically meet criteria under this zoning provision.
- (2) Single-family dwellings ~~with attached garage~~. A single-family dwelling may be allowed as a conditional use in the Rm-1 District if the site meets the minimum lot area, width and yard requirements of the R-4.5 District.
 - (3) Conservation area use and design standards.

- (a) Uses permitted in conservation areas. The following uses are permitted in conservation areas:
- [1] Conservation of open land in its natural state (for example, woodland, fallow field, or managed meadow);
 - [2] Agricultural and horticultural uses, including raising crops or livestock, associated buildings, excluding residences that are specifically needed to support an active, viable agricultural or horticultural operation. Specifically excluded are commercial livestock operations involving swine, poultry, mink, and other animals likely to produce highly offensive odors.
 - [3] Pasture land for horses used solely for recreational purposes. Equestrian facilities shall be permitted but may not consume more than half of the minimum required conservation area.
 - [4] Silviculture, in keeping with established standards for selective harvesting and sustained-yield forestry.
 - [5] Neighborhood open space uses, such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses, specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Plan Commission.
 - [6] Active noncommercial recreation areas, such as play fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required conservation area or five acres, whichever is less. Play fields, playgrounds, and courts shall not be located within 200 feet of abutting properties. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than 10 parking spaces.
 - [7] Golf courses may comprise up to half of the minimum required conservation area but shall not include driving ranges or miniature golf courses. Their parking areas and any associated structures shall not be included within the minimum conservation area requirement; their parking and accessways may be paved and lighted.
 - [8] Private owner water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation area. The integrity of all conservation areas shall be maintained and not adversely impacted.
 - [9] Easements for drainage, access, sewer or water lines, or other public purposes. Off-lot POWTS areas shall be identified through survey markers/monuments. In addition, as-built drawings shall be submitted to the City and/or the grantee of the conservation easement for the area.

- [10] Underground utility rights-of-way. Aboveground utility and street rights-of-way may traverse conservation areas but shall not count toward the minimum required conservation area.

~~[11] Single-family residential uses, in compliance with 275-37C(1)(b),~~

(b) Conservation design standards.

- [1] Conservation areas shall be laid out to ensure that an interconnected network of open space will be provided, to the greatest extent practicable, considering both areas within the proposed subdivision and areas adjacent to it. The required conservation area consists of a mixture of primary environmental corridors (PECs), all of which must be included, and secondary environmental corridors (SECs), and isolated natural resource areas (INRAs). PECs comprise those areas listed in § 275-33G(2) as being subtracted from the total parcel acreage to produce the "adjusted tract acreage." SCAs should include special features of the property that would ordinarily be overlooked or ignored during the design process. Examples of such features are listed and described in § 235-41 (conservation design review standards) in Chapter 235, Subdivision of Land.
- [2] Conservation areas shall generally remain undivided and may be owned and maintained by a homeowners' association, land trust, another conservation organization recognized by the City, or by a private individual (typically as part of the original farmstead). However, in no case shall less than 30% of the land comprising the adjusted tract acreage be available for the common use and enjoyment of the subdivision residents. These ownership options may be combined so that different parts of the conservation area may be owned by different entities.
- [3] Buffers for adjacent public parkland. Where the proposed development adjoins public parkland, a natural conservation buffer at least 150 feet deep shall be provided within the development along its common boundary with the parkland, within which no new structures shall be constructed, nor shall any clearing of trees or understory growth be permitted (except as may be necessary for street or trail construction). Where this buffer is unwooded, the City may require vegetative screening to be planted or that it be managed to encourage natural forest succession through "no-mow" policies and the periodic removal of invasive alien plant and tree species.

(c) Other requirements.

- [1] No portion of any building lot may be used for meeting the minimum required conservation area, except within conservancy lots of at least 10 acres. However, active agricultural land with farm buildings, excluding areas used for residences, may be used to meet the minimum required conservation area.

- [2] Pedestrian and maintenance access, excluding those areas used for agricultural or horticultural purposes, shall be provided to a conservation area in accordance with the following requirements:
 - [a] Access to conservation areas used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.
 - [3] All conservation areas that are not wooded or farmed shall be landscaped in accordance with the landscaping requirements of this chapter and Chapter 235, Subdivision of Land (§ 275-56 and § 235-41B[1]).
 - [1] *Editor's Note: See now § 235-40B.*
 - [4] Submission of a plan for the maintenance and operation of the conservation areas as required by § 235-41B.[2]
 - [2] *Editor's Note: See now § 235-40B.*
- (4) Permanent conservation protection through conservation easements.
 - (a) The conservation area that is required to be reserved and created through the subdivision process shall be subject to permanent conservation easements prohibiting future development and defining the range of permitted activities. (For example, the clearing of woodland habitat shall generally be prohibited, except as necessary to create trails, active recreation facilities, and to install subsurface septic disposal systems or spray irrigation facilities.) The determination of necessity shall lie with the Common Council.
 - (b) In "limited development" subdivisions where applicants voluntarily opt to develop their properties at densities substantially below those which are permitted under this chapter, with lots at 10 acres in area, and when they offer to place a restrictive conservation easement preventing future subdivision of the newly created parcels, the City shall review the proposed easements and may accept them, provided their wording accomplishes the purposes of this chapter and is consistent with the City's Comprehensive Plan and the Wisconsin Uniform Conservation Easement Act.[3]
 - [3] *Editor's Note: See § 700.40, Wis. Stats.*
 - (c) The holder of the conservation easement shall be as permitted pursuant to § 700.40(1)(b), Wis. Stats., as amended.
- (5) Conservation area ownership and maintenance standards.
 - (a) Permanent protection. All conservation areas shall be permanently restricted from future subdivision and development. Under no circumstances shall any development be permitted in the open space at any time, except for those uses listed in § 275-41B.
 - (b) Ownership options. The following methods may be used, either individually or in combination, to own common facilities. The City may request designation of areas for municipal ownership, of any areas identified in the

City's Park and Open Space Plan as future parkland or potential trails, and any areas identified for protection under the SEWRPC's Natural Areas and Critical Species Habitat Protection and Management Plan for Southeastern Wisconsin. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Ownership methods shall conform to the following:

- [1] Fee-simple dedication to the City. The City may, but shall not be required to, accept any portion of the common facilities, provided that:
 - [a] There is no cost of acquisition to the City;
 - [b] The City agrees to and has access to maintain such facilities;
 - [c] There is no environmental contamination on the site.
- [2] Condominium association. Common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant state law. All open land and common facilities shall be held as "common elements."
- [3] Homeowners' association. Common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in state regulations and statutes. In addition, the following regulations shall be met:
 - [a] The applicant shall provide the City a description of the organization of the proposed association, including its bylaws and all documents governing ownership, maintenance, and use restrictions for common facilities.
 - [b] The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development.
 - [c] Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units therein and their successors in title.
 - [d] The association shall be responsible for maintenance and insurance of common facilities.
 - [e] The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his or her dues. Such dues shall be paid with the accrued interest before the lien may be lifted.
 - [f] Written notice of any proposed transfer of common facilities by the association or the assumption of maintenance for

- common facilities must be given to all members of the association and to the City no less than 30 days prior to such event.
- [g] The association or its designee shall have adequate staff to administer, maintain, and operate such common facilities.
 - [h] The bylaws must prohibit amendments without the approval of the City as to conservation areas.
- [4] Private conservation organization. With permission of the City, an owner may transfer either fee-simple title of the open space or easements on the open space to a private nonprofit conservation organization, provided that:
- [a] The conservation organization is acceptable to the City and is a bona fide conservation organization intended to exist indefinitely;
 - [b] The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions;
 - [c] The conservation areas are permanently restricted from future development through a conservation easement; and
 - [d] A maintenance agreement acceptable to the City is established between the owner and the organization.
- [5] Dedication of easements to the City. The City may, but shall not be required to, accept easements for public use of any portion of the common land or facilities. In such cases, the facility remains in the ownership of the condominium association, homeowners' association, or private conservation organization while the City holds the easements. In addition, the following regulations shall apply:
- [a] There shall be no cost of acquisition to the City.
 - [b] Any such easements for public use shall be accessible to residents of the City.
- [6] In the R-6 District, additional perimeter screening shall be required along Sunny Slope Road and any other designated area that requires visual relief. The following shall apply: [Added 1-12-2016 by Ord. No. 2558]
- [a] Screening areas shall be at least 50 feet deep and may be placed in an outlot or defined easement area.
 - [b] Berms shall be utilized and constructed at a slope of 2.5 to one.
 - [c] Perimeter landscaping shall provide a semi-opaque screen during the winter season.

[d] Plants in perimeter landscaping areas shall be grouped instead of evenly spread.

[e] The screening buffer shall take on a more natural appearance, where organic lines are used over straight formal lines.

~~(6) In the R-6 District, additional perimeter screening shall be required along Sunny Slope Road and any other designated area that requires visual relief. The following shall apply: [Added 1-12-2016 by Ord. No. 2558] Reserved.~~

~~(a) Screening areas shall be at least 50 feet deep and may be placed in an outlot or defined easement area.~~

~~(b) Berms shall be utilized and constructed at a slope of 2.5 to one.~~

~~(c) Perimeter landscaping shall provide a semi-opaque screen during the winter season.~~

~~(d) Plants in perimeter landscaping areas shall be grouped instead of evenly spread.~~

~~(e) The screening buffer shall take on a more natural appearance, where organic lines are used over straight formal lines.~~

Commented [HK28]: Duplicate

~~(6) Community living arrangements.~~

~~(a) Community living arrangements as provided for in § 62.23(7)(j), Wis. Stats., shall be a principal use in all residential districts and in the Institutional District.~~

~~(b) Community living arrangements that exceed the limit of those defined in § 62.23(7)(j), Wis. Stats., may be approved as a conditional use per § 275-27.~~

~~(c) Community living arrangements shall meet all applicable state statutes regarding such uses.~~

Commented [KH29]: NO CHANGE - Moved from 275-41G(1)

(7) In the R-7 District, the following shall apply: [Added 10-13-2020 by Ord. No. 2642]

(a) In the R-7 District, a development agreement shall be required along with appropriate financial sureties, to be evaluated by the City, no more than annually and no less than every five years, for adequacy, to ensure for the proper maintenance and permitting of the on-site waste treatment facility in perpetuity.

(8) Transient lodging uses. [Added 4-25-2023 by Ord. No. 2668]

(a) Transient lodging uses for remuneration are prohibited in the residential districts of the City where the period of each individual use is less than seven days. Any person acting as an agent, real estate broker, real estate sales agent, property manager, reservation service or arranges or negotiates for the use of residential property or transient lodging uses, or any person who uses or allows the use of residential property in this manner shall be considered in violation of this section. Each day in which such residential property is used or allowed to be used in violation of this section shall be

considered a separate offense. Any rental of single-family property for camping purposes is prohibited.

- (b) Individual transient residential lodging uses for remuneration of more than six but fewer than 30 consecutive days within any consecutive 365-day period may be rented for no more than 181 days in the aggregate. The days during which the transient residential lodging uses for remuneration may be conducted shall run consecutively. Any individual or entity which engages in transient residential lodging uses for remuneration shall notify the City Clerk, in writing, when the first rental within a 365-day period is to begin.

C. Commercial uses.

(1) Adult-oriented establishments.

- (a) Such uses shall not be operated within 1,000 feet of:
 - [1] A church, synagogue, or regular place of worship;
 - [2] A public or private elementary or secondary school;
 - [3] A single-family, two-family, or multifamily zoning district boundary;
 - [4] A public park adjacent to a residential zoning district boundary; or
 - [5] Another adult-oriented establishment.
- (b) Such use may not be operated in the same building, structure or any portion thereof containing another adult-oriented establishment.
- (c) For purposes of this section, the distance between any two adult-oriented establishments shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- (d) Such use shall comply with the licensing and layout requirements set forth in Chapter 152, Licenses and Permits, § 152-17, of the Code of the City of New Berlin.

(2) Automotive fuel sales.

- (a) All fuel pumps and service islands shall comply with the yard requirements of the zoning district in which the use is allowed.
- (b) The outermost edge of any protective canopy shall not be closer than 25 feet to the base setback line and shall meet the side and rear setbacks.
[Amended 4-25-2023 by Ord. No. 2668]

(3) Automotive service. Such uses shall not include the service of semitractors or semitrailers.

(4) Bed-and-breakfast establishments. All bed-and-breakfast establishments shall meet the provisions set forth in § 254.61(1), Wis. Stats, and Ch. HSS 197, Wis. Adm. Code.

(5) Department stores. Department stores are only allowed in shopping centers located on a site that is 10 or more gross acres in size.

- (6) Drive-in theaters.
- (a) A twenty-five-foot-wide planting screen shall be provided between the drive-in theater and any residential district.
- (b) There shall be a minimum of 1,000 feet between the access drive to the theater and any street intersection.
- (7) ~~Funeral services.~~ Crematory services shall only be allowed as an accessory use ~~in the I-1, B-1, B-2, B-3, M-1, and M-2 Zoning Districts to cemeteries, funeral services or veterinary clinics.~~
- (8) Hotels and motels. Hotels and motels may exceed the district height regulations, yet no hotel or motel may exceed 55 feet in height except as defined in § 275-35D(5).
- (9) ~~Reserved. Outdoor displays and sales. [Amended 9-23-2014 by Ord. No. 2529]~~
- ~~(a) The outside display of merchandise may be allowed as an accessory use in all commercial, manufacturing and industrial districts if all of the following provisions are met:~~
- ~~[1] The display shall not exceed 500 square feet in commercial districts or 1,000 square feet in the manufacturing and industrial districts; excluding seasonal displays, temporary events or displays approved as part of the plan of operation;~~
- ~~[2] The display does not obstruct traffic, sidewalks, or fire lanes; and~~
- ~~[3] The display area is not being used for the storage of merchandise only.~~
- ~~(b) Display of vehicles for sale. Not more than one automobile, boat, recreational vehicle, or other personal vehicle may be displayed in a driveway or parking lot for sale, unless a sales lot has been approved by the Plan Commission in an appropriate business district. The vehicle must be owned and registered to the occupant of the premises, and such sales shall not occur more than three times in any given year. Vehicles shall not be displayed on lawn areas or within a public right-of-way.~~
- ~~(c) Outdoor displays placed under permanent canopies for automotive fuel sales shall be permitted.~~
- ~~(d) Items that are visible and are not located within an approved area for outdoor displays and sales are considered outdoor storage and shall meet the requirements in § 275-41C(10).~~
- (10) ~~Reserved. Outdoor storage. Outdoor storage may be allowed as an accessory use as defined in the use summary tables for each zoning district, subject to Department of Community Development staff review and approval, and provided that such storage is screened from view of any public right-of-way or residential area. [Amended 9-23-2014 by Ord. No. 2529]~~
- (11) Personal services. A personal service use may be approved as a conditional use in the O-2, M-1 and M-2 Zoning Districts, provided that it meets the requirements of § 275-27 and that it is in such a location to provide services to the employees of nearby uses in these districts.

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- (12) Restaurants. [Amended 10-9-2018 by Ord. No. 2607]
- (a) A drive-through facility shall not be approved as part of a restaurant unless drive-through facilities are allowed in the subject zoning district and it meets all of the additional use regulations specified in § 275-41~~HE~~(1) of this chapter.
 - (b) ~~Reserved. A restaurant may be approved as a principal use in any office or industrial district, provided that it meets the requirements of § 275-24.~~
 - (c) Brewpubs.
 - [1] Brewpubs in the City shall follow the definition set forth within § 275-70.
 - [2] Brewpubs shall be required to meet all applicable local codes and licensing requirements, as well as applicable state statutes, federal laws and licensing governing this type of use.
 - [3] One of the conditions of approval for brewpubs shall be that the applicant has applied for and received all necessary liquor licenses and permits to operate this type of business.
 - [4] A brewpub (restaurant) in the City may only brew beer as part of its business for consumption on the premises. No wholesaling of the beer shall be permitted.
 - [5] Applicants shall adhere to the performance requirements outlined in § 275-60 of this Code.
 - (d) Breweries.
 - [1] Breweries in the City shall follow the definition set forth within § 275-70.
 - [2] Breweries shall be required to meet all applicable local codes and licensing requirements, as well as applicable state statutes, federal laws and licensing governing this type of use.
 - [3] One of the conditions of approval for breweries shall be that the applicant has applied for and received all necessary liquor licenses and permits to operate this type of business.
 - [4] Applicants shall adhere to the performance requirements outlined in § 275-60 of this Code.
- (13) ~~Reserved. Retail commercial uses. A retail commercial use may be approved as a conditional use in any office or industrial district, provided that it meets the requirements of § 275-27.~~
- (14) Self-storage facilities.
- (a) No perishable products may be stored unless the Plan Commission determines that adequate health provisions have been made;
 - (b) No flammable or explosive materials may be stored unless the Plan Commission determines that adequate safety provisions have been made;

- (c) No sales of merchandise may be conducted from a self-storage facility; and
 - (d) No offices may be set up in storage units.
- (15) Service commercial uses.
- (a) Service commercial uses in the B-5 District should be limited to uses that will serve the needs of the rural residential community.
 - (b) ~~Reserved. A service commercial use may be approved as a conditional use in any office or industrial district, provided it meets the requirements of § 275-27 and that it is in such a location to provide services to the employees and businesses in the office and industrial districts.~~
 - (c) Traffic, loading, parking and access. The parking and storage of semitractors and semitrailers, except for pickup and deliveries, is prohibited. Parking or storage of construction vehicles and equipment, except during periods of permitted construction activity, is prohibited. All storage and parking of vehicles and equipment, other than required customer and employee off-street parking, shall be inside, except the outside parking of two vehicles in accordance with the type and size limitation of this chapter.
- (16) Mobile tower siting regulations. [Amended 9-23-2014 by Ord. No. 2529]
- (a) Purpose. Mobile tower facilities shall be regulated as set forth in this section, subject to 2013 Wisconsin Act 10, which amended § 66.0404, Wis. Stats. These standards shall also be interpreted and enforced in a manner consistent with the Telecommunications Act of 1996.
 - (b) Exemptions.
 - [1] Emergency communication facilities used for emergency communication by public officials.
 - [2] City communication facilities.
 - [3] Antennas, amateur radio antennas (e.g., ham radio), and satellite dishes as regulated by § 275-42~~G(2)~~.
 - (c) Definitions. Refer to § 275-70. [Amended 4-25-2023 by Ord. No. 2668]
 - (d) Waivers/modifications. The Plan Commission may waive or modify any requirements of this section. Any site for which a waiver from the requirements of this section is granted shall comply with all other requirements of this chapter. Such waiver or modification shall only be granted if the Plan Commission determines that:
 - [1] There will be no appreciable off-site impact caused by the waiver/modification.
 - [2] Compliance with the requirement(s) is impractical or impossible due to site conditions or other circumstances beyond the control of the applicant.
 - [3] The specific requirement is not necessary for a particular site to ensure compliance with the requirements of this section.

- (e) The siting and construction of a new mobile service support structure and facilities or the substantial modification of an existing support structure and mobile service facilities (Class 1 co-location).
 - [1] Application information, process and fees. An application for conditional use permit shall be made through the permit application center on forms furnished by the Department of Community Development and shall include information and supporting materials as specified under this section. Applicable application fees and developer deposit shall accompany the application as outlined in Zoning Code § 275-20C. The conditional use application shall be in writing and in an electronic format and shall contain all of the following information:
 - [a] The name and business address of, and the contact individual for, the applicant.
 - [b] The location of the proposed or affected support structure.
 - [c] The location of the proposed mobile service facility.
 - [d] Applications to substantially modify an existing support structure shall submit a construction plan, which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - [e] Applications to construct a new mobile service support structure shall submit a construction plan, which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - [f] Applications to construct a new mobile service support structure shall submit an explanation as to why the applicant chose the proposed location and why the applicant did not choose co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that:
 - [i] Co-location within the applicant's search ring would not result in the same mobile service functionality, coverage, and co-location capacity;
 - [ii] Co-location is technically infeasible; or
 - [iii] Co-location is economically burdensome to the mobile service provider.

- [g] Provide documentation of the applicant's right, title or interest in the property where the facility is to be located. If the applicant is not the property owner, the applicant shall submit a letter from the property owner(s) stating that they are consenting to have a tower placed on their property. When the property owner is the City, the applicant shall obtain approval from the applicable boards or commissions that oversee the facility or land where the tower is proposed to be placed. Any proposal for a new mobile service support structure and facility on City-owned lands (parks, utility, etc.) shall be required to make a submittal to DCD outlining their specific request. DCD shall forward an RAS to the Common Council to decide if it wishes to enter into negotiations on a lease to move forward with a full submittal. If the Council agrees to investigate further, the Council will refer the request on to the applicable boards, commissions, and committees.
- [h] The facility is appropriately landscaped.
- [i] The facility/tower is in compliance with any other applicable local, state, or federal regulations.
- [j] Structure report. A structure report prepared by a qualified and licensed professional engineer which:
 - [i] Describes the tower or structure height and design, including a cross section and elevation;
 - [ii] Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 - [iii] Describes the tower or structure capacity, including the number and type of antennas that it can accommodate;
 - [iv] Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 - [v] Includes an engineer's stamp and registration number;
 - [vi] Includes safety considerations; and
 - [vii] Includes other information necessary to evaluate the request.
- [k] Design: ground equipment and utility structures.
 - [i] One building that houses all the necessary ground equipment shall be located on the site. All co-located equipment shall be located within the

common building to the maximum extent practicable. The building shall either be sized to house all equipment for all future co-location or constructed in a manner that allows expansion. All expansions shall be architecturally consistent and compatible.

- [ii] The building shall be architecturally designed to be compatible with the architecture characteristics and § 275-59 to the maximum extent practicable.
 - [iii] The building shall meet the minimum setbacks of the zoning district. See also § 275-41C(16)(e)[1][m] below.
 - [iv] Ground-mounted equipment, including but not limited to equipment cabinets and generators, should, to the maximum extent practicable, be enclosed in a building except when screened with appropriate landscaping.
- [l] Landscaping. The parking areas, buildings, and equipment shall be landscaped in accordance with § 275-56. The Plan Commission and CDA may allow an alternative landscaping or screening plan or waive the landscaping requirements if it is determined that the landscaping will not serve a functional value based on existing topography or surrounding land uses.
- [m] Height standards. Height is to be measured from the ground elevation to the top of the tower, excluding any antennas.
- [n] A conditional use status shall not be granted for communication towers unless the tower is located so that there is sufficient radius of clear land around the tower that its collapse shall be completely contained on the property, subject to the following. If an applicant provides the City with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Plan Commission provides the applicant with substantial evidence that the engineering certification is flawed.
- [o] Setback standards.
 - [i] Roof, existing structure, and/or building-mount facilities. Antenna arrays shall not project into the setback of the structure they are located on or within.

- [2] Completeness determination. If an applicant submits to the City an application for a permit to engage in an activity described under § 275-41C(16)(e), which contains all of the information required under § 275-41C(16)(e)[1], the Director or designee shall consider the application complete. If the Director or designee does not believe that the application is complete, the Director or designee shall notify the applicant, in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- [3] Approval criteria. Within 90 days of its receipt of a complete conditional use application, meeting the criteria listed within this section, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing, to an extension of the ninety-day period:
 - [a] Review the application to determine whether it complies with § 275-41C(16)(e)[1] and all applicable aspects of the City Building Code and subject to the limitations in this section of the Zoning Ordinance.
 - [b] Plan Commission or CDA holds a public hearing.
 - [c] Make a final decision whether to approve or disapprove the application.
 - [d] Notify the applicant, in writing, of its final decision.
 - [e] If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- [4] The Plan Commission or CDA may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under § 275-41C(16)(e)[1][f].
- [5] A party who is aggrieved by the final decision of the Plan Commission or CDA under § 275-41C(16)(e)[3][c] may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.
- (f) Co-location of existing support structure (Class II co-location).
 - [1] Application information. An application for a building permit shall be made through the permit application center on forms furnished by the Department of Community Development and shall include information and supporting materials as specified under this category. Applicable application fees shall accompany the application as outlined in Zoning Code § 275-20C and the State of

Wisconsin. The building permit application shall be in writing and in an electronic format and shall contain all of the following information:

- [a] The name and business address of, and the contact individual for, the applicant.
 - [b] The location of the proposed or affected support structure.
 - [c] The location of the proposed mobile service facility and construction plans.
 - [d] The application complies with this section.
 - [e] The facility/tower is in compliance with any other applicable local, state, or federal regulations.
 - [f] Structure report. A structure report prepared by a qualified and licensed professional engineer which:
 - [i] Describes the tower or structure height and design, including a cross section and elevation;
 - [ii] Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 - [iii] Describes the tower or structure capacity, including the number and type of antennas that it can accommodate;
 - [iv] Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 - [v] Includes an engineer's stamp and registration number;
 - [vi] Includes safety considerations; and
 - [vii] Includes other information necessary to evaluate the request.
- [2] Completeness determination. If an applicant submits to the City an application for a permit to engage in an activity described under § 275-41C(16)(f), which contains all of the information required under § 275-41C(16)(f)[1], the Director or designee shall consider the application complete. If the Director or designee does not believe that the application is complete, the Director or designee shall notify the applicant, in writing, within five days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

- [3] Approval criteria. Within 45 days of its receipt of a complete building permit application, meeting the criteria listed within § 275-25, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree, in writing, to an extension of the forty-five-day period:
 - [a] Make a final decision whether to approve or disapprove the application.
 - [b] Notify the applicant, in writing, of its final decision.
 - [c] If the application is approved, issue the applicant the relevant permit.
 - [d] If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- [4] A party who is aggrieved by the final decision of the City under § 275-41C(16)(f)[3][a] may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.
- (g) General standards.
 - [1] All towers and sites shall be properly maintained and shall be kept in a condition as not to become a public nuisance or eyesore in accordance with Chapter 201, Property Maintenance. Proper maintenance shall include but not be limited to regular lawn and landscaping care and painting of an accessory building, fences, and tower. Additionally, the site shall be kept free of junk and trash.
 - [2] All antenna arrays shall be securely fastened to minimize noise emissions or damages from falling.
 - [3] Limitations on authority. The City review and action in the matter shall be subject to the limitations imposed by Wis. Stats., § 66.0404(4). In the event the applicant believes the City has exceeded its authority in this regard, the applicant shall notify the City in writing, and the Common Council reserves the right to reconsider the matter, to ensure that applicable laws are followed.
- (17) Cosmetic tattoo establishments/permanent cosmetics.
 - (a) The applicant shall provide a copy of all state licenses relating to any application for permanent cosmetics prior to the issuance of a zoning permit.
- (18) Outside seating area, patio, smoking area or other outside activity area (i.e., volleyball courts, horseshoe pits, etc.) for commercial uses.
 - (a) The plan of operation may be amended to allow for the use to extend to an approved outside patio, seating area, and/or other outside activity area. The applicant shall provide the following information:

- [1] Submit a use, site and architecture application to the Department of Community Development. Refer to § 275-24 submittal criteria.
- [2] Submit an extension of premises application to the City of New Berlin Clerk's office, if required.
- (b) If the proposed use is adjacent to a residential zoning district, the applicant shall be referred to the Plan Commission or CDA for consideration. Other applications may be administratively approved, unless, in the sole discretion of the Director, they pose significant potential implications for surrounding uses.
- (c) An outdoor extension of the premises shall not increase the authorized capacity of the establishment.
- (19) Convenient cash businesses. [Added 9-23-2014 by Ord. No. 2529]
 - (a) Convenient cash businesses may not be located within 2,500 feet of any other convenient cash business.
 - (b) Convenient cash businesses may not operate between the hours of 9:00 p.m. and 8:00 a.m.
- (20) Car wash establishment. [Added 4-25-2023 by Ord. No. 2668]
 - (a) Car wash establishments are allowed as a principal use in the B-1, B-2, B-3, O-1, O-2, M-1 and M-2 Districts if the establishment meets all other criteria.
 - (b) Car wash establishments are prohibited in all Agriculture, Residential, B-5 and M-3 Zoning Districts.
 - (c) A property containing a car wash establishment shall not be located closer than 100 feet from the border of lands designated as residential in the City's Comprehensive Plan.
 - (d) A property containing a car wash establishment shall not be located closer than 100 feet from the border of a residentially zoned or residentially used property due to the intensity of the use of such facilities and the impact which they are likely to have with regard to noise, light pollution and traffic in surrounding neighborhoods and streets. The distance shall be calculated as the shortest measurable distance between the property lines of the property in which the car wash facility is desired to the edge of the residential zoning district, in a straight line without regard to intervening structures. Right-of-way is not included and shall be subtracted from this measurement. A GIS map will be created by the City for any such requests.
 - (e) Applicants shall be required to provide supplemental information as required by the City in order to review the car wash establishment for compliance with the City's performance standards in Zoning Code § 275-60 and adequate public facilities, § 275-58. Refer to Zoning Code § 275-20 developer deposit fee whereby the City can utilize the applicant's developer deposit to hire outside consulting agencies to assist with the City's evaluation of the proposal.

D. Office / Industrial uses.

- (1) Financial institutions. A drive-through facility shall not be approved as a part of a financial institution unless the drive-through facility is allowed in the subject zoning district and the drive-through facility meets all of the additional use regulations specified in § 275-41~~HE~~(1) of this chapter.
- (2) Offices. Where any of the following office uses are not related to another use allowed in the M-1 or M-2 District, it may be approved as a principal use if it meets the requirements set forth in § 275-24:
 - (a) Business offices;
 - (b) Financial institutions;
 - (c) Government offices; and
 - (d) Medical and dental offices.

~~(3) Light industrial uses. Light industrial uses may be allowed as an accessory use in the O-2 District when they are in the same building or on the same lot as the corporate headquarters or manufacturing office of a business.~~

~~(4) Warehouses. Warehouses may be allowed as an accessory use in the O-2 District when they are in the same building or on the same lot as the corporate headquarters or manufacturing office of a business.~~

~~(5) Quarry uses. All uses are conditional, and no use in a Q-1 District shall be allowed until the following provisions have been met:~~

~~(a) Operational plan required. Each applicant for a conditional use in the Q-1 District shall submit an operational plan for the use. The operational plan shall specify:~~

~~[1] A timetable for operation of the quarry, including the date on which the quarrying, extractive, or other operation will begin and the planned date of the completion of the operation;~~

~~[2] A phasing plan showing the location and timing on all proposed phases;~~

~~[3] Hours of operation and days of operation for the quarrying, extractive, or other operation;~~

~~[4] The means by which noise, dust, and other potential nuisances will be controlled;~~

~~[5] The means by which the applicant will control stormwater runoff and erosion to protect watersheds and groundwater aquifers;~~

~~[6] The location, height, and type of all proposed fences;~~

~~[7] All machinery and equipment to be used and/or stored during the quarrying, extractive, or other operation, and the location thereof;~~

~~[8] A transportation plan identifying the mode of transportation to be used, the size and types of vehicles to be used, the number and~~

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frequency of trips to and from the site, and the routes to be used by trucks or locomotives;

[9] The location and type of landscaping to be used to screen the quarrying, extractive, or other operation from adjacent land uses and public rights-of-way; and

[10] Other information required by the Plan Commission.

(b) Restoration requirements. In order to ensure that the area of quarrying, extractive, or related operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall submit to the City Plan Commission a plan for such restoration in the form of the following. Existing quarry operations shall submit a restoration plan within two years following the adoption of this chapter.

[1] An agreement with the City whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the City.

[2] A physical restoration plan showing existing topography (at a contour interval specified by the Plan Commission) and the proposed contours after restoration, plantings and other special features of restoration, and the method by which such restoration is to be accomplished. Every two years following the initial conditional use permit issuance or adoption of this chapter, whichever is applicable, the applicant or his successor shall submit an update to the restoration plan showing restoration progress and existing topography of the quarry site.

[3] A bond, written by a licensed surety company, a certified check, or other financial guaranty satisfactory to the City in an amount sufficient, in the opinion of the Director of Community Development, to secure the performance of the restoration agreement.

[4] Such agreement and financial guaranty shall be in a form approved by the City Attorney.

[a] If the applicant fails to fulfill the agreement, such bond, check or other financial guaranty shall be deemed forfeited for the purpose of enabling the City to perform the restoration.

[b] Restoration shall proceed as soon as practicable and at the order and direction of the Director of Community Development. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years.

- [c] At any stage during the restoration, the plan may be modified by mutual agreement between the City and the owner or operator.
 - [d] The restoration plan shall specify what fill material will be used, the method and extent of compaction, and the depth of topsoil upon completion of the quarry, extractive, or related operation. In all cases, fill shall consist of clean earth, and no more than 25% by volume per truckload of building stone or concrete, and no more than 5% by volume per truckload of incidental asphalt. Where there is backfilling, the method of backfilling shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility, or unsightliness. In any case, the finished condition of the restored area, except for rock faces, outcroppings, water bodies, or areas of proposed building or paving construction, shall be of sufficient depth of earth to support plant growth.
 - [e] Within one year after the cessation of the operation or any phase of the operation, all temporary structures (except fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition.
 - [f] In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of 1 1/2 horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.
 - [g] Upon completion of quarry operations, the quarry operator shall be required to submit a restoration report prepared by a registered professional engineer certifying that the restoration plan has been fully complied with.
- [5] Restoration shall proceed as soon as practical and at the order and direction of the Director. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years. Aerial photographs of the quarry site shall also be provided at least every other year, and topographical data, to a detail required by the Plan Commission, shall be required at least every two years. The quarry operator shall be required to submit restoration progress reports and a final restoration report prepared by a registered professional engineer certifying that the restoration plan discussed in § 275-41D(5)(b) has been fully complied with.

(c) Nonconforming quarrying uses. Any nonconforming quarrying use shall, on or before one year from the adoption and publication of this chapter, apply to the Plan Commission for a use and occupancy permit. The Plan Commission shall require a plan of operation, final restoration plan, intermediate restoration plans, as deemed necessary, and may impose such restrictions upon the use of such site, and the height and bulk of any structure, as may be reasonable and not unduly burdensome or onerous under the particular circumstances, provided that such restrictions shall not be more restrictive than the requirements established for the district in which such structure or use is located. In addition, a nonconforming use shall be subject to the requirements of § 275-36B(1), Table 275-36-1 and § 275-41D(5).

[1] Setback requirements from adjacent properties which are subdivided (as a subdivision is defined in Chapter 236, Wisconsin Statutes), shall be a minimum of 50 feet.

[2] The minimum setback from all other adjacent parcels shall be at least 20 feet.

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E. Manufacturing/industrial uses:

(1) Light industrial uses. Light industrial uses may be allowed as an accessory use in the O-2 District when they are in the same building or on the same lot as the corporate headquarters or manufacturing office of a business.

(2) Warehouses. Warehouses may be allowed as an accessory use in the O-2 District when they are in the same building or on the same lot as the corporate headquarters or manufacturing office of a business.

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F. Quarry uses. All uses are conditional, and no use in a Q-1 District shall be allowed until the following provisions have been met:

(1) Operational plan required. Each applicant for a conditional use in the Q-1 District shall submit an operational plan for the use. The operational plan shall specify:

(a) A timetable for operation of the quarry, including the date on which the quarrying, extractive, or other operation will begin and the planned date of the completion of the operation;

(b) A phasing plan showing the location and timing on all proposed phases;

(c) Hours of operation and days of operation for the quarrying, extractive, or other operation;

(d) The means by which noise, dust, and other potential nuisances will be controlled;

(e) The means by which the applicant will control stormwater runoff and erosion to protect watersheds and groundwater aquifers;

(f) The location, height, and type of all proposed fences;

(g) All machinery and equipment to be used and/or stored during the quarrying, extractive, or other operation, and the location thereof;

- (h) A transportation plan identifying the mode of transportation to be used, the size and types of vehicles to be used, the number and frequency of trips to and from the site, and the routes to be used by trucks or locomotives;
 - (i) The location and type of landscaping to be used to screen the quarrying, extractive, or other operation from adjacent land uses and public rights-of-way; and
 - (j) Other information required by the Plan Commission.
- (2) Restoration requirements. In order to ensure that the area of quarrying, extractive, or related operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall submit to the City Plan Commission a plan for such restoration in the form of the following. Existing quarry operations shall submit a restoration plan within two years following the adoption of this chapter.
- (a) An agreement with the City whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the City.
 - (b) A physical restoration plan showing existing topography (at a contour interval specified by the Plan Commission) and the proposed contours after restoration, plantings and other special features of restoration, and the method by which such restoration is to be accomplished. Every two years following the initial conditional use permit issuance or adoption of this chapter, whichever is applicable, the applicant or his successor shall submit an update to the restoration plan showing restoration progress and existing topography of the quarry site.
 - (c) A bond, written by a licensed surety company, a certified check, or other financial guaranty satisfactory to the City in an amount sufficient, in the opinion of the Director of Community Development, to secure the performance of the restoration agreement.
 - (d) Such agreement and financial guaranty shall be in a form approved by the City Attorney.
 - [1] If the applicant fails to fulfill the agreement, such bond, check or other financial guaranty shall be deemed forfeited for the purpose of enabling the City to perform the restoration.
 - [2] Restoration shall proceed as soon as practicable and at the order and direction of the Director of Community Development. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years.
 - [3] At any stage during the restoration, the plan may be modified by mutual agreement between the City and the owner or operator.
 - [4] The restoration plan shall specify what fill material will be used, the method and extent of compaction, and the depth of topsoil upon completion of the quarry, extractive, or related operation. In all

cases, fill shall consist of clean earth, and no more than 25% by volume per truckload of building stone or concrete, and no more than 5% by volume per truckload of incidental asphalt. Where there is backfilling, the method of backfilling shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility, or unsightliness. In any case, the finished condition of the restored area, except for rock faces, outcroppings, water bodies, or areas of proposed building or paving construction, shall be of sufficient depth of earth to support plant growth.

[5] Within one year after the cessation of the operation or any phase of the operation, all temporary structures (except fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition.

[6] In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of 1 1/2 horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.

[7] Upon completion of quarry operations, the quarry operator shall be required to submit a restoration report prepared by a registered professional engineer certifying that the restoration plan has been fully complied with.

(e) Restoration shall proceed as soon as practical and at the order and direction of the Director. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years. Aerial photographs of the quarry site shall also be provided at least every other year, and topographical data, to a detail required by the Plan Commission, shall be required at least every two years. The quarry operator shall be required to submit restoration progress reports and a final restoration report prepared by a registered professional engineer certifying that the restoration plan discussed in § 275-41F(2) has been fully complied with.

(3) Nonconforming quarrying uses. Any nonconforming quarrying use shall, on or before one year from the adoption and publication of this chapter, apply to the Plan Commission for a use and occupancy permit. The Plan Commission shall require a plan of operation, final restoration plan, intermediate restoration plans, as deemed necessary, and may impose such restrictions upon the use of such site, and the height and bulk of any structure, as may be reasonable and not unduly burdensome or onerous under the particular circumstances, provided that such restrictions shall not be more restrictive than the requirements established for the district in which such structure or use is located. In addition, a nonconforming use shall be subject to the requirements of § 275-36B(1), Table 275-36-1, this Subsection F(3) and Subsection F(2).

~~(a) Setback requirements from adjacent properties which are subdivided (as a subdivision is defined in Chapter 236, Wisconsin Statutes), shall be a minimum of 50 feet.~~

~~(b) The minimum setback from all other adjacent parcels shall be at least 20 feet.~~

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EE. Institutional/public/semipublic uses.

(1) ~~Reserved. Community living arrangements.~~

~~(a) Community living arrangements as provided for in § 62.23(7)(i), Wis. Stats., shall be a principal use in all residential districts and in the Institutional District.~~

~~(b) Community living arrangements that exceed the limit of those defined in § 62.23(7)(i), Wis. Stats., may be approved as a conditional use per § 275-27.~~

~~(c) Community living arrangements shall meet all applicable state statutes regarding such uses.~~

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(2) Educational facilities.

(a) An educational facility may be allowed as a conditional use in any residential district if the design, intensity and layout of the development are compatible with surrounding land uses.

(b) Colleges, universities, technical schools and other similar graduate schools are prohibited in all residential districts.

(3) Golf driving ranges.

(a) A golf driving range may be approved as an accessory use in the P-1 District when it is accessory to an approved golf course.

(b) A golf driving range may be approved as a conditional use per § 275-27 when it is not associated with a golf course.

(4) Landfills. No conditional use in an L-1 District shall be allowed until the following provisions have been met:

(a) Operational plan required. Each applicant for a conditional use in the L-1 Landfill District shall submit an operation plan for the use. The operational plan shall specify:

- [1] A timetable for operation of the landfill, including the date on which the landfill operation will begin and the planned date of the completion of the operation;
- [2] A phasing plan showing the location and timing on all proposed phases;
- [3] Hours of operation and days of operation for the landfill operation;
- [4] The types of material or refuse to be disposed of;
- [5] The means by which noise, dust, debris, and other potential nuisances will be controlled;

- [6] The means by which the applicant will collect and dispose of leachate to protect watersheds and groundwater aquifers;
 - [7] The means by which the applicant will control stormwater runoff and erosion to protect watersheds and groundwater aquifers;
 - [8] The location, height, and type of all proposed fences;
 - [9] All machinery and equipment to be used and/or stored during the landfill operation;
 - [10] A transportation plan identifying the mode of transportation to be used, the size and types of vehicles to be used, the number and frequency of trips to and from the site, and the routes to be used by trucks or locomotives;
 - [11] The location and type of landscaping to be used to screen the landfill operation from adjacent land uses and public rights-of-way; and
 - [12] Other information required by the Plan Commission.
- (b) Restoration and reuse plan required. A restoration and reuse plan, provided by the applicant, shall contain existing topography (at a contour interval specified by the Plan Commission) and proposed contours after filling or restoration; depth of the restored topsoil; and planting or restoration and restoration commencement and completion dates. Updates of the restoration plan shall be filed annually to show restoration progress. The applicant and/or owner of the sanitary landfill site shall furnish the necessary sureties, which will enable the City to perform the planned restoration of the site in the event of default by the applicant. The amount of such sureties shall be based upon cost estimates prepared by the City, and the form and type of such sureties shall be approved by the Common Council.

HE. Miscellaneous uses.

(1) Drive-through facilities.

- (a) ~~Standalone~~ Drive-through facilities may be allowed as an accessory ~~or principal use in zoning districts where the use is allowed as a principal use, to drive-through restaurants, pharmacies, financial institutions, and other uses as allowed by the Plan Commission.~~
- (b) All drive-through facilities shall comply with the ~~yard setback~~ requirements of the zoning district where the use is allowed.
- (c) Protective canopies shall not be closer than 25 feet to the base setback line.
- (d) Drive-through facilities shall meet any additional requirements as set forth in § 275-57 ~~D~~.

(2) ~~Aboveground/underground storage tanks:~~

- (a) ~~Are considered permitted uses in all nonresidential districts.~~
- (b) ~~Aboveground installation requires an administrative permit.~~

~~(c) Shall follow the accessory use requirements of the district in which the tank is located for the appropriate setback requirements.~~

~~(d) The applicant shall meet all Fire Department requirements.~~

~~(3) Outdoor firing ranges, excluding trap and skeet shooting, are prohibited in all districts.~~

~~I. Aboveground/underground storage tanks: [Amended 6-11-2019 by Ord. No. 2620]~~

~~(1) Are considered permitted uses in all nonresidential districts.~~

~~(2) Aboveground installation requires an administrative permit.~~

~~(3) Shall follow the accessory use requirements of the district in which the tank is located for the appropriate setback requirements.~~

~~(4) The applicant shall meet all Fire Department requirements.~~

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§ 275-42. Accessory uses and structures.

[Amended 9-23-2014 by Ord. No. 2529; 1-12-2016 by Ord. No. 2558; 10-9-2018 by Ord. No. 2607; 6-11-2019 by Ord. No. 2620; 10-13-2020 by Ord. No. 2642; 8-24-2021 by Ord. No. 2652; 4-25-2023 by Ord. No. 2668]

A. General provisions:

- (1) Properties with a minimum of five acres in size that have demonstrated agricultural or silviculture uses as determined by the Director shall be exempt from § 275-42B. "Agricultural uses" shall be defined as land that is primarily used for agricultural activity, including but not limited to the growing of qualified crops, planting in rows, fertilizing and tilling the land, and any other efforts to enhance growth of the yield. Physical evidence of agricultural activity can include furrows, crops, fencing and livestock. Minimal maintenance of the land and naturally growing crops will not be considered agricultural activity.
- (2) Accessory uses that are for a demonstrated agricultural use shall only be used for storage and demonstrated agricultural purposes, and not for home occupations, commercial storage, or business operations. All setbacks shall be met for the zoning district and shall be located in the rear or side yards in all residential districts.
- (3) The Plan Commission shall regulate the architecture of agricultural accessory uses under § 275-59D(1) of this chapter.
- (4) Accessory uses are allowed in any district as may be specified in the appropriate district regulations or in this section.
- (5) All accessory buildings shall require the issuance of a building permit.
- (6) Accessory uses are allowed only after the principal structure is present or under construction. The Director of Community Development may administratively approve an accessory structure prior to the principal structure being built, as long as the construction of the principal structure has begun within one year of starting work on the accessory structure. The City has the ability to enforce fines and/or citations.
- (7) The use and/or location requirements stipulated elsewhere in this chapter may be modified subject to Plan Commission approval.
- (8) Detached accessory buildings and structures that are part of a planned development are subject to Plan Commission review.
- (9) Skateboard ramps are prohibited in the City of New Berlin within residentially zoned districts.
- (10) All accessory buildings and structures shall be located outside of public easement areas unless Plan Commission approval is granted.

B. Maximum number and size of accessory structures. The maximum allowable square footage of accessory structures and the maximum number of accessory buildings shall be regulated as outlined in Table 275-42-1. Square footage shall be based on the first-floor footprint, excluding overhangs up to 24 inches. Overhangs exceeding 24 inches shall be counted towards the square footage. Tool sheds with a maximum square footage of 144

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square feet are allowed in addition to the "maximum combined allowable square footage" as listed in Table 275-42-1; however, the parcel may not exceed the "maximum number of accessory buildings" listed in Table 275-42-1, including the tool shed:

Table 275-42-1		
Lot Area (acres)	Maximum Combined Allowable Square Footage	Maximum Number of Accessory Buildings
Less than 2	840	2
2.0 - 2.5	1,000	2
2.5 - 3.0	1,250	3
3.0 - 3.5	1,500	3
3.5 - 4.0	1,750	3
4.0 - 4.5	2,000	3
4.5 - 5.0	2,250	3
5.0 and greater	2,500*	3*

NOTES:

* Unless demonstrated agricultural use as determined by the Director.

G. Pad/foundation requirements. Accessory buildings and tool sheds 144 square feet or less in area shall be placed on a pad of concrete, asphalt, patio block, polycarbonate or pressure-treated lumber. Accessory buildings greater than 144 square feet in area shall be constructed on a foundation or concrete slab.

D. Building materials. Accessory buildings may be made from either masonry or wood frame materials, subject to the following:

(1) All accessory buildings shall be at least 10 feet from a principal residence, or in the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.

E. Dimensional requirements:

(1) Size and height:

(a) General farm buildings:

[1] General farm buildings, including barns, silos, sheds, and storage bins intended for allowed agricultural uses, shall be sized to meet demonstrated agricultural needs.

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Moved to 275-42B(2)(e)

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Moved to 275-42B(2)(d)

- [2] No farm buildings or parts of farm buildings shall exceed 60 feet in height.
- [3] Accessory buildings exceeding 35 feet in height shall provide one additional foot of required front, side, and rear yard for each one foot over 35 feet in height.
- (b) Single-family residential accessory uses. An accessory building height may only be one story and shall not exceed 15 feet in height. A half story may be permitted, pursuant to § 275-70. Living quarters are not permitted within accessory buildings. DCD may grant a waiver for accessory buildings with a height up to 18 feet in order to match the exterior of the principal structure or for a larger footprint accessory building. See § 275-45 for height measurement requirements.
- (c) Nonsingle-family residential accessory uses. DCD staff shall determine if Architecture Review Committee review and approval is required:
- [1] Accessory buildings located within nonsingle-family residential zoning districts with a maximum size of 2,500 square feet shall require the issuance of an administrative permit by DCD staff.
- [2] Accessory buildings in nonsingle-family residential zoning districts that exceed 2,500 square feet shall require Plan Commission review and approval.
- (2) Setbacks:
- (a) All accessory uses, except where otherwise specified, shall be set back a minimum of five feet from all property lines.
- (b) The five-foot accessory setback shall be regulated as follows:
- [1] The accessory use setback shall be kept free from accumulation of debris or refuse.
- [2] The accessory setback shall not be used for the storage of any material or for parking.
- [3] Only fences, drainage swales, utilities, and landscaping may be allowed within the accessory setback area.
- (c) The Plan Commission/Community Development Authority shall have the ability to modify setbacks for all accessory buildings in any nonsingle-family residential district.
- (d) All accessory buildings and structures shall be located a minimum of 10 feet from the principal building, or in the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.
- (3) Lot coverage.

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Moved to 275-42B(2)(a)[2]

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Moved to 275-42B(2)(f)

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(a) Accessory uses shall not occupy more than 20% of the rear yard in any residential district.

(b) Accessory uses shall not occupy more than 50% of the rear yard area in any office or industrial district.

(c) Where accessory uses are allowed in the side or front yards, the accessory structures or uses shall not occupy more than 15% of the yard area.

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F. Allowed accessory uses:

(1) Accessory uses not requiring a building permit:

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(a) The following uses may be allowed in the front yard:

Minimum Setbacks (feet)			
Use	Front	Side	Rear
Basketball hoops	5	5	5
Bird baths	5	5	5
Flagpoles	5	5	5
Fountains	5	5	5
Gardens	5	5	5
Greenhouses (temporary)	5	5	5
Lawn sculptures	5	5	5
Pergolas (freestanding)	5	5	5
Pools (temporary or seasonal)	5	5	5
Religious statues	5	5	5
Seasonal gazebos	5	5	5
Wishing wells	5	5	5

(b) The following uses may be allowed in the side yard:

Minimum Setbacks (feet)			
Use	Front	Side	Rear
Basketball hoops	5	5	5
Bird baths	5	5	5
Flagpoles	5	5	5
Fountains	5	5	5
Gardens	5	5	5
Greenhouses (temporary)	5	5	5
Lawn sculptures	5	5	5
Pergolas (freestanding)	5	5	5
Pools (temporary or seasonal)	5	5	5
Religious statues	5	5	5
Seasonal gazebos	5	5	5
Wishing wells	5	5	5

(c) — The following uses may be allowed in the rear yard:

Minimum Setbacks (feet)			
Use	Front	Side	Rear
Basketball hoops	5	5	5
Bird baths	5	5	5
Compost piles (maximum height 6 feet)	5	5	5
Firewood piles, neatly stacked (maximum height 6 feet — no height restriction if stacked against a permitted structure)	5	5	5
Flagpoles	5	5	5
Fountains	5	5	5

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Minimum Setbacks (feet)			
Use	Front	Side	Rear
Gardens	5	5	5
Greenhouses (temporary)	5	5	5
Lawn sculptures	5	5	5
Patios (uncovered)	5	5	5
Pergolas (freestanding)	5	5	5
Pools (temporary or seasonal)	5	5	5
Religious statues	5	5	5
Seasonal gazebos	5	5	5
Sport courts	5	5	5
Swing sets and gym sets	5	5	5
Tennis courts	5	5	5
Volleyball courts (permanent)	5	5	5
Wishing wells	5	5	5

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Commented [KH58]: NO CHANGE - Moved to 275-42T

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(2) — Accessory uses requiring a building permit.

(a) — The following uses may be allowed in the front yard:

Use	Front	Side	Rear
Accessory buildings greater than 144 square feet (includes garages, pole barns)	District setbacks	District setbacks	District setbacks
Balconies	District Setbacks	District setbacks	District setbacks
Central air conditioning units and generators	District Setbacks	District setbacks	District setbacks
Covered patios or decks (attached)	District setbacks	District setbacks	District setbacks
Decks (4 feet in height or greater)	See § 275-46D(3)	District setbacks	District setbacks

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Use	Front	Side	Rear
Decks (less than 4 feet in height)	See § 275-46D(3)	District setbacks	5

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(b) — The following uses may be allowed in the side yard:

Use	Front	Side	Rear
Accessory buildings greater than 144 square feet (includes garages, pole barns)	District setbacks	District setbacks	District setbacks
Accessory buildings 144 square feet or less (includes tool sheds)	—	District setbacks	5
Balconies	District Setbacks	District setbacks	District setbacks
Carports (attached), only if supplemental to a garage	—	District setbacks	District setbacks
Central air-conditioning units and generators	District setbacks	District setbacks	District setbacks
Covered patios or decks (attached)	District setbacks	District setbacks	District setbacks
Decks (4 feet in height or greater)	See § 275-46D(3)	District setbacks	District setbacks
Decks (less than 4 feet in height)	See § 275-46D(3)	District setbacks	5
Gazebos/open-air structures	—	District setbacks	District setbacks
Hot tubs	—	District setbacks	5
Playhouse exceeding 144 square feet and greater than 7 feet in height	—	District setbacks	5
Poolhouses	—	District setbacks	District setbacks

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Commented [KH68]: NO CHANGE - Moved to 275-42B(2)(c)

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Commented [KH75]: NO CHANGE - Moved to 275-42B(1)(c)

(c) — The following uses may be allowed in the rear yard:

Use	Front	Side	Rear
Accessory buildings greater than 144 square feet (includes garages, pole barns)	District setbacks	District setbacks	District setbacks
Accessory buildings 144 square feet or less (includes tool sheds)	—	5	5
Balconies	District Setbacks	District setbacks	District setbacks
Carports (attached), only if supplemental to a garage	—	District setbacks	District setbacks
Central air-conditioning units and generators	District setbacks	District setbacks	District setbacks
Covered patios or decks (attached)	District setbacks	District setbacks	District setbacks
Decks (4 feet in height or greater)	See § 275-46D(3)	District Setbacks	District setbacks
Decks (less than 4 feet in height)	See § 275-46D(3)	District setbacks	5
Gazebos/open-air structures	—	District Setbacks	District setbacks
Hot tubs	—	District setbacks	5
Playhouse exceeding 144 square feet and greater than 7 feet in height	—	District setbacks	5
Poolhouses	—	District setbacks	District setbacks
Pools (above-ground or in-ground)	—	5	5

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Commented [KH84]: NO CHANGE - Moved to 275-42B(1)(c)

Commented [KH85]: NO CHANGE - Moved to 275-42O

(3) — Temporary outdoor storage. Temporary outdoor storage may be allowed as an accessory use in all zoning districts, subject to the following provisions:

(a) — Temporary outdoor storage units (example: shipping containers/crates) shall abide by the restrictions below:

[1] — An administrative permit application shall be submitted and a zoning permit issued prior to the temporary outdoor storage unit being placed on the property, if it will be stored on the property for more than 30 days.

[2] Only one temporary outdoor storage unit will be allowed per tax key. The Department of Community Development will review requests for any additional temporary outdoor storage units.

[3] Temporary outdoor storage units shall not exceed eight feet in height, 10 feet in width and 20 feet in length.

[4] No flammable or explosive materials may be stored in the temporary outdoor storage unit.

[5] No temporary outdoor storage unit will be used to store materials related to an off-premises business or a home occupation.

(b) Location:

[1] Temporary storage units shall be placed on a hard, all-weather surface, driveway or turnaround area. (This does not include areas of dirt or grass.)

[2] Temporary outdoor storage areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.

[3] Temporary outdoor storage units will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

(c) Duration:

[1] Temporary outdoor storage units shall not be stored on a property longer than 30 days unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of the temporary outdoor storage unit with an application and permit shall not exceed 60 days unless as specified in the next condition.

[2] Property owners that have applied for and received a valid building permit shall be allowed to store temporary outdoor storage units on the property no longer than 180 days or until final occupancy is issued, whichever comes first.

[3] If the project has a valid building permit, the property owner shall not be required to apply for an administrative permit.

[4] If the temporary outdoor storage unit is scheduled to remain on the property over 180 days, then the property owner shall apply for an administrative permit.

[5] Once the project or property owner receives final occupancy and/or the building permits have been closed out and final inspected, the property owner must remove the temporary outdoor storage unit within 30 days.

[6] Temporary outdoor storage units and small homes are prohibited as a permanent use.

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(4) Refuse containers. Refuse containers may be allowed as an accessory use in all zoning districts, subject to the following provisions. City-issued trash and recycling bins intended for weekly pickup and dumpsters used by commercial, industrial or multifamily developments for the primary use of everyday garbage disposal or recycling are exempt from this section and shall refer to Chapter 220 of the Municipal Code.

(a) Refuse containers (example: dumpsters/Bagster bags) shall abide by the restrictions below:

- [1] Only one refuse container will be allowed per tax key. The Department of Community Development will review requests for any additional refuse containers.
- [2] Refuse containers shall not exceed eight feet in height, 10 feet in width and 24 feet in length.
- [3] No flammable or explosive materials may be stored in a refuse container.
- [4] No refuse container will be used to store materials related to an off-premises business or a home occupation.

(b) Location:

- [1] Refuse containers areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.
- [2] Refuse containers will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

(c) Duration:

- [1] Refuse containers shall not be stored on a property longer than 15 days, unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of a refuse container with an application and permit shall not exceed 75 days.
- [2] Property owners that have applied for and received a valid building permit for an addition, remodel or alteration shall be allowed to store a refuse container on the property no longer than 180 days.
- [3] Permits for new construction shall be allowed to store a refuse container until final occupancy. To prevent construction debris from leaving the site, refuse containers must be changed regularly.

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G. Regulations for specific types of accessory uses and structures:

(1) Accessory dwellings:

(a) Residential quarters may be allowed in the B-2, B-3 and B-5 Districts, provided that the following regulations are met:

- [1] The accessory dwelling is located in the same building as the business;

- [2] The accessory dwelling shall meet all minimum floor area requirements of the Rm-1 Zoning District;
- [3] Adequate off-street parking for the occupant and visitors is provided as well as access to and from a public roadway; and
- [4] A sufficient amount of yard space is provided for ordinary outdoor activities.
- (b) Residential quarters for the caretaker or clergy may be provided in the I-1 District.
- (c) Family dwelling unit. An accessory family dwelling unit, commonly called an "in-law suite," may be permitted in the agricultural and single-family residential zoning districts, provided:
- [1] The family dwelling unit is attached and architecturally integrated with the principal dwelling unit. Detached accessory dwelling units are prohibited.
- [2] The family dwelling unit shall require a zoning permit in compliance with § 275-24.
- [3] The family dwelling unit may be built simultaneously with a new residence or after an existing residence has been constructed.
- [4] The owner is required to reside on the property. The owner may live in either the principal unit or the family dwelling unit.
- [5] The occupants of the principal unit and family dwelling unit shall be related by blood, adoption, marriage or other legally recognized relationship which creates a common household. A deed restriction on the family dwelling unit and property shall be recorded to limit the occupants as defined hereunder.
- [6] No more than two people shall live in the family dwelling unit.
- [7] The maximum size of the family dwelling unit shall be no greater than 50% of the living space of the principal unit.
- [8] The family dwelling unit may have a separate entrance, provided the entrance is not in the front of the principal unit.
- [9] The family dwelling unit shall have a minimum of one interior connection to the principal unit.
- (2) Antennas, amateur radio antennas (e.g., ham radio), and satellite dishes. Terrestrial antennas, amateur radio antennas (e.g., ham radio), and satellite dishes are allowed as accessory uses in any district, provided that the standards set forth below are met. These standards shall be interpreted and enforced in a manner consistent with the Telecommunications Act of 1996 and applicable FCC regulations:
- (a) Location:
- [1] Terrestrial antennas, amateur radio antennas (e.g., ham radio), and digital satellite receiving dishes 36 inches or less in diameter may be

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located in the rear yard or on the roof of the principal structure in all residential districts.

[2] Earth station dish antennas may be located in the rear yard in any residential district.

[3] Terrestrial antennas and earth station dish antennas may be located in the side and rear yard or on the roof of the principal structure in nonresidential districts, including agricultural districts.

[4] Amateur radio antennas (e.g., ham radio) may be located in the rear or side yard.

(b) Measurements.

[1] All freestanding antennas shall be located not less than five feet from a lot line. Adjustable antennas shall not be closer than five feet to the lot line in any position.

[2] All freestanding terrestrial antennas, roof antennas, and amateur radio antennas (e.g., ham radio) shall meet the height requirements for the district in which they are located, except as provided in § 275-45B of this chapter.

[3] Ground-mounted earth station dish antennas shall not exceed 15 feet in height.

[4] All antennas, including earth station dish antennas, shall be constructed and anchored in such a manner to withstand winds of not less than 80 miles per hour, and such installations shall be constructed of noncombustible and corrosive-resistant materials.

(c) Additional regulations.

[1] All antennas, including earth station dish antennas, shall be filtered and/or shielded so as to prevent the emission or reflection of electromagnetic radiation that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to its installation, the owner of the dish antenna shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.

[2] Not more than one terrestrial and one earth station dish antenna per dwelling unit shall be allowed on a lot or parcel in a residential zoning district.

[3] Earth station dish antennas shall be located and designed to reduce their visual impact on surrounding properties.

[4] No form of display or identification may be displayed on the dish or framework other than the customary manufacturer's identification plates.

~~[5] All antennas, and the construction supports and installation thereof, shall conform to applicable City Building Code and Electrical Code regulations and requirements. [1] Appropriate permits shall be issued by the Building Inspector. Prior to the issuance of a permit for a building-mounted earth station dish antenna, the applicant shall submit a plan or document prepared by a registered professional engineer which certifies that the proposed dish antenna installation is structurally sound to accommodate wind load, snow load, and dead load.~~

~~[1] Editor's Note: See Ch. 80, Building Construction, and Ch. 106, Electrical Standards.~~

~~[6] Portable or trailer-mounted antennas are not allowed, with the exception of temporary installation for on-site testing and demonstration purposes for a period not to exceed two days at any one location.~~

~~[7] In the event the property owner of a parcel of land located in a residential district determines and documents that the placement of an antenna in a rear yard would prevent its use for its intended purpose, the property owner may apply to the Plan Commission for a variance to allow the installation of the antenna in a side yard location. The procedure for issuing the Plan Commission variance shall follow the procedure set forth in § 275-30B of this chapter. If the owner determines and documents that a side yard location is not functional, then the Plan Commission may allow a roof-mounted earth station dish antenna.~~

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~~(3) Fences. Fences are allowed as accessory uses in all districts and are further regulated as follows~~

~~(a) Height. Fence height shall be measured from the average grade of the ground beneath the fence.~~

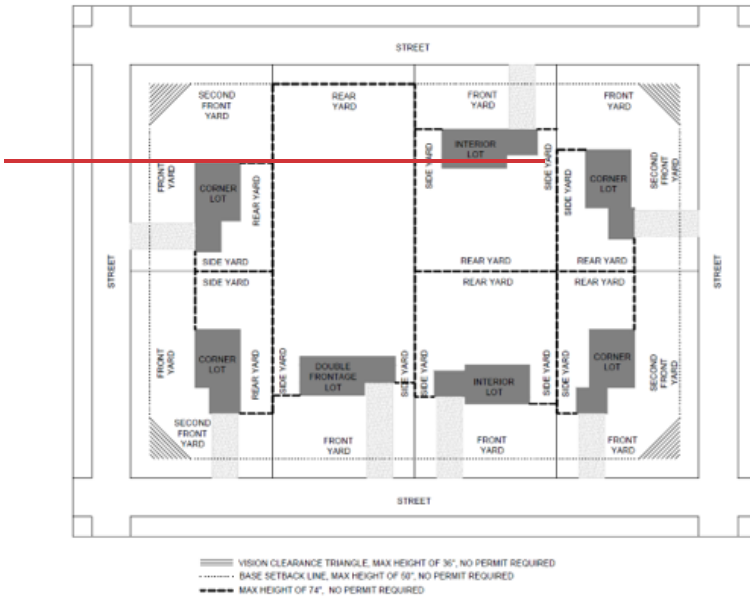
~~[1] Residential.~~

~~[a] Front yard. No fence in the front yard shall be located closer to the street than the base setback line and shall not exceed 50 inches in height. No fence in the vision clearance triangle shall exceed three feet in height above mean street grade. On corner lots, the side facing the side street (or second street) shall also be considered a front yard.~~

~~[b] Side and rear yards. Fences located in the side or rear yards shall not exceed 74 inches in height. On double frontage lots, the side facing the rear street shall be considered a rear yard.~~

~~[2] Nonresidential. Fences shall not exceed 98 inches in height.~~

**Figure V – 1
Fence Location**



(b) Location:

- [1] Fences made of maintenance-free materials may be located on the lot line. Such materials include, but are not limited to, metal fences (chain-link, wrought-iron, aluminum), PVC/recycled materials, removable fencing, pressure-treated wood and other maintenance-free materials, as approved by the Director. Common-lot-line fencing that has a finished side facing both properties and is maintained by both owners with a prior agreement is allowed with a survey. Fences that are not made of maintenance-free materials shall be located at least two feet from the property line.
- [2] Fences shall be located outside of easement areas unless Plan Commission approval is granted.
- [3] Fences shall not block or impact existing drainage patterns. Any grade changes made in the area of the fence installation must follow the requirements in § 275-55.

(c) Construction and maintenance:

- [1] All structural and support components of a fence shall face away from adjacent properties.
- [2] All fences shall be constructed straight and plumb. Any fence that is to be constructed or maintained in other than a straight and plumb

condition, including but not limited to certain types of split-rail fences, shall require Plan Commission review and approval.

[3] Fences in nonresidential districts shall adhere to § 275-59.

[4] All fences shall be maintained in good repair at all times. No signs or display shall be allowed on a fence. No materials shall be stored between the fence and the lot line.

(d) Permits. No permit is required for fences meeting the above criteria. A permit shall be required for:

[1] Residential fences located in the front yard that exceed 50 inches but not more than 74 inches, provided that all other requirements for fences are met. DCD review and approval is required.

[2] Residential fences exceeding 74 inches in height, provided that all other requirements for fences are met. Plan Commission review and approval is required.

(e) Exception:

[1] A snow fence temporarily constructed for the purpose of catching wind-blown snow shall not be subject to these fence requirements, provided that it shall be installed no earlier than November 1 of each year and shall be removed no later than April 1 each year.

[2] Windscreens are allowed on a seasonal basis within Institutional and Park Zoning Districts and may display content. Windscreens shall be maintained and in good repair.

(4) Home occupations. Home occupations may be allowed as accessory uses in any agricultural or residential district, provided that they comply with the following standards:

(a) General regulations:

[1] Home occupations shall be allowed only after staff review and administrative approval in accordance with the procedures set forth in Article III of this chapter.

[2] The total area devoted to a home occupation shall not exceed 20% of the building area of the principal dwelling unit.

[3] A home occupation shall produce no offensive noise, vibration, dust, odors, smoke, heat, pollution, glare, or radio, electrical, or television interference or otherwise produce a nuisance as determined by the Plan Commission.

[4] No materials that decompose by detonation shall be allowed in conjunction with a home occupation.

[5] No home occupation shall be allowed which changes the outside appearance of the dwelling or is visible from the street.

Commented [KH90]: NO CHANGE - Moved to 275-42H

- [6] Materials used in or produced by a home occupation may not be stored or displayed outside the dwelling without Plan Commission approval;
 - [7] No more than one nonresident employee shall be employed by a home occupation;
 - [8] Retail and wholesale sales shall be prohibited, except for the retail or wholesale sales of products or goods produced or fabricated on the premises as a result of the home occupation;
 - [9] The applicant shall demonstrate that there is sufficient off-street parking available to the home occupation. All vehicular parking for both the residence and the home occupation shall be located on the premises;
 - [10] A home occupation shall be carried on wholly within the principal dwelling. No home occupation nor any storage of goods, materials, or products connected with a home occupation shall be allowed in any accessory building or detached garage;
 - [11] Home occupation uses shall meet all applicable Fire and Building Code safety requirements;
 - [12] No home occupation involving visits to the site of the home occupation by customers or the loading or unloading of business-oriented material shall be operated between the hours of 8:00 p.m. and 8:00 a.m.
- (b) Prohibited home occupations. The following uses are prohibited as home occupations:
- [1] Animal hospitals or pet boarding;
 - [2] Antique shop;
 - [3] Automobile or other motor vehicle repair or paint shops;
 - [4] Dance studios for more than six students;
 - [5] Furniture stripping and/or refinishing;
 - [6] Gift shops;
 - [7] Gun or ammunition sales;
 - [8] Manufacturing or assembling items for sale from components not made on the same premises;
 - [9] Mortuaries;
 - [10] Music studios for more than three students;
 - [11] Photographic studios;
 - [12] Private clubs;
 - [13] Restaurants;

[14] Small engine repair shops;

[15] Stables or kennels;

[16] Tourist homes or boardinghouses; and

[17] Any other home occupations not meeting the criteria established by this chapter.

Commented [KH91]: NO CHANGE - Moved to 275-42J

(5) Small wind energy systems:

(a) Authority. This subsection is adopted pursuant to authority granted pursuant to Wisconsin Statutes, §§ 62.23(7) and 66.0401.

(b) Purpose. The purpose and intent of this subsection is to oversee the permitting of small wind energy systems and to preserve and protect public health, safety and welfare without significantly increasing the cost or decreasing the efficiency of a small wind energy system.

(c) Definitions. Refer to § 275-70.

(d) General regulations. A small wind energy system shall comply with the use regulations of the applicable zoning district and with the following requirements:

[1] A wind tower for a small wind energy system shall be set back a distance equal its total height from:

[a] Any public right-of-way, unless written permission is granted by the governmental entity with jurisdiction over said road right-of-way.

[b] Any overhead utility line, unless written permission is granted by the affected utility.

[c] Any property line abutting the property that is not residentially zoned, unless written permission is granted by the owner of the abutting property.

[2] Access. All ground-mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access. The tower shall be designated and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 12 feet above the ground.

[3] The tower shall be designed and installed so that the distance between the bottom of the blade at its lowest point of rotation shall not be less than 20 feet above the ground.

[4] Electrical wires. All electrical wires associated with the small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, shall be located underground.

[5] Lighting. The wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation

Administration. The wind generator and tower shall remain painted or finished the color or finish that was originally applied by the manufacturer and was approved by the Director of Community Development.

[6] Signs. All signs other than the manufacturer's or installer's identification, appropriate warning signs or owner identification on a wind generator tower building, or other structure associated with the small wind energy system visible from any public road, shall be prohibited.

[7] The small wind energy systems, including the tower and associated structure, shall comply with all applicable state building codes, construction and electrical codes and the national electrical codes.

[8] Utility notification and interconnection. Small wind energy systems that connect to the electrical utility shall comply with the Public Service Commission of Wisconsin Rules for Interconnecting Distributed Generation Facilities.

[9] Noise. Audible noise due to wind energy system operations shall not exceed 50 dBA for any period of time when measured at the exterior of any residence, school, hospital, church or public library and the property line of the adjacent neighbors existing on the date of the approved clean energy system permit. In the event audible noise due to wind energy system operations contains a steady pure tone such as a whine, screech or hum not produced under normal operating conditions, it is prohibited. In the event the ambient noise level exceeds the applicable standards given above, the applicable standard shall be adjusted so as to equal the ambient noise level.

(e) Small wind energy system permit.

[1] An applicant for a small wind energy system permit shall provide the following:

[a] A survey map showing property lines and physical dimensions, including the location, dimensions and types of existing structures on the property, location of the proposed small wind energy system tower, right-of-way of any public road that is contiguous with the property, and the overhead utility lines.

[b] Wind energy system specifications include the manufacturer and model, rotor diameter, tower height, tower type and kilowatt specifications.

[c] Information regarding noise anticipated to be attributed to the wind energy system.

[2] The small wind energy system permit shall expire if the small wind energy system is not installed and functioning within 12 months from the date the permit is issued.

(f) — Abandonment. The small wind energy system is deemed to be abandoned if it is out of service for a continuous twelve-month period. If the City provides a notice of abandonment, the small wind energy system must be removed at the owner's expense within 90 days of the notice of abandonment. If the owner fails to remove the wind energy system, the City may pursue a legal action to have the wind energy system removed at the owner's expense, including the applicable legal fees. The owner shall have the right to respond to the notice of abandonment within 30 days of receipt of the notice. The City shall withdraw the notice of abandonment if the owner provides information that demonstrates the small wind energy system has not been abandoned.

(g) — The Director of Community Development shall issue the small wind energy system permit, provided that it complies with the limitations and conditions as set forth herein, as well as applicable provisions of the Wisconsin Administrative Code and Wisconsin statutes. In the event that the application is rejected, the Director of Community Development shall notify the applicant in writing and provide a written statement of the reasons why the application was rejected. The applicant may appeal the decision of the Director of Community Development to the Plan Commission.

Commented [KH92]: NO CHANGE - Moved to 275-42R

(6) — Solar energy conversion systems:

(a) — Solar energy conversion systems (including solar collectors attached to the principal structure and solar collectors erected as an accessory structure) may be allowed as an accessory use in all zoning districts.

(b) — Solar energy conversion systems shall be subject to the following provisions:

[1] — Application. Applications for the erection of a solar energy conversion system shall conform to the application and approval procedure for a building permit set forth in § 275-25 of this chapter and the Electrical Code. In addition, the application shall include a copy of any solar easements obtained from adjacent property owners.

[a] — A building permit application submittal for a solar energy conversion system shall require a complete set of plans, including a site plan and any structure details drawn to scale. This plan set will be reviewed to ensure that a solar panel does not negatively impact the public health, safety and welfare.

[2] — Construction. Solar energy conversion systems shall be constructed and installed in conformance with all applicable state and local building and zoning codes.

[3] — Location and height. Solar energy conversion systems shall meet all setback and yard requirements for the district in which they are located. Solar energy conversion systems shall conform to all height requirements of this chapter.

Commented [KH93]: NO CHANGE - Moved to 275-42S

(7) ~~Geothermal systems. Geothermal systems may be allowed as an accessory use in all zoning districts, subject to applicable building codes.~~

(8) ~~District heating/cooling. District heating and/or cooling is allowed as an accessory use in all zoning districts, subject to applicable building codes.~~

(9) ~~Donation boxes. Donation boxes shall be monitored on at least a biweekly basis, or within five business days of a request by the Code Compliance Specialist, so that the contents are collected and that graffiti which becomes a blight is precluded. There shall be no accumulation of any items outside of the donation box. Donation boxes are required to be cleaned or repainted to remove graffiti that would otherwise result in a blight to the area. The owner's contact information shall be displayed clearly on the box. The donation box shall not obstruct traffic, sidewalks, fire lanes, or impact the required the required number of parking spaces.~~

Commented [KH94]: NO CHANGE - Moved to 275-42A(6)

Commented [KH95]: NO CHANGE - Moved to 275-42G

A. General Provisions.

(1) ~~Accessory uses are allowed in any district as may be specified in the appropriate district regulations or in this section.~~

Commented [KH96]: NO CHANGE - Moved from 275-42A(4)

(2) ~~Accessory uses are allowed only after the principal structure is present or under construction. The Director of Community Development may administratively approve an accessory structure prior to the principal structure being built, as long as the construction of the principal structure has begun within one year of starting work on the accessory structure. The City has the ability to enforce fines and/or citations.~~

(3) ~~Detached accessory buildings and structures that are part of a planned development are subject to Plan Commission review.~~

Commented [KH97]: NO CHANGE - Moved from 275-42A(6)

(4) ~~Dimensional requirements.~~

Commented [KH98]: NO CHANGE - Moved from 275-42A(8)

(a) ~~Setbacks. All accessory uses, except where otherwise specified, shall be set back a minimum of five feet from all property lines. Setbacks are measured from the overhang to the lot line. Setbacks shall be regulated as follows:~~

[1] ~~The accessory use setback shall be kept free from accumulation of debris or refuse.~~

[2] ~~The accessory setback shall not be used for the storage of any material or for parking.~~

[3] ~~Only fences, drainage swales, utilities, and landscaping may be allowed within the accessory setback area.~~

Commented [KH99]: NO CHANGE - Moved from 275-42E(2)

(b) ~~All accessory buildings and structures shall be located outside of public easement areas unless Plan Commission approval is granted.~~

Commented [KH100]: NO CHANGE - Moved from 275-42A(10)

(c) ~~The use and/or location requirements stipulated elsewhere in this chapter may be modified subject to Plan Commission approval.~~

Commented [KH101]: NO CHANGE - Moved from 275-42A(7)

(d) ~~Lot coverage.~~

[1] Where accessory uses are allowed in the front or side yards, the accessory structures or uses shall not occupy more than 15% of the yard area.

[2] Residential districts. Accessory uses shall not occupy more than 20% of the rear yard in any residential district.

[3] Office and industrial districts. Accessory uses shall not occupy more than 50% of the rear yard area in any office or industrial district.

(5) Demonstrated Agricultural Use. "Agricultural uses" shall be defined as land that is primarily used for agricultural activity, including but not limited to the growing of qualified crops, planting in rows, fertilizing and tilling the land, and any other efforts to enhance growth of the yield. Physical evidence of agricultural activity can include furrows, crops, fencing and livestock. Minimal maintenance of the land and naturally growing crops will not be considered agricultural activity.

(a) Accessory uses that are for a demonstrated agricultural use shall only be used for storage and demonstrated agricultural purposes, and not for home occupations, commercial storage, or business operations. All setbacks shall be met for the zoning district and shall be located in the rear or side yards in all residential districts.

(b) DCD shall regulate the architecture of agricultural accessory uses under § 275-59D(1) of this chapter.

(6) Allowed accessory uses. The following accessory uses may be allowed in all yards and shall be set back a minimum of five feet from all property lines: basketball hoops, bird baths, district heating/cooling, flagpoles, fountains, gardens, gazebos (fabric roof), generators, geothermal systems, greenhouses (polycarbonate type roof and walls), lawn sculptures, patios (uncovered), pergolas (detached), pools (seasonal and under 4' in height), religious statues, tree houses, and wishing wells. A building permit may be required for these uses.

(7) Prohibited accessory uses. Skateboard ramps are prohibited within residentially zoned districts.

B. Accessory buildings. All accessory buildings shall require the issuance of a building permit.

(1) Accessory buildings greater than 144 square feet (includes accessory buildings, garages (detached), gazebos, pavilions/covered patios (detached), permanent greenhouses, playhouses, pole barns and pool houses).

(a) Size.

[1] Square footage. Square footage shall be based on the first-floor footprint. Eaves up to 24" are excluded from this measurement. Overhangs and other attached accessory structures, as defined in §275-42D, exceeding 24" shall be counted towards the square footage.

[a] Single-family and two-family residential zoning districts.

Commented [KH102]: NO CHANGE - Moved from 275-42E(3)

Commented [HK103]: From Plan Commission to DCD to make consistent with 275-15D(3)

Commented [KH104]: NO CHANGE - Moved from 275-42A

Commented [KH105]: From district setbacks to 5' from property lines

Commented [KH106]: NO CHANGE - Moved from 275-42F(1)
Moved from 275-42F(2)
Moved from 275-42G(7)
Moved from 275-42G(8)

Commented [KH107]: NO CHANGE - Moved from 275-42A(9)

Commented [KH108]: NO CHANGE - Moved from 275-42A(5)

- i. The maximum combined allowable square footage is outlined in Table 275-42-1.
- ii. Properties which are 5 acres or greater with a demonstrated agricultural use, as determined by the Director, may exceed the maximum combined allowable square footage listed in Table 275-42-1.

Commented [KH109]: NO CHANGE - Moved from 275-42B

Table 275-42-1		
Lot Area (acres)	Maximum Combined Allowable Square Footage of Accessory Buildings greater than 144 SF	Maximum Number of Accessory Buildings
Less than 2	840	2
2.0 - less than 2.5	1,500	2
2.5 - less than 3.0	1,750	3
3.0 - less than 3.5	2,000	3
3.5 - less than 4.0	2,250	3
4.0 - less than 4.5	2,500	3
4.5 - less than 5.0	2,750	3
5.0 and greater	3,000	3

Commented [KH110]: Increase allowable square footage

[b] All other zoning districts. There is no maximum allowable square footage of accessory buildings within these zoning districts. Lot coverage percentages shall be met.

[2] Height.

[a] General farm buildings.

- i. General farm buildings, including barns, silos, sheds, and storage bins intended for allowed agricultural uses, shall be sized to meet demonstrated agricultural needs.
- ii. No farm buildings or parts of farm buildings shall exceed 60 feet in height.
- iii. Accessory buildings exceeding 35 feet in height shall provide one additional foot of required front, side, and rear yard for each one foot over 35 feet in height.

[b] Single-family and two-family residential zoning districts.

Commented [KH111]: NO CHANGE - Moved from 275-42E(1)

- i. An accessory building height may only be one story and shall not exceed 18 feet in height. A half story may be permitted, pursuant to § 275-70.
- ii. DCD may grant a waiver for accessory buildings with a height up to 21 feet to match the exterior of the principal structure or for a larger footprint accessory building.
- iii. Accessory dwelling units (ADU's) / Living quarters are not permitted within accessory buildings.

[c] All other zoning districts. The maximum height allowed shall comply with the use table for that district.

(b) Quantity.

[1] Single-family and two-family residential zoning districts.

Lot Area (acres)	Maximum Number of Accessory Buildings
Less than 2.5	2
2.5 and greater	3
5.0 and greater with a demonstrated agricultural use, as determined by the Director	No limit

[2] All other zoning districts. There is no maximum number of accessory buildings within these zoning districts. Lot coverage percentages shall be met.

Commented [KH112]: NO CHANGE - Moved from 275-42B

(c) Location.

[1] Yards. May be located in the front, side or rear yard.

[2] Setbacks. Setbacks are measured from the overhang to the lot line.

[a] The setbacks of the zoning district shall be met.

Commented [KH113]: NO CHANGE - Moved from 275-42F(2)

[b] The Plan Commission/Community Development Authority shall have the ability to modify setbacks for all accessory buildings in any non single-family residential district.

Commented [KH114]: NO CHANGE - Moved from 275-42E(2)(c)

[3] Building separation. A minimum of 10' of separation is required between other structures, measured wall to wall. In the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.

Commented [KH115]: NO CHANGE - Moved from 275-42E(2)(d)

- (d) Building materials. Accessory buildings may be made from either masonry or wood frame materials, subject to §275-42B(1)(c)[3].
- (e) Pad/foundation requirements. Accessory buildings greater than 144 square feet shall be constructed on a foundation or concrete slab.
- (f) Use Approval Permit. DCD staff shall determine if Architecture Review Committee review and approval is required.
 - [1] Accessory buildings located within non single-family residential zoning districts with a maximum size of 2,500 square feet shall require the issuance of an administrative permit by DCD staff.
 - [2] Accessory buildings in non single-family residential zoning districts that exceed 2,500 square feet shall require Plan Commission review and approval.
- (2) Accessory buildings 144 square feet or less (includes gazebos, pavilions/covered patios (detached), permanent greenhouses, playhouses, pool houses, and sheds).
 - (a) Size.
 - [1] Square footage. Square footage shall be based on the first-floor footprint. Eaves up to 24" are excluded from this measurement. Overhangs and other attached accessory structures, as defined in §275-42D, exceeding 24" shall be counted towards the square footage.
 - [a] Single-family and two-family residential zoning districts.
 - i. The maximum size is 144 square feet. Accessory buildings 144 square feet or less do not count towards the maximum combined allowable square footage outlined in Table 275-42-1.
 - ii. Properties which are 5 acres or greater with a demonstrated agricultural use, as determined by the Director, may exceed the maximum combined allowable square footage listed in Table 275-42-1.
 - [b] All other zoning districts. There is no maximum allowable square footage of accessory buildings within these zoning districts. Lot coverage percentages shall be met.
 - [2] Height.
 - [a] General farm buildings.
 - i. General farm buildings, including barns, silos, sheds, and storage bins intended for allowed agricultural uses, shall be sized to meet demonstrated agricultural needs.
 - ii. No farm buildings or parts of farm buildings shall exceed 60 feet in height.

Commented [KH116]: NO CHANGE - Moved from 275-42D

Commented [KH117]: NO CHANGE - Moved from 275-42C

Commented [KH118]: NO CHANGE - Moved from 275-42E(1)(c)

Commented [KH119]: NO CHANGE - Moved from 275-42B

iii. Accessory buildings exceeding 35 feet in height shall provide one additional foot of required front, side, and rear yard for each one foot over 35 feet in height.

Commented [KH120]: NO CHANGE - Moved from 275-42E(1)

[b] Single-family and two-family residential zoning districts.

i. An accessory building height may only be one story and shall not exceed 18 feet in height. A half story may be permitted, pursuant to § 275-70.

ii. DCD may grant a waiver for accessory buildings with a height up to 21 feet to match the exterior of the principal structure or for a larger footprint accessory building.

iii. Accessory dwelling units (ADU's) / Living quarters are not permitted within accessory buildings.

[c] All other zoning districts. The maximum height allowed shall comply with the use table for that district.

(b) Quantity.

[1] Single-family and two-family residential zoning districts.

Lot Area (acres)	Maximum Number of Accessory Buildings
Less than 2.5	2
2.5 and greater	3
5.0 and greater with a demonstrated agricultural use, as determined by the Director	No limit

Commented [KH121]: NO CHANGE - Moved from 275-42B

[2] All other zoning districts. There is no maximum number of accessory buildings within these zoning districts. Lot coverage percentages shall be met.

(c) Location.

[1] Yards. May be located in the side or rear yard.

[2] Setbacks. Setbacks are measured from the overhang to the lot line.

[a] Sheds located in the side yard shall meet the setbacks of the zoning district. Sheds located in the rear yard shall be located a minimum of 5' from all property lines.

Commented [KH122]: NO CHANGE - Moved from 275-42F(2)

[b] The Plan Commission/Community Development Authority shall have the ability to modify setbacks for all accessory buildings in any non single-family residential district.

Commented [KH123]: NO CHANGE - Moved from 275-42E(2)(c)

[3] Building separation. A minimum of 10' of separation is required between other structures, measured wall to wall. In the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.

Commented [KH124]: NO CHANGE - Moved from 275-42E(2)(d)

(d) Building materials. Accessory buildings may be made from either masonry or wood frame materials, subject to §275-42B(2)(c)[3].

Commented [KH125]: NO CHANGE - Moved from 275-42D

(e) Pad/foundation requirements. Accessory buildings 144 square feet or less must be placed over a concrete slab, a solid base of patio block, asphalt, poly-carbonate or on a floor of pressure treated wood.

Commented [KH126]: NO CHANGE - Moved from 275-42C

(f) Use Approval Permit. DCD staff shall determine if Architecture Review Committee review and approval is required.

[1] Accessory buildings located within non single-family residential zoning districts with a maximum size of 2,500 square feet shall require the issuance of an administrative permit by DCD staff.

Commented [KH127]: NO CHANGE - Moved from 275-42E(1)(c)

C. Accessory dwelling units.

(1) Residential quarters may be allowed in the B-2, B-3 and B-5 Districts, provided that the following regulations are met:

(a) The accessory dwelling is located in the same building as the business;

(b) The accessory dwelling shall meet all minimum floor area requirements of the Rm-1 Zoning District;

(c) Adequate off-street parking for the occupant and visitors is provided as well as access to and from a public roadway; and

(d) A sufficient amount of yard space is provided for ordinary outdoor activities.

(2) Residential quarters for the caretaker or clergy may be provided in the I-1 District.

(3) Family dwelling unit. An accessory family dwelling unit, commonly called an "in-law suite," may be permitted in the agricultural and single-family residential zoning districts, provided:

(a) The family dwelling unit is attached and architecturally integrated with the principal dwelling unit. Detached accessory dwelling units are prohibited.

(b) The family dwelling unit shall require a zoning permit in compliance with § 275-24.

(c) The family dwelling unit may be built simultaneously with a new residence or after an existing residence has been constructed.

(d) The owner is required to reside on the property. The owner may live in either the principal unit or the family dwelling unit.

(e) The occupants of the principal unit and family dwelling unit shall be related by blood, adoption, marriage or other legally recognized relationship which

creates a common household. A deed restriction on the family dwelling unit and property shall be recorded to limit the occupants as defined hereunder.

- (f) No more than two people shall live in the family dwelling unit.
- (g) The maximum size of the family dwelling unit shall be no greater than 50% of the living space of the principal unit.
- (h) The family dwelling unit may have a separate entrance, provided the entrance is not in the front of the principal unit.
- (i) The family dwelling unit shall have a minimum of one interior connection to the principal unit or attached to the principal building.

Commented [KH128]: NO CHANGE - Moved from 275-42G(1)

Commented [KH129]: NO CHANGE - Moved from 275-42G(1)

D. Accessory structures, attached. All accessory structures attached to a building shall require the issuance of a building permit, including balconies (covered or uncovered), carports attached to a building (only if supplemental to a garage), pavilions/covered patios (attached), pergolas (attached), and porches. Attached accessory structures exclude those defined in 275-42B.

- (1) Yards. May be located in the front, side or rear yard.
- (2) Setbacks. Setbacks are measured from the overhang to the lot line.

(a) The setbacks of the zoning district shall be met.

- (3) Building separation. A minimum of 10' of separation is required between other structures, measured wall to wall. In the case of proper fire separation, the Building Inspector may allow accessory structures to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.

Commented [KH130]: NO CHANGE - Moved from 275-42F(2)

Commented [KH131]: NO CHANGE - Moved from 275-42E(2)(d)

E. Antennas (terrestrial), amateur radio antennas (e.g., ham radio), and satellite dishes. The standards below shall be interpreted and enforced in a manner consistent with the Telecommunications Act of 1996 and applicable FCC regulations.

(1) Location.

- (a) Terrestrial antennas, amateur radio antennas (e.g., ham radio), and digital satellite receiving dishes 36 inches or less in diameter may be located in the rear yard or on the roof of the principal structure in all residential districts.
- (b) Earth station dish antennas may be located in the rear yard in any residential district.
- (c) Terrestrial antennas and earth station dish antennas may be located in the side and rear yard or on the roof of the principal structure in nonresidential districts, including agricultural districts.
- (d) Amateur radio antennas (e.g., ham radio) may be located in the rear or side yard.

(2) Measurements.

- (a) All freestanding antennas shall be located not less than five feet from a lot line. Adjustable antennas shall not be closer than five feet to the lot line in any position.

- (b) All freestanding terrestrial antennas, roof antennas, and amateur radio antennas (e.g., ham radio) shall meet the height requirements for the district in which they are located, except as provided in § 275-45B of this chapter.
 - (c) Ground-mounted earth station dish antennas shall not exceed 15 feet in height.
 - (d) All antennas, including earth station dish antennas, shall be constructed and anchored in such a manner to withstand winds of not less than 80 miles per hour, and such installations shall be constructed of noncombustible and corrosive-resistant materials.
- (3) Additional regulations.
- (a) All antennas, including earth station dish antennas, shall be filtered and/or shielded so as to prevent the emission or reflection of electromagnetic radiation that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to its installation, the owner of the dish antenna shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.
 - (b) Not more than one terrestrial and one earth station dish antenna per dwelling unit shall be allowed on a lot or parcel in a residential zoning district.
 - (c) Earth station dish antennas shall be located and designed to reduce their visual impact on surrounding properties.
 - (d) No form of display or identification may be displayed on the dish or framework other than the customary manufacturer's identification plates.
 - (e) All antennas, and the construction supports and installation thereof, shall conform to applicable City Building Code and Electrical Code regulations and requirements. Appropriate permits shall be issued by the Building Inspector. Prior to the issuance of a permit for a building-mounted earth station dish antenna, the applicant shall submit a plan or document prepared by a registered professional engineer which certifies that the proposed dish antenna installation is structurally sound to accommodate wind load, snow load, and dead load.
 - (f) Portable or trailer-mounted antennas are not allowed, with the exception of temporary installation for on-site testing and demonstration purposes for a period not to exceed two days at any one location.
 - (g) In the event the property owner of a parcel of land located in a residential district determines and documents that the placement of an antenna in a rear yard would prevent its use for its intended purpose, the property owner may apply to the Plan Commission for a variance to allow the installation of the antenna in a side yard location. The procedure for issuing the Plan Commission variance shall follow the procedure set forth in § 275-30B of

this chapter. If the owner determines and documents that a side yard location is not functional, then the Plan Commission may allow a roof-mounted earth station dish antenna.

Commented [KH132]: NO CHANGE - Moved from 275-42G(2)

F. Decks. All attached and detached decks shall require the issuance of a building permit.

(1) Yards. May be located in the front, side or rear yard.

(2) Setbacks.

(a) The setbacks of the zoning district shall be met.

(b) Decks located in the rear yard that are 4' in height or less shall be located a minimum of 5' from all property lines.

(c) See also § 275-46E(3) regarding decks sized for entry purposes.

Commented [KH133]: NO CHANGE - Moved from 275-42F(2)

G. Donation boxes. Donation boxes shall be monitored on at least a biweekly basis, or within five business days of a request by the Code Compliance Specialist, so that the contents are collected and that graffiti which becomes a blight is precluded. There shall be no accumulation of any items outside of the donation box. Donation boxes are required to be cleaned or repainted to remove graffiti that would otherwise result in a blight to the area. The owner's contact information shall be displayed clearly on the box. The donation box shall not obstruct traffic, sidewalks, fire lanes, or impact the required the required number of parking spaces.

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H. Fences.

(1) Height. Fence height shall be measured from the average grade of the ground beneath the fence.

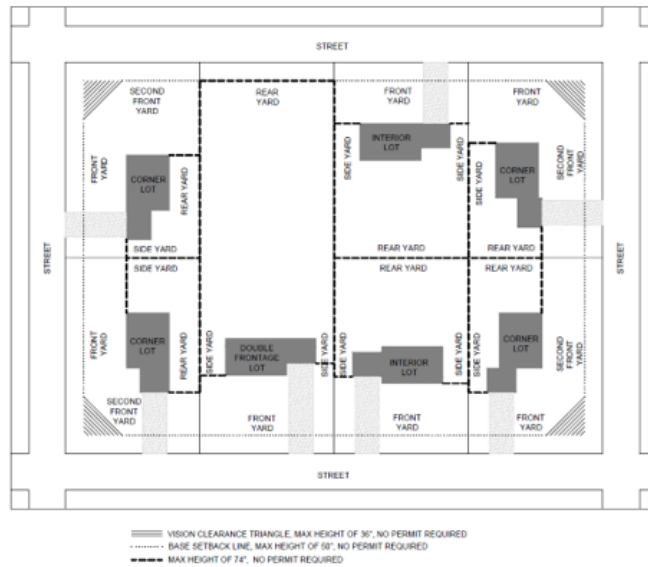
(a) Residential.

[1] Front yard. No fence in the front yard shall be located closer to the street than the base setback line and shall not exceed 50 inches in height. No fence in the vision clearance triangle shall exceed three feet in height above mean street grade. On corner lots, the side facing the side street (or second street) shall also be considered a front yard.

[2] Side and rear yards. Fences located in the side or rear yards shall not exceed 74 inches in height. On double frontage lots, the side facing the rear street shall be considered a rear yard.

(b) Nonresidential. Fences shall not exceed 98 inches in height.

**Figure V – 1
Fence Location**



(2) Location.

- (a) Fences made of maintenance-free materials may be located on the lot line. Such materials include, but are not limited to, cedar, metal fences (chain-link, wrought-iron, aluminum), PVC/recycled materials, removable fencing, pressure-treated wood and other maintenance-free materials, as approved by the Director. Common-lot-line fencing that has a finished side facing both properties and is maintained by both owners with a prior agreement is allowed with a survey. Fences that are not made of maintenance-free materials shall be located at least two feet from the property line.
- (b) Fences shall be located outside of public easement areas unless Plan Commission approval is granted.
- (c) Fences shall not block or impact existing drainage patterns. Any grade changes made in the area of the fence installation must follow the requirements in § 275-55.

(3) Construction and maintenance.

- (a) All structural and support components of a fence shall face away from adjacent properties.
- (b) All fences shall be constructed straight and plumb. Any fence that is to be constructed or maintained in other than a straight and plumb condition, including but not limited to certain types of split-rail fences, shall require Plan Commission review and approval.

(c) Fences in nonresidential districts shall adhere to § 275-59.

(d) All fences shall be maintained in good repair at all times. No signs or display shall be allowed on a fence. No materials shall be stored between the fence and the lot line.

(4) Permits. No permit is required for fences meeting the above criteria. A permit shall be required for:

(a) Residential fences located in the front yard that exceed 50 inches but not more than 74 inches, provided that all other requirements for fences are met. DCD review and approval is required.

(b) Residential fences exceeding 74 inches in height, provided that all other requirements for fences are met. Plan Commission review and approval is required.

(5) Exception.

(a) A snow fence temporarily constructed for the purpose of catching wind-blown snow shall not be subject to these fence requirements, provided that it shall be installed no earlier than November 1 of each year and shall be removed no later than April 1 each year.

(b) Windscreens are allowed on a seasonal basis within Institutional and Park Zoning Districts and may display content. Windscreens shall be maintained and in good repair.

I. Firewood and compost piles.

(1) Firewood and compost piles with a maximum height of 6 feet shall be allowed as an accessory use in all zoning districts. Firewood piles that are stacked against a permanent structure have no height restriction.

(2) Yards. Firewood and compost piles may be located in the rear yard.

(3) Setbacks. Firewood and compost piles shall be located a minimum of 5' from all property lines.

J. Home occupations. Home occupations may be allowed as accessory uses in any agricultural or residential district, provided that they comply with the following standards:

(1) General regulations.

(a) Home occupations shall be allowed only after staff review and administrative approval in accordance with the procedures set forth in Article III of this chapter.

(b) The total area devoted to a home occupation shall not exceed 20% of the building area of the principal dwelling unit.

(c) A home occupation shall produce no offensive noise, vibration, dust, odors, smoke, heat, pollution, glare, or radio, electrical, or television interference or otherwise produce a nuisance as determined by the Plan Commission.

(d) No materials that decompose by detonation shall be allowed in conjunction with a home occupation.

Commented [KH135]: NO CHANGE - Moved from 275-42G(3)

Commented [KH136]: NO CHANGE - Moved from 275-42F(1)(c)

- (e) No home occupation shall be allowed which changes the outside appearance of the dwelling or is visible from the street.
 - (f) Materials used in or produced by a home occupation may not be stored or displayed outside the dwelling without Plan Commission approval.
 - (g) No more than one nonresident employee shall be employed by a home occupation.
 - (h) Retail and wholesale sales shall be prohibited, except for the retail or wholesale sales of products or goods produced or fabricated on the premises as a result of the home occupation.
 - (i) The applicant shall demonstrate that there is sufficient off-street parking available to the home occupation. All vehicular parking for both the residence and the home occupation shall be located on the premises.
 - (j) A home occupation shall be carried on wholly within the principal dwelling. No home occupation nor any storage of goods, materials, or products connected with a home occupation shall be allowed in any accessory building or detached garage.
 - (k) Home occupation uses shall meet all applicable Fire and Building Code safety requirements.
 - (l) No home occupation involving visits to the site of the home occupation by customers or the loading or unloading of business-oriented material shall be operated between the hours of 8:00 p.m. and 8:00 a.m.
- (2) Prohibited home occupations. The following uses are prohibited as home occupations:
- (a) Animal hospitals or pet boarding;
 - (b) Antique shop;
 - (c) Automobile or other motor vehicle repair or paint shops;
 - (d) Dance studios for more than six students;
 - (e) Furniture stripping and/or refinishing;
 - (f) Gift shops;
 - (g) Gun or ammunition sales;
 - (h) Manufacturing or assembling items for sale from components not made on the same premises;
 - (i) Mortuaries;
 - (j) Music studios for more than three students;
 - (k) Photographic studios;
 - (l) Private clubs;
 - (m) Restaurants;
 - (n) Small engine repair shops;

- (o) Stables or kennels;
- (p) Tourist homes or boardinghouses; and
- (q) Any other home occupations not meeting the criteria established by this chapter.

K. Hot tubs.

- (1) Yards. Hot tubs may be located in the side or rear yard.
- (2) Setbacks.
 - (a) Hot tubs located in the side yard shall meet the setbacks of the Zoning District.
 - (b) Hot tubs located in the rear yard shall be located a minimum of 5' from all property lines.
- (3) Building separation. May be permitted as close as necessary to a principal or accessory building.

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L. Outdoor displays and sales.

- (1) The outside display of merchandise may be allowed as an accessory use in all commercial, manufacturing and industrial districts if all of the following provisions are met:
 - (a) The display shall not exceed 500 square feet in commercial districts or 1,000 square feet in the manufacturing and industrial districts; excluding seasonal displays, temporary events or displays approved as part of the plan of operation;
 - (b) The display does not obstruct traffic, sidewalks, or fire lanes; and
 - (c) The display area is not being used for the storage of merchandise only.
- (2) Display of vehicles for sale. Not more than one automobile, boat, recreational vehicle, or other personal vehicle may be displayed in a driveway or parking lot for sale, unless a sales lot has been approved by the Plan Commission in an appropriate business district. The vehicle must be owned and registered to the occupant of the premises, and such sales shall not occur more than three times in any given year. Vehicles shall not be displayed on lawn areas or within a public right-of-way.
- (3) Outdoor displays placed under permanent canopies for automotive fuel sales shall be permitted.
- (4) Items that are visible and are not located within an approved area for outdoor displays and sales are considered outdoor storage and shall meet the requirements in § 275-42M.

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M. Outdoor storage, permanent. Outdoor storage may be allowed as an accessory use as defined in the use summary tables for each zoning district, subject to Department of Community Development staff review and approval, and provided that such storage is screened from view of any public right-of-way or residential area.

Commented [HK139]: NO CHANGE - Moved from 275-41C(9)

Commented [HK140]: NO CHANGE - Moved from 275-41C(10)

N. Outdoor storage, temporary. Temporary outdoor storage may be allowed as an accessory use in all zoning districts, subject to the following provisions:

(1) Temporary outdoor storage units (example: shipping containers/crates) shall abide by the restrictions below:

- (a) An administrative permit application shall be submitted and a zoning permit issued prior to the temporary outdoor storage unit being placed on the property, if it will be stored on the property for more than 30 days.
- (b) Only one temporary outdoor storage unit will be allowed per tax key. The Department of Community Development will review requests for any additional temporary outdoor storage units.
- (c) Temporary outdoor storage units shall not exceed eight feet in height, 10 feet in width and 20 feet in length.
- (d) No flammable or explosive materials may be stored in the temporary outdoor storage unit.
- (e) No temporary outdoor storage unit will be used to store materials related to an off-premises business or a home occupation.

(2) Location:

- (a) Temporary storage units shall be placed on a hard, all-weather surface, driveway or turnaround area. (This does not include areas of dirt or grass.)
- (b) Temporary outdoor storage areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.
- (c) Temporary outdoor storage units will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

(3) Duration:

- (a) Temporary outdoor storage units shall not be stored on a property longer than 30 days unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of the temporary outdoor storage unit with an application and permit shall not exceed 60 days unless as specified in the next condition.
- (b) Property owners that have applied for and received a valid building permit shall be allowed to store temporary outdoor storage units on the property no longer than 180 days or until final occupancy is issued, whichever comes first.
- (c) If the project has a valid building permit, the property owner shall not be required to apply for an administrative permit.
- (d) If the temporary outdoor storage unit is scheduled to remain on the property over 180 days, then the property owner shall apply for an administrative permit.

(e) Once the project or property owner receives final occupancy and/or the building permits have been closed out and final inspected, the property owner must remove the temporary outdoor storage unit within 30 days.

(f) Temporary outdoor storage units and small homes are prohibited as a permanent use.

O. Pools. All above ground and in ground pools shall require the issuance of a building permit.

(1) Yards. Pools may be located in the side or rear yard.

(2) Setbacks.

(a) Pools located in the side yard shall meet the setbacks of the zoning district.

(b) Pools located in the rear yard shall be located a minimum of 5' from all property lines.

(3) Building separation. A minimum of 10' of separation is required between pools and any wall or structure overhang.

P. Refuse containers. Refuse containers may be allowed as an accessory use in all zoning districts, subject to the following provisions. City-issued trash and recycling bins intended for weekly pickup and dumpsters used by commercial, industrial or multifamily developments for the primary use of everyday garbage disposal or recycling are exempt from this section and shall refer to Chapter 220 of the Municipal Code.

(1) Refuse containers (example: dumpsters/Bagster bags) shall abide by the restrictions below:

(a) Only one refuse container will be allowed per tax key. The Department of Community Development will review requests for any additional refuse containers.

(b) Refuse containers shall not exceed eight feet in height, 10 feet in width and 24 feet in length.

(c) No flammable or explosive materials may be stored in a refuse container.

(d) No refuse container will be used to store materials related to an off-premises business or a home occupation.

(2) Location:

(a) Refuse containers areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.

(b) Refuse containers will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

(3) Duration:

(a) Refuse containers shall not be stored on a property longer than 15 days, unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of a refuse container with an application and permit shall not exceed 75 days.

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Commented [KH142]: NO CHANGE - Moved from 275-42F(2)(c)

- (b) Property owners that have applied for and received a valid building permit for an addition, remodel or alteration shall be allowed to store a refuse container on the property no longer than 180 days.
- (c) Permits for new construction shall be allowed to store a refuse container until final occupancy. To prevent construction debris from leaving the site, refuse containers must be changed regularly.

Q. Retaining walls. See §275-55A(5).

R. Small wind energy systems.

- (1) Authority. This subsection is adopted pursuant to authority granted pursuant to Wisconsin Statutes, §§ 62.23(7) and 66.0401.
- (2) Purpose. The purpose and intent of this subsection is to oversee the permitting of small wind energy systems and to preserve and protect public health, safety and welfare without significantly increasing the cost or decreasing the efficiency of a small wind energy system.
- (3) Definitions. Refer to § 275-70.
- (4) General regulations. A small wind energy system shall comply with the use regulations of the applicable zoning district and with the following requirements:
 - (a) A wind tower for a small wind energy system shall be set back a distance equal its total height from:
 - [1] Any public right-of-way, unless written permission is granted by the governmental entity with jurisdiction over said road right-of-way.
 - [2] Any overhead utility line, unless written permission is granted by the affected utility.
 - [3] Any property line abutting the property that is not residentially zoned, unless written permission is granted by the owner of the abutting property.
 - (b) Access. All ground-mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access. The tower shall be designated and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 12 feet above the ground.
 - (c) The tower shall be designed and installed so that the distance between the bottom of the blade at its lowest point of rotation shall not be less than 20 feet above the ground.
 - (d) Electrical wires. All electrical wires associated with the small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, shall be located underground.
 - (e) Lighting. The wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration. The wind generator and tower shall remain painted or finished the color or finish that

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was originally applied by the manufacturer and was approved by the Director of Community Development.

- (f) Signs. All signs other than the manufacturer's or installer's identification, appropriate warning signs or owner identification on a wind generator tower building, or other structure associated with the small wind energy system visible from any public road, shall be prohibited.
 - (g) The small wind energy systems, including the tower and associated structure, shall comply with all applicable state building codes, construction and electrical codes and the national electrical codes.
 - (h) Utility notification and interconnection. Small wind energy systems that connect to the electrical utility shall comply with the Public Service Commission of Wisconsin Rules for Interconnecting Distributed Generation Facilities.
 - (i) Noise. Audible noise due to wind energy system operations shall not exceed 50 dBA for any period of time when measured at the exterior of any residence, school, hospital, church or public library and the property line of the adjacent neighbors existing on the date of the approved clean energy system permit. In the event audible noise due to wind energy system operations contains a steady pure tone such as a whine, screech or hum not produced under normal operating conditions, it is prohibited. In the event the ambient noise level exceeds the applicable standards given above, the applicable standard shall be adjusted so as to equal the ambient noise level.
- (5) Small wind energy system permit.
- (a) An applicant for a small wind energy system permit shall provide the following:
 - [1] A survey map showing property lines and physical dimensions, including the location, dimensions and types of existing structures on the property, location of the proposed small wind energy system tower, right-of-way of any public road that is contiguous with the property, and the overhead utility lines.
 - [2] Wind energy system specifications include the manufacturer and model, rotor diameter, tower height, tower type and kilowatt specifications.
 - [3] Information regarding noise anticipated to be attributed to the wind energy system.
 - (b) The small wind energy system permit shall expire if the small wind energy system is not installed and functioning within 12 months from the date the permit is issued.
- (6) Abandonment. The small wind energy system is deemed to be abandoned if it is out of service for a continuous twelve-month period. If the City provides a notice of abandonment, the small wind energy system must be removed at the owner's expense within 90 days of the notice of abandonment. If the owner fails to remove

the wind energy system, the City may pursue a legal action to have the wind energy system removed at the owner's expense, including the applicable legal fees. The owner shall have the right to respond to the notice of abandonment within 30 days of receipt of the notice. The City shall withdraw the notice of abandonment if the owner provides information that demonstrates the small wind energy system has not been abandoned.

- (7) The Director of Community Development shall issue the small wind energy system permit, provided that it complies with the limitations and conditions as set forth herein, as well as applicable provisions of the Wisconsin Administrative Code and Wisconsin statutes. In the event that the application is rejected, the Director of Community Development shall notify the applicant in writing and provide a written statement of the reasons why the application was rejected. The applicant may appeal the decision of the Director of Community Development to the Plan Commission.

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S. Solar energy conversion systems. Solar energy conversion systems (including solar collectors attached to the principal structure and solar collectors erected as an accessory structure) may be allowed as an accessory use in all zoning districts and shall be subject to the following provisions:

- (1) Application. Applications for the erection of a solar energy conversion system shall conform to the application and approval procedure for a building permit set forth in § 275-25 of this chapter and the Electrical Code. In addition, the application shall include a copy of any solar easements obtained from adjacent property owners.
- (a) A building permit application submittal for a solar energy conversation system shall require a complete set of plans, including a site plan and any structure details drawn to scale. This plan set will be reviewed to ensure that a solar panel does not negatively impact the public health, safety and welfare.
- (2) Construction. Solar energy conversion systems shall be constructed and installed in conformance with all applicable state and local building and zoning codes.
- (3) Location and height. Solar energy conversion systems shall meet all setback and yard requirements for the district in which they are located. Solar energy conversion systems shall conform to all height requirements of this chapter.

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T. Sport courts, tennis courts and permanent volleyball courts.

- (1) Yards. Sport courts, tennis courts and permanent volleyball courts may be located in the rear yard.
- (2) Setbacks. Sport courts, tennis courts and permanent volleyball courts shall be located a minimum of 5' from all property lines.

U. Swing sets and gym sets.

- (1) Yards. Swing sets and gym sets may be located in the rear yard.
- (2) Setbacks. Swing sets and gym sets shall be located a minimum of 5' from all property lines.

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§ 275-43. Temporary uses, structures and special events.

- A. Application process. As applicable, temporary uses, structures and special events shall obtain a permit. Applications and necessary materials shall be submitted to staff and may be subject to application fees and developer deposit fees. The temporary use, structure or special event shall be reviewed in accordance with the provisions of this section and other applicable sections of this chapter ~~and § 152-23, Special event permit. Temporary uses, structures, and special events requiring a permit include:~~
- (1) ~~Festivals, food truck festivals, art/craft fairs, outdoor markets, plant/flower sales, circuses, concerts, wine/food tastings, beer gardens, races, parades, block parties, sporting events, exhibitions, outdoor seating/dining, pop up live music, car shows, fundraisers/outings (e.g., golf outings/company picnics), game day/nights (bingo/trivia), outdoor movie theater, material storage and associated work for Municipal projects as approved by the City, and/or other similar events unless approved as part of an existing plan of operation or an approved calendar of events.~~
 - (2) ~~The use of public streets, rights-of-way or sidewalks.~~
 - (3) ~~An event that creates a substantial impact on the operations of the City, surrounding neighbors or neighborhoods and requires public safety and City services above and beyond their normal functions, at the discretion of City staff.~~
 - (4) ~~Events held on private property that are open to the public may be classified as a special event if there is a significant impact on the City's operations and residents.~~
- B. ~~Temporary uses, structures, and special events requiring a permit may include, but are not limited to, festivals, food truck festivals, art/craft fairs, outdoor markets, plant/flower sales, circuses, concerts, wine/food tastings, beer gardens, races, outdoor seating/dining, pop up live music, car shows, fundraisers/outings (e.g., golf outings/company picnics), game day/nights (bingo/trivia), outdoor movie theater, and/or other similar events unless approved as part of an existing plan of operation or an approved calendar of events:~~
- B. ~~Submittal requirements. An application will be considered complete if it contains all the information required under this section.~~
- (1) ~~Completed application shall be submitted prior to the event.~~
 - (a) ~~Class I events, as outlined in DHS 110.44(20r), with more than 5,000 people, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 120 days prior to the proposed event.~~
 - (b) ~~Class II events with 501-5,000 people, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 90 days prior to the proposed event~~
 - (c) ~~Class III events with 151-500 people, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 45 days prior to the proposed event.~~
 - (d) ~~Class IV events with 150 people or less, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 15 days prior to the proposed event.~~

(2) Deposits for Class I Events. Application fee in the form of a deposit shall be submitted to the City for all Class I events. The deposit shall be used to cover City staff review, planning time and coordination to review the application itself and through the completion of the event. Staff will use their direct billable hours to debit the submitted deposit amount. Should the deposit itself go down to zero, the applicant shall replenish the deposit to the original amount. Any remaining deposit funds after the permit is issued or denied shall be returned to the applicant. The deposit will start at \$1,000.

(3) Detailed plan of operation including the following information:

(a) A description, date, time and location of the event. Special events in residential neighborhoods may require notification of adjacent neighbors. Include proposed site requests, including but not limited to: amplified music or entertainment and the hours, fireworks, closure of public streets or rights-of-way meeting the requirements of §230-6 of the Municipal Code, parking, electricity, temporary structures, temporary fencing, waste/recycling collection and disposal, and portable restrooms and hand wash stations. Additional items to consider include additional security personnel, emergency plan for inclement weather, potable water for consumption on site, and medical/first aid kits.

(b) The estimated maximum number of participants, spectators and vendors at the proposed event. If the event is a multi-day event, it should be noted the estimated attendance per day.

(c) Whether alcohol will be sold or served at the event.

(d) Whether food and/or merchandise will be sold at the event.

C. Time limits. Temporary use, structure and special event permits shall be valid for a specified period of time. A permit shall lapse if not used within the dates approved.

D. Required findings. The application shall be approved as submitted or in a modified form if the Director of the Department of Community Development finds that:

(1) The proposed temporary use, structure, or special event will be located, operated, and maintained in a manner consistent with the policies of the New Berlin Comprehensive Plan and the provisions of this chapter;

(2) The approval of the application will not be detrimental to property or improvements in the surrounding area or detrimental to public health, safety or general welfare. The City may require that the permit holder provide written notice 15 days in advance of the special event to any property owners or tenants as determined during the City department's review. Notice shall include the type of event, name of the special event sponsor(s), date, time and location, event coordinator's name and contact information during the event; and

(3) The proposed temporary use, structure or special event complies with all applicable standards of this section, unless otherwise expressly stated.

(4) Special Events requiring a road closure, except for City run events, shall comply with the following standards:

- (a) ~~A public street shall not be barricaded for recreational purposes for more than 12 hours.~~
- (b) ~~The applicant shall provide evidence of written consent of not less than 80% of the property owners abutting the portion of the street to be closed. The applicant is also required to provide evidence that all abutting property owners have been advised of the request for closure.~~
- (c) ~~Road closures are only permitted for local streets that are public, not arterial streets that are public. The applicant shall be required to provide a map showing the portion of the street to be closed and where the barricades will be placed.~~
- (e) ~~The applicant must be the owner of a property on the street where the event is to be held and shall assume responsibility under the permit for the event, which includes compliance with all City Ordinances, the clean-up of the public right of way, and the return of all City barricades within 48 hours of the event.~~
- (f) ~~Barricades to close the street must remain in place for the duration of the event. The applicant must ensure that a drive lane through the blockaded street area of not less than 15' in width shall be provided so that all City emergency service vehicles are able to access properties within the blocked street.~~
- (g) ~~If alcohol is being served at the event, it may only be to persons of age and may not be provided to any uninvited guests. Alcohol cannot be sold.~~
- (h) ~~Grills may be permitted in the right-of-way, subject to the limitations of this section. Smokers, fireplaces, fire pits, chimineas, and inflatable play structures are prohibited in the right-of-way.~~
- (i) ~~All waste and debris must be cleaned up and properly disposed of after the event ends. Public rights-of-way must be restored to the condition that existed prior to the commencement of the event.~~
- (j) ~~If complaints are received by the Police Department which are not satisfactorily resolved, the Police Department shall have the authority to revoke the permit and to terminate the event.~~
- (k) ~~A permit request may be denied if complaints have been received regarding Special Events on the same street in the past, or if the applicant has failed to comply with the requirements of any City Permits in the past.~~
- (l) ~~Special Events requiring a road closure shall not occur on holidays.~~
- (45) ~~The Mayor and/or his or her designee may approve special event permits for City-owned lands within City Center as long as the findings below are met and those found in Subsection D(1) through (3) above in this section are met: The City may approve temporary events on City property or within public rights-of-way if the additional conditions are met:~~
 - (a) A certificate of insurance (COI) is required to be submitted for the event prior to the event occurring. It shall include the following:

- [1] COI limits shall name the City of New Berlin as additionally insured.
- [2] The parties agree to indemnify and hold harmless the other from any and all claims for injury or property damage to the extent that such claims arise out of the negligence of their employees, representatives, agents, contractors or officers as a result of this Agreement. Any indemnity that the City would agree to would be subject to the following limitations: Notwithstanding the forgoing, nothing contained within this agreement is intended to be a waiver or estoppel of the City of New Berlin or its insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within §§ 893.80, 895.52 and 345.05, Wis. Stats. To the extent that indemnification is available and enforceable, the City of New Berlin or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. Under no circumstances shall the City of New Berlin be required to indemnify the contractor for its own negligent or intentional conduct.
- [3] Each party shall provide the other with a certificate of insurance naming each other as an additional insured. The amount of such insurance shall be mutually agreed between the parties. Each party waives their right of subrogation against the other. Both parties' insurance policies shall have a noncancellation provision except upon 30 days' written notice to the other party.

(b) City services. All requests by the applicants for City services must be made at the time of application. The applicant shall be responsible for reimbursement to the City for any city personnel, services, equipment, and facilities provided for the special event. Reimbursement costs shall be calculated to include wages, overtime and fringe benefits and is due within 30 days of receipt of invoice. The City reserves the right to require full or partial payment of estimated costs in advance. All permit, signage and barricade costs are due prior to the special event.

(c) Cleaning/damage deposit. The applicant may be required to submit to the City a deposit depending on the size and number of attendees. The deposit will be refunded to the applicant after an inspection of the premises is conducted and the City determines there is no loss or cleaning costs. The applicant shall be fully responsible for necessary cleanup associated with the permitted event, which must be completed no later than 12 hours after the conclusion of the event. The City reserves the right to retain the entire deposit if cleanup is not satisfactorily completed in the time frame specified.

[1] A deposit of \$5,000 shall be submitted for a Class I Special Event.

[2] A deposit of \$200 shall be submitted for a Class II Special Event.

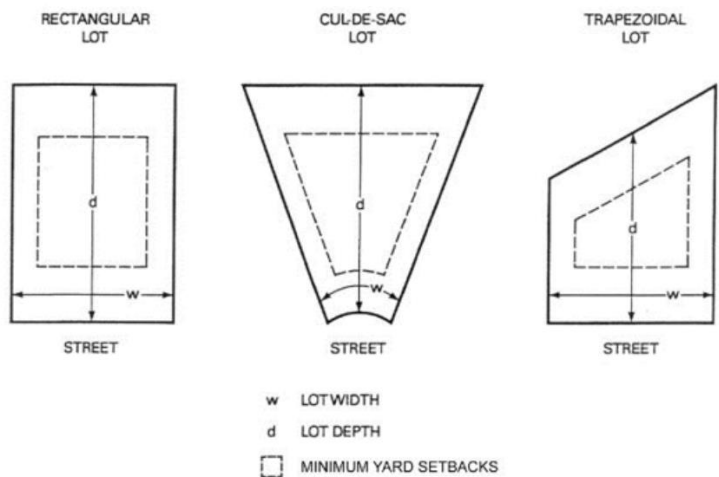
(b) And any other conditions that may be established by the Mayor, City Attorney, Board or Commission, and/or City staff that seeks to protect the City.

- E. Conditions of approval. In approving a temporary use, structure, or special event permit, the Director of the Department of Community Development may impose reasonable conditions, including, but not limited to, limitations on hours, illumination, storage, and parking, necessary to:
- (1) Achieve the general purposes of this section and the specific purposes of the zoning district in which the temporary use will be located or be consistent with the New Berlin Comprehensive Plan;
 - (2) Protect the public health, safety, and general welfare; and
 - (3) Ensure the operation and maintenance of the temporary use, structure, or special event in a manner compatible with existing uses on adjoining properties and in the surrounding area.
- F. Temporary construction, security, or real estate sales offices.
- (1) General. The owner of a construction project may place on the construction site a temporary office for use by construction, security, or real estate sales personnel.
 - (2) Location. The temporary office shall be located on the lot on which construction or development is occurring and shall not be located within 25 feet of any abutting residential use.
 - (3) Sanitation. Sanitation and plumbing requirements may be waived by the Director, provided that adequate facilities are available elsewhere on the site.
 - (4) Time limits. The office shall be removed within 15 days after final inspection of the permanent structure or expiration of the corresponding building permit, whichever event occurs first. In the case of residential development projects, the office must be removed within 15 days of the sale or lease of all dwelling units.
- G. Staff shall have the authority to review and send items to the appropriate board, commission and/or Council for their review and approval if there are potential effects on surrounding land uses.

§ 275-44. Lot measurement and requirements.

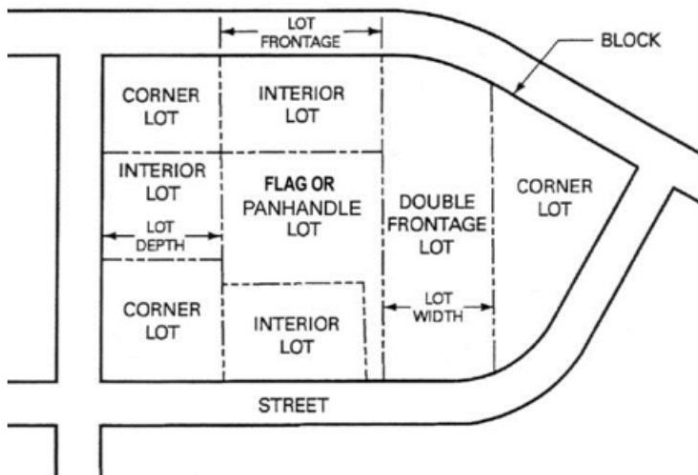
- A. Measurement of lot area. The lot area is the total area within the lot lines of a lot, excluding any street right-of-way or ultimate right-of-way in all districts.
- B. Percentages and fractions. When a measurement results in a fractional number or percentage, any fraction of $\frac{1}{2}$ or ~~less~~ ~~more~~ shall be rounded ~~down~~ ~~up~~ to the next ~~lower~~ ~~higher~~ whole number, and any fraction of ~~more than~~ $\frac{1}{2}$ ~~or less~~ shall be rounded ~~up~~ ~~down~~ to the next ~~higher~~ ~~lower~~ whole number. Any percentage of 0.5% or greater shall be rounded up to the next higher whole number, and any percentage less than 0.5% shall be rounded down to the next lower whole number.
- C. Dimensions. [See Figure VI-1.](#) [See also § 275-70.](#) [Added 4-25-2023 by Ord. No. 2668]

Figure VI-1
Lot Width and Lot Depth



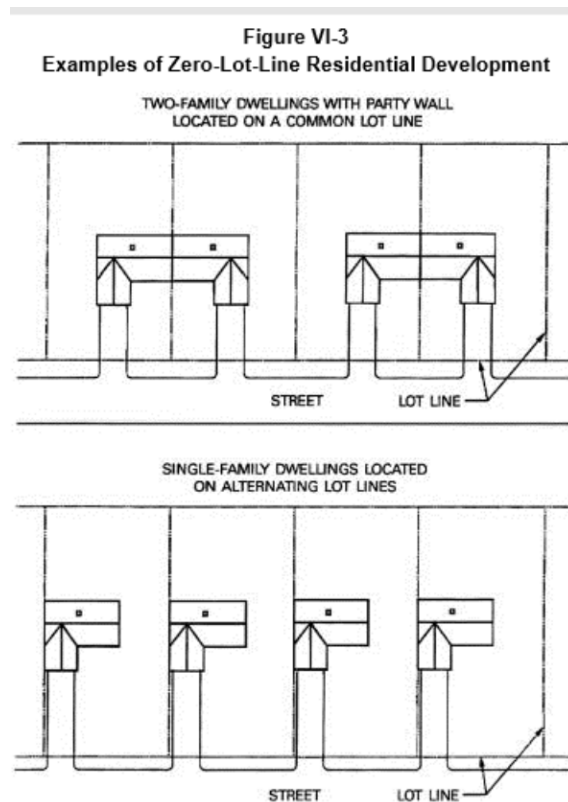
- D. Lot types. [See Figure VI-2.](#) [See also § 275-70.](#) [Added 4-25-2023 by Ord. No. 2668]

**Figure VI-2
Lot Types**



- E. Zero-lot-line residential development. Zero-lot-line residential developments (see Figure VI-23) may be permitted in the Rd-1 and Rm-1 Districts where the following provisions are met: [Amended 4-25-2023 by Ord. No. 2668]
- (1) Lot area and width. Lots shall have a minimum area of 6,200 square feet and shall not be less than 50 feet in width with one dwelling unit per lot.
 - (2) Setback and yards.
 - (a) There shall be a minimum setback of 50 feet from the right-of-way of all public streets or from private drives. There shall be a side yard requirement on one side of a building of not less than 15 feet. The dwelling unit shall be placed on one side property line with a zero-foot side yard. The minimum distance between buildings shall be 30 feet. There shall be a rear yard of not less than 15 feet for all lots unless the Plan Commission permits the rear lot line to be a second zero lot line.
 - (b) All buildings shall be a minimum of 50 feet from an adjacent single-family lot line in a single-family residential district.
 - (3) Other requirements.
 - (a) Buildings constructed shall be of the row (party wall) dwelling type and shall consist of a row of attached dwelling units.

- (b) Each dwelling unit shall have separate utility connections. Attached dwellings may have one sanitary and stormwater lateral run and two separate water meters.



- F. Lots of record. An existing legal lot that contains less area than the lot requirements of this chapter may be used as a building site, provided that the proposed use is allowed in the zoning district.
- (1) Minimum lot size requirements shown in the zoning districts apply to the creation of new lots and do not affect existing legally created lots or parcels, provided that the lot is a lot of record in the Waukesha County Register of Deeds' office prior to the effective date of this chapter.
 - (2) Vacant buildable lots of record can be used as a building site, provided that the use is allowed in the zoning district and the lot has frontage on and access to a public street. If an existing structure on a lot of record were to be damaged or destroyed, it would be allowed to be rebuilt in accordance with the Building Code and these Zoning Regulations.

- (3) New building permits issued under this section shall be required to meet the setback and other yard requirements of this chapter. A building proposed with lesser dimensions and requisites than those stated in the code shall be issued a building permit only after a variance by the Board of Appeals.
- (4) If two or more lots with continuous frontage, one or more of which contains less land area or width than required by this chapter, have the same ownership as of the effective date of this chapter, the lots involved may be considered to be an individual parcel for the purpose of this chapter. If a permanent shared driveway easement is used to achieve access to either parcel, said property owners shall be required to enter into a recordable document prohibiting the sale of either property independent of the other. Said restrictions shall be confirmed through a deed restriction recorded as to both parcels and said restriction may not be amended without the consensus/approval of the City.
- (5) If two or more adjoining lots with the same ownership are used or built on as one parcel, then the individual lots may not be considered separate until all buildings, utilities, and appurtenant structures are removed, vacated, or set back in accordance with the standards of this chapter.
- (6) If two adjoining lots, where only one may have frontage and/or access to a public ROW, and both are considered legal lots of record, both lots may be developed into one home site each but both parcels shall have a deed restriction recorded against them for a permanent driveway access and this access easement shall not be removed without consensus/approval of the City.

G. Where a lot is located partially within a C-1 or C-2 District and/or is subject to a conservation easement and partially within another district, that portion of the lot within the C-1 or C-2 District may be used to meet the minimum area requirements of the adjoining use district, provided that the area within the C-1 or C-2 District is reduced by an amount computed using the adjusted tract acreage approach as described under § 275-33G(2). The adjusted tract acreage shall not apply to land divisions (CSMs). A conservation easement shall be used to protect the C-1, C-2 or conservation area.

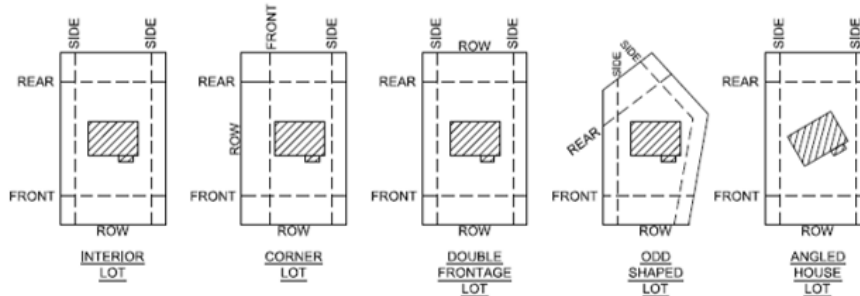
§ 275-45. Height measurement and requirements.

- A. Measurement of height. The "height of a structure" shall mean the vertical distance from the average grade adjoining the walls of the structure to the average of the highest points of the roof surface of a flat roof, or to the deckline of a mansard roof, or the mean height level between eaves and ridge for a gable, hip or gambrel roof.
- B. ~~Exemptions and exceptions to height regulations~~ Height modifications. The district height limitations set forth elsewhere in this chapter may be exceeded, but such modification shall be in accord with the following standards, ~~subject to Plan Commission approval~~:
- ~~(1) — Exemptions. The following uses and structures are exempt from the height limitations of this chapter:~~
- ~~(a1)~~ Architectural projections. Architectural projections which are integral to a principal structure, such as spires, steeples, belfries, parapet walls, cupolas, domes, flues, and chimneys.
- ~~(b2)~~ Special structures. Special structures, such as elevator penthouses, gas tanks, grain elevators, observation towers, scenery lofts, heating and air-conditioning equipment and necessary mechanical appurtenances, cooling towers, fire towers, ornamental towers, substations, and smokestacks.
- ~~(c3)~~ Essential services. Essential services, such as utilities, water towers, electric power and communication transmission lines.
- ~~(d4)~~ Solar collectors. Solar collectors and wind energy conversion systems (windmills), provided that they shall not exceed a height equal to their distance to the nearest lot line.
- ~~(e) — Utilities, as defined in § 275-70.~~
- ~~(25)~~ Communication structures. The height of telecommunications structures is regulated in § 275-41C(16).
- ~~(36)~~ Agricultural structures. Agricultural structures, such as barns, silos, and windmills, may exceed a height of 35 feet, provided that all required yards are increased not less than one foot for each additional foot the structure exceeds 35 feet.

§ 275-46. Yard/setback measurement and requirements.

- A. Measurement of a setback. The minimum distance a building or structure shall be located from a lot line or base setback line. The setback line shall be drawn parallel to a lot line. See Figure VI-4.

**Figure VI-4
Measurement of Setbacks**

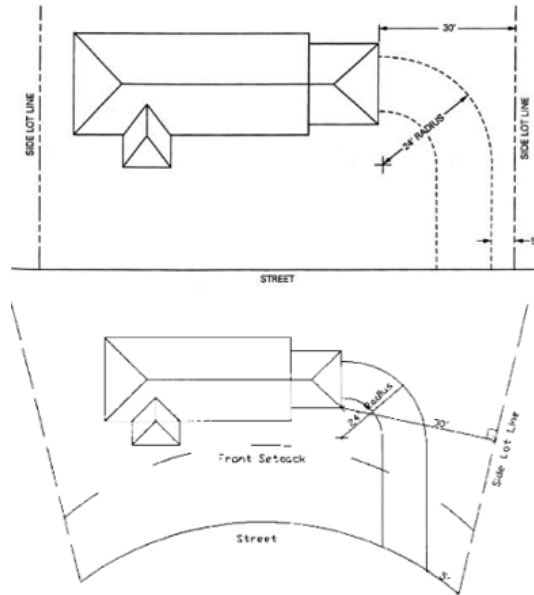


- (1) Corner lots. Structures on corner lots shall provide a front setback as required by this chapter on the street that the structure faces. A second front yard shall be provided on the side of the structure abutting a second public or private street. The second front yard is referred to as the "side on corner." The setbacks on each street shall be the same distance. The remaining yards shall be a side yard and a rear yard. The functional rear of the house shall face the rear yard, which shall be opposite of the front yard. Staff may administratively approve reductions to the front setbacks for the side on corner up to 25% on lots less than 100 feet in width.
- (2) Double-frontage lots. Structures on lots abutting two opposite streets shall be provided with a front setback and a rear setback. The Director or a designee shall select where the front setback shall be applied and where the rear setback shall be applied in a manner that prohibits access to a double-frontage lot from two arterial streets. The selected front setback area shall be required to comply with the front setback requirements for the district in which the lot is located. The selected rear setback area shall be required to comply with the rear setback requirements for the district in which the lot is located, and the rear setback area shall be screened from arterial streets with fencing or landscaping, as may be appropriate. Accessory structures may be placed in the designated rear setback area but shall be located no closer to the street right-of-way than the required setback for accessory structures. For purposes of selecting the front yard, the architectural front of the structure shall be designated as the front yard.
- (31) Side-entry garage setback. When a garage is proposed with an entry facing an interior lot line, the garage shall be set back a minimum of 30 feet from the lot line opposite the garage door to provide for adequate maneuvering space. The setback shall be measured perpendicular from the edge closest to the street of each garage door opening. There shall be a twenty-four-foot access radius in and out of the garage door.

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Figure VI-5
Side-Entry Garage Setback

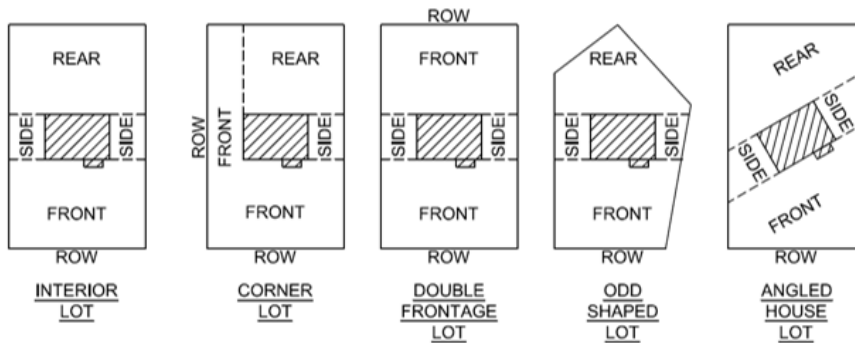


(2) Average front setback. For new structures, additions to existing structures or accessory structures, the required front setback may, with Plan Commission approval or with an administrative adjustment per §275-30.1D, be decreased in any residential or business districts to the average of the existing front setbacks of the abutting structures on each side but in no case less than 15 feet in any residential district and five feet in any business district.

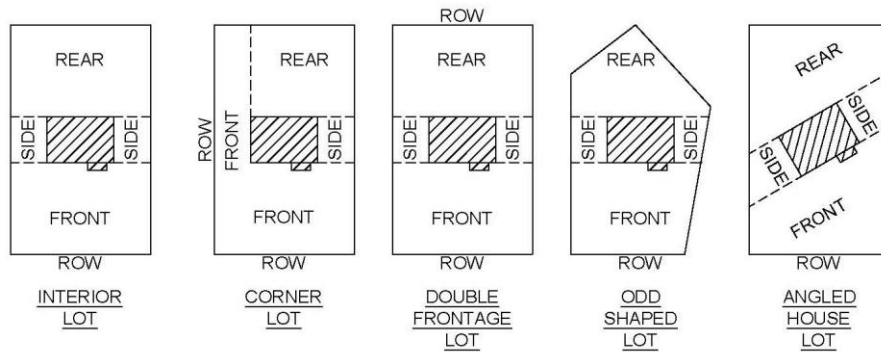
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B. Measurement of a yard. See Figure VI-6. See also § 275-70.

Figure VI-6
Location of Yards



**Figure VI-6
Location of Yards**



C. Average front setback. For new structures, additions to existing structures or accessory structures, the required front setback may, with Plan Commission approval, be decreased in any residential or business districts to the average of the existing front setbacks of the abutting structures on each side but in no case less than 15 feet in any residential district and five feet in any business district.

Commented [KH150]: NO CHANGE - Moved to 275-46A

C. Corner lots. Structures on corner lots shall provide a front yard as required by this chapter on the street that the structure faces. A second front yard shall be provided on the side of the structure abutting a second public or private street. The second front yard is referred to as the "side on corner." The setbacks on each street shall be the same distance. The remaining yards shall be a side yard and a rear yard. The functional rear of the house shall face the rear yard, which shall be opposite of the front yard. Staff may administratively approve reductions to the front setbacks for the side on corner up to 25% on lots less than 100 feet in width.

D. Double-frontage lots. Structures on lots abutting two opposite streets shall be provided with a front yard and a rear yard. The Director or a designee shall select where the front yard shall be applied and where the rear yard shall be applied in a manner that prohibits access to a double-frontage lot from two arterial streets. The selected front yard shall be required to comply with the front setback requirements for the district in which the lot is located. The selected rear yard shall be required to comply with the rear setback requirements for the district in which the lot is located, and the rear yard shall be screened from arterial streets with fencing or landscaping, as may be appropriate. Accessory structures may be placed in the designated rear yard but shall be located no closer to the street right-of-way than the required setback for accessory structures. For purposes of selecting the front yard, the architectural front of the structure shall be designated as the front yard.

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D.E. Exemptions and exceptions to yard and setback requirements. Yard and setback modifications. The district yard and setback requirements set forth elsewhere in this chapter may be modified, but such modification shall be in accord with the following standards, subject to Plan Commission approval:

(1) ~~Exemptions. The following uses and structures are exempt from the yard and setback limitations of this chapter:~~

(a1) Essential services. Essential services, such as utilities, electric power and communication transmission lines ~~are exempt from the setback requirements of this chapter.~~

(b) ~~Landscaping and vegetation. Landscaping and vegetation shall comply with the vision triangle requirements set forth in this chapter.~~

(c) ~~Building connections. For nonresidential uses, building interconnections between buildings and adjacent parcels for shared or common operations shall not be considered for setback purposes.~~

Commented [KH152]: Duplicate

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(2) Architectural projections. Architectural projections, limited to eaves and wing walls, ~~if the building is constructed to the full permitted building width or depth,~~ may project into any yard, but such projection shall not exceed three feet.

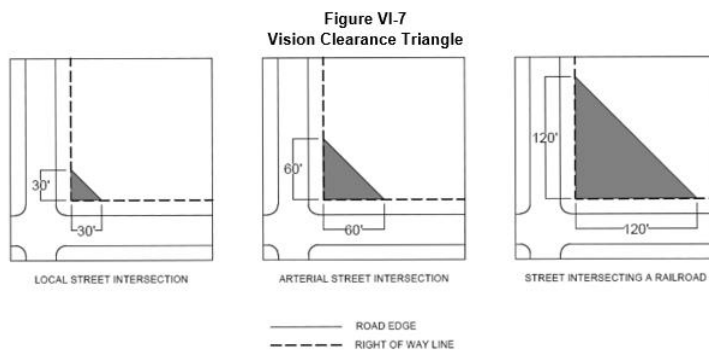
(3) Attached accessory uses. Uncovered stairs, decks sized for entry purposes only, stoops, landings, fire escapes, gutters, ~~decks~~ and awnings may project into any yard but not to exceed six feet and not closer than five feet to any lot line.

(4) Vision clearance triangle. No obstructions, such as structures, parking, landscaping or vegetation, shall be permitted in any district between the heights of three feet and 10 feet above the plane through the mean curb grades within the triangular space formed by any two intersecting right-of-way lines and a line joining those points.

(a) Intersection of local streets. The corner cutoff distances establishing the vision triangle clearance space shall be 30 feet.

(b) Intersection with arterial streets. In the case of arterial streets, one or more of which has an established right-of-way of 80 feet or more, intersecting with any other street, the corner cutoff distances establishing the vision triangle clearance space shall be 60 feet.

(c) Intersection with a railway. In the case of a railway intersecting with a street, the corner cutoff distances establishing the vision triangle clearance space shall be 120 feet.



(5) Building connections. For nonresidential uses, building interconnections between buildings and adjacent parcels for shared or common operations shall not be considered for setback purposes.

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§ 275-53. Site plan review principles and standards.

- A. Applicability. This section sets forth review principles and standards to guide the Plan Commission and staff in the review of all development requiring a site plan pursuant to § 275-24, Zoning permits, except where permits are considered to be redevelopment.. For redevelopment, as defined in the definition section of this Zoning Code,[1] the application shall follow the criteria listed in § 275-53C below. Uses requiring a site plan shall conform to the principles and standards of this section in addition to complying with all development standards set forth in this Article VIII.
- [1] Editor's Note: See Art. XI, Definitions.
- B. Review principles and standards. The Plan Commission shall approve site plans only after determining that:
- (1) The site plan is consistent with the purposes and requirements of this chapter, including these general development regulations.
 - (2) The site plan is consistent with the goals, objectives, principles, standards, policies, and urban design criteria set forth in the New Berlin Comprehensive Plan.
 - (3) No land shall be used or structure erected where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, or low bearing strength of underlying soil, erosion susceptibility of underlying soil, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community.
 - (4) No zoning permit or building permit shall be issued for a lot that does not abut a fully dedicated and improved public street, unless it meets the requirements of 275-44F(6).
 - (5) There is a proper relationship between the existing and proposed streets and highways within the vicinity of the project in order to assure the safety and convenience of pedestrian and vehicular traffic.
 - (6) The proposed on-site buildings, structures, and entryways are situated and designed to minimize adverse effects upon owners and occupants of adjacent and surrounding properties by providing for adequate design of ingress/egress, interior/exterior traffic flow, stormwater drainage, erosion, grading, lighting, and parking, as specified by this chapter or any other codes or laws.
 - (7) Natural features of the landscape are retained where they can enhance the development on the site, or where they furnish a barrier or buffer between the project and adjoining properties used for dissimilar purposes, or where they assist in preserving the general safety, health, welfare, and appearance of the neighborhood.
 - (8) Adverse effects of the proposed development and activities upon adjoining residents or owners are minimized by appropriate screening, fencing, or landscaping as provided or required in this chapter.
 - (9) Land, buildings, and structures are readily accessible to emergency vehicles and the handicapped.

- (10) When a site plan modification or addition is reviewed, all existing nonconformities and outstanding code violations shall be identified, resolved, and remedied.
- (11) All hazards identified in the site plan review process shall be resolved or mitigated.

C. Redevelopment standards.

- (1) Open space is not required to meet the zoning district requirements for new development but shall not go below the amount of open space existing on the lot at the time of the proposed redevelopment and/or site modifications. For sites that do not meet the minimum open space requirements, the applicant shall incorporate low-impact development techniques.
- (2) Existing parking lots and drive aisles that do not meet the required setbacks shall not encroach any further into the setback.
- (3) Sites shall provide adequate parking spaces to meet the requirements in ~~Table~~ 275-57-4, unless a waiver is requested and granted by the Plan Commission.
- (4) The applicant shall meet all applicable stormwater and drainage requirements.
- (5) Existing parking lot lighting shall be evaluated on a case-by-case basis when a project includes parking lot modification or expansion. At a minimum, a lighting plan shall be provided for the parking lot modification area(s).
- (6) A reoccupancy, internal facility remodel, parking lot repair and maintenance or façade improvement does not require the implementation of these requirements or the requirements in this article. Only a building expansion or parking lot expansion will prompt the requirements to be enforced.

§ 275-63A - § 275-63C. Nonmetallic mine reclamation.

[Amended 4-25-2023 by Ord. No. 2668]

A. General provisions.

- (1) Title. This section shall be known and may be cited as the "Nonmetallic Mining Reclamation Ordinance for the City of New Berlin."
- (2) Purpose. The purpose of this section is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of New Berlin after the effective date of this section, in compliance with Ch. NR 135, Wis. Adm. Code, and Subchapter I of Ch. 295, Wis. Stats.
- (3) Statutory authority. This section is adopted under authority of § 295.14(1), Wis. Stats., § NR 135.32, Wis. Adm. Code, and § 62.11(3), Wis. Stats.
- (4) Restrictions adopted under other authority. The purpose of this section is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by § 295.12(1)(a), Wis. Stats., and contained in Ch. NR 135, Wis. Adm. Code. It is not intended that this section repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.
- (5) Interpretation. In their interpretation and application, the provisions of this section shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code. Where any terms or requirements of this section may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this section is required by Wisconsin Statutes, or by a standard in Ch. NR 135, Wis. Adm. Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Ch. NR 135, Wis. Adm. Code.
- (6) Severability. Should any portion of this section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this section shall not be affected.
- (7) Applicability.
 - (a) Overall applicability. The requirements of this section apply to all operators of nonmetallic mining sites within the City of New Berlin ~~operating on or commencing to operate after August 1, 2001~~, except as exempted in ~~Subsection G(2) §275-63A(7)~~. This section does not apply to nonmetallic mining sites where nonmetallic mining permanently ceased before August 1, 2001. This section applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of the City of New Berlin or for the benefit or use of the state or any state agency, board, commission or

department, except for the waiver of financial assurance in ~~Subsection E~~
~~§275-63E(3)~~.

(b) ~~Exemptions~~. This section does not apply to the following activities:

- [1] Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under § 30.19, 30.195 or 30.20, Wis. Stats., and complies with Ch. NR 340, Wis. Adm. Code.
- [2] Excavations subject to the permit and reclamation requirements of § 30.30 or 30.31, Wis. Stats.
- [3] Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- [4] Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- [5] Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- [6] Excavations for building construction purposes conducted on the building site.
- [7] Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
- [8] Any mining operation, the reclamation of which is required in a permit obtained under Ch. 293, Wis. Stats.
- [9] Any activities required to prepare, operate or close a solid waste disposal facility under Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this section apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- [10] Nonmetallic mining.
 - [a] Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin

Department of Transportation concerning the restoration of the nonmetallic mining site.

[b] This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.

[c] If a nonmetallic mining site is covered under ~~Subsection G(2)(j)(1)-§275-63A(7)(b)[10][a] and [b]~~ and is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this subsection still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

[11] Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

[12] Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under § 30.21, Wis. Stats.

(8) Administration. The provisions of this section shall be administered by the City of New Berlin Department of Community Development.

(9) Effective date. The provisions of this section shall take effect on July 24, 2001, the date of publication.

(10) Definitions. See § 275-70.

B. All nonmetallic mining sites subject to this section shall be reclaimed in conformance with the standards contained below:

(1) General standards.

(a) Refuse and other solid wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to Chs. 289 and 291, Wis. Stats.

(b) Area disturbed and contemporaneous reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.

- (c) Public health, safety and welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.
 - (d) Habitat restoration. When the land use required by the reclamation plan approved pursuant to this section requires plant, fish or wildlife habitats, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.
 - (e) Compliance with environmental regulations. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws, including those related to environmental protection, zoning and land use control. Note: Other applicable environmental, zoning or land use regulations may include Chs. NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 151, 340, 500-590, and 812, Wis. Adm. Code, Chs. 30 and 91, Wis. Stats., and Section 404 of the Clean Water Act (33 U.S.C. § 1344), which may be applicable to all or part of either an existing or proposed nonmetallic mining project, so long as they do not require or directly regulate the reclamation of nonmetallic mining sites as addressed under Subchapter I of Ch. 295, Wis. Stats.
- (2) Surface water and wetlands protection. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chs. NR 102 to NR 105, Wis. Adm. Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this section. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.
- (3) Groundwater protection.
- (a) Groundwater quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.
 - (b) Groundwater quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Ch. NR 140, Wis. Adm. Code, to be exceeded at a point of standard application defined in that chapter.
- (4) Topsoil management.
- (a) Removal. Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this section in order to achieve reclamation to the approved post-mining land use. Removal of onsite topsoil and topsoil substitute material removal, when specified in the reclamation plan, shall be performed, ~~when specified in the reclamation~~

~~plan~~, prior to any mining activity associated with any specific phase of the mining operation.

- (b) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of onsite topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this section. Note: Existing resources that may be used to identify the soil present on a site include the County Soil Surveys and information obtained from a soil scientist or the University of Wisconsin Soil Science Extension Agent or other available resources. Topsoil or topsoil substitute material shall be removed from areas to be affected by mining operations to the depth indicated in the reclamation plan or as determined in the field by a soil scientist, project engineer or other qualified professional.
 - (c) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this section, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.
- (5) Final grading and slopes.
- (a) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to § NR 135.19, Wis. Adm. Code, to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining, including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either:
 - [1] A site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope; or
 - [2] The operator shall perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.
 - (b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under § NR 135.26, Wis. Adm. Code; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil

substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

- (c) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically six feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body, to allow for a safe exit.
- (6) Topsoil redistribution for reclamation. Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this section in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.
- (7) Revegetation and site stabilization. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this section, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site. Note: Field test plot demonstrations are highly recommended to ensure that reclamation success standards are met and financial assurance is released as quickly as possible. When field test plots are employed, they should be approved as part of the reclamation plan under § NR 135.19, Wis. Adm. Code.
- (8) Assessing completion of successful reclamation.
 - (a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this section. Criteria to evaluate reclamation success shall be quantifiable.
 - (b) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - [1] Onsite inspections by the City or its agent;
 - [2] Reports presenting results obtained during reclamation evaluations, including summarized data on revegetation, photo documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or
 - [3] A combination of inspections and reports.
 - (c) In those cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a premining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.

- (d) Revegetation success may be determined by:
 - [1] Comparison to an appropriate reference area;
 - [2] Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
 - [3] Comparison to an approved alternate technical standard.
 - (e) Revegetation using a variety of plants indigenous to the area is favored.
 - (9) Intermittent mining. Intermittent mining may be conducted, provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to § 275-65-23E is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.
 - (10) Maintenance. During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this section, or to meet the goals specified in the reclamation plan approved pursuant to this section.
- C. Permitting. Nonmetallic mining reclamation permit application required. No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance unless the activity is specifically exempted in §§ 275-63A(7) or 275-70 definition of "Nonmetallic mining site" paragraph (b).
- (1) Required submittal. All operators of any nonmetallic mining sites shall apply for a reclamation permit from the City. All applications for reclamation permits under this section shall be accompanied by the following information:
 - (a) A brief description of the general location and nature of the nonmetallic mine.
 - (b) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.
 - (c) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
 - (d) The name, address and telephone number of the person or organization who or which is the operator.
 - (e) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by § 275-63B(4).
 - (2) The operator of any nonmetallic mine site shall submit an application that meets the requirements specified below to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151, prior to beginning operations.

- (a) The information required by § 275-63C(1).
- (b) The plan review and annual fees required by § 275-63Q and § 275-63R.
- (c) A reclamation plan conforming to § 275-63D.
- (d) A certification that the operator will provide, as a condition of the reclamation permit, financial assurance as required by § 275-63E upon granting of the reclamation permit and before mining begins.
- (e) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this section.

§ 275-65J. Floodplain zoning.

- J. Definitions. ~~See § 275-70. Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.~~
- (1) ~~A ZONES – Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.~~
- (2) ~~AH ZONE – See “AREA OF SHALLOW FLOODING”.~~
- (3) ~~AO ZONE – See “AREA OF SHALLOW FLOODING”.~~
- (4) ~~ACCESSORY STRUCTURE OR USE – A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. An accessory structure shall not be used for human habitation.~~
- (5) ~~ALTERATION – An enhancement, upgrade or substantial change or modification other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.~~
- (6) ~~AREA OF SHALLOW FLOODING – A designated AO, AH, AR/AO, AR/AH, or VO zone on a community’s Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.~~
- (7) ~~BASE FLOOD – Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.~~
- (8) ~~BASEMENT – Any enclosed area of a building having its floor sub-grade on all sides.~~
- (9) ~~BUILDING – See STRUCTURE.~~
- (10) ~~BULKHEAD LINE – A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.~~
- (11) ~~CAMPGROUND – Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.~~

- (12) CAMPING UNIT – Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
- (13) CERTIFICATE OF COMPLIANCE – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
- (14) CHANNEL – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (15) CRAWLWAYS or CRAWL SPACE – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
- (16) DECK – An unenclosed exterior structure that has no roof or sides and has a permeable floor which allows the infiltration of precipitation.
- (17) DEPARTMENT – The Wisconsin Department of Natural Resources.
- (18) DEVELOPMENT – Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
- (19) DRYLAND ACCESS – A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (20) ENCROACHMENT – Any fill, structure, equipment, use or development in the floodway.
- (21) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – The federal agency that administers the National Flood Insurance Program.
- (22) FLOOD INSURANCE RATE MAP (FIRM) – A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

- (23) FLOOD or FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
- (a) The overflow or rise of inland waters;
 - (b) The rapid accumulation or runoff of surface waters from any source;
 - (c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
 - (d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (24) FLOOD FREQUENCY – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.
- (25) FLOODFRINGE – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
- (26) FLOOD HAZARD BOUNDARY MAP – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- (27) FLOOD INSURANCE STUDY – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
- (28) FLOODPLAIN – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.
- (29) FLOODPLAIN ISLAND – A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (30) FLOODPLAIN MANAGEMENT – Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

- (31) **FLOOD PROFILE** – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (32) **FLOODPROOFING** – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
- (33) **FLOOD PROTECTION ELEVATION** – An elevation of two feet of freeboard above the Regional Flood Elevation. (Also see: FREEBOARD.)
- (34) **FLOOD STORAGE** – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- (35) **FLOODWAY** – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (36) **FREEBOARD** – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
- (37) **HABITABLE STRUCTURE** – Any structure or portion thereof used or designed for human habitation.
- (38) **HEARING NOTICE** – Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
- (39) **HIGH FLOOD DAMAGE POTENTIAL** – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
- (40) **HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (41) **HISTORIC STRUCTURE** – Any structure that is either:
- (a) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
- (42) INCREASE IN REGIONAL FLOOD HEIGHT – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (43) LAND USE – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
- (44) LOWEST ADJACENT GRADE – Elevation of the lowest ground surface that touches any of the exterior walls of a building.
- (45) LOWEST FLOOR – The lowest floor of the lowest enclosed area (including basement).
- (46) MAINTENANCE – The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
- (47) MANUFACTURED HOME – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
- (48) MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
- (49) MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
- (50) MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING – The preparation of additional sites by the construction of facilities for servicing the lots

on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.

- (51) **MOBILE RECREATIONAL VEHICLE** – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
- (52) **MODEL, CORRECTED EFFECTIVE** – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
- (53) **MODEL, DUPLICATE EFFECTIVE** – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.
- (54) **MODEL, EFFECTIVE** – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.
- (55) **MODEL, EXISTING (PRE-PROJECT)** – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
- (56) **MODEL, REVISED (POST-PROJECT)** – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
- (57) **MUNICIPALITY or MUNICIPAL** – The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
- (58) **NAVD or NORTH AMERICAN VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1988 adjustment.
- (59) **NGVD or NATIONAL GEODETIC VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1929 adjustment.
- (60) **NEW CONSTRUCTION** – Structures for which the start of construction commenced on or after the effective date of a floodplain zoning regulation adopted by this community and includes any subsequent improvements to such structures.

- (61) **NON-FLOOD DISASTER** – A fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.
- (62) **NONCONFORMING STRUCTURE** – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
- (63) **NONCONFORMING USE** – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- (64) **OBSTRUCTION TO FLOW** – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
- (65) **OFFICIAL FLOODPLAIN ZONING MAP** – That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.
- (66) **OPEN SPACE USE** – Those uses having a relatively low flood damage potential and not involving structures.
- (67) **ORDINARY HIGHWATER MARK** – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (68) **PERSON** – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
- (69) **PRIVATE SEWAGE SYSTEM** – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
- (70) **PUBLIC UTILITIES** – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
- (71) **REASONABLY SAFE FROM FLOODING** – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

- (72) REGIONAL FLOOD – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
- (73) START OF CONSTRUCTION – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (74) STRUCTURE – Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
- (75) SUBDIVISION – Has the meaning given in s. 236.02(12), Wis. Stats.
- (76) SUBSTANTIAL DAMAGE – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
- (77) SUBSTANTIAL IMPROVEMENT – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (78) UNNECESSARY HARDSHIP – Where special conditions affecting a particular property, which were not self created, have made strict conformity with restrictions

governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

(79) VARIANCE – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

(80) VIOLATION – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

(81) WATERSHED – The entire region contributing runoff or surface water to a watercourse or body of water.

(82) WATER SURFACE PROFILE – A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

(83) WELL – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

Commented [HK155]: DNR Requirement to add these back in.

§ 275-70. Terms defined.

A ZONES

(As it pertains to floodplain, § 275-65) Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

ACCESSORY DWELLING UNIT

~~A second dwelling unit integrated with a business that is located on the same lot as the business. An additional dwelling unit on the same property as the principal use. To be considered an accessory dwelling unit, kitchen (sink and stove or stove hookups), sleeping and bathroom (full bathroom) facilities must all be provided.~~ "Accessory dwelling" does not mean a mobile home, recreational vehicle, or travel trailer. ~~Accessory dwelling units shall meet the requirements of §275-42.~~

ACCESSORY STRUCTURE OR USE

(As it pertains to floodplain, § 275-65) A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. ~~An accessory structure shall not be used for human habitation.~~

ACCESSORY USE

~~See "use, accessory" below.~~

Commented [KH156]: Duplicate

AH ZONE

(As it pertains to floodplain, § 275-65) See "area of shallow flooding."

ALTERATION

(As it pertains to floodplain, § 275-65) An enhancement, upgrade or substantial change or modification, other than an addition or repair, to a dwelling or to electrical, plumbing, heating, ventilating, air-conditioning and other systems within a structure.

AO ZONE

(As it pertains to floodplain, § 275-65) See "area of shallow flooding."

AREA OF SHALLOW FLOODING

(As it pertains to floodplain, § 275-65) A designated AO, AH, AR/AO, AR/AH, or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

ASSISTED-LIVING FACILITIES

Residences for the elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide additional services, such as recreational activities, financial services, and transportation. Residential care apartment complexes (RCACs) are a type of assisted living.

BALCONY

A platform that projects from the wall of a building, is surrounded by a railing, and has no stair access. May be covered or uncovered.

BASE FLOOD

(As it pertains to floodplain, § 275-65) Means the flood having a 1% chance of being equaled or exceeded in any given year, as published by FEMA as part of an FIS and depicted on a FIRM.

BASEMENT

(As it pertains to floodplain, § 275-65) Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.

BREAKAWAY WALL

A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

BUILDING, ACCESSORY

A building detached from a principal building on the same lot and customarily incidental or subordinate to the principal building or use. Accessory buildings shall meet the requirements of §275-42.

CANOPY

A permanent overhang or structure without walls for the purpose of shielding windows, doors, patios, decks, driveways, sidewalks, or service areas from the elements.

CHANNEL

(As it pertains to floodplain, § 275-65) A natural or artificial watercourse or drainageway of perceptible extent with a definite bed and banks to confine and conduct continuously or periodically normal flowing of water.

COMMUNITY LIVING ARRANGEMENTS

The following facilities, licensed or operated or permitted under the authority of the Wisconsin State Statutes: child welfare agencies under § 48.60, group foster homes for children under § 48.02(7m), and community-based residential facilities under § 50.01. The term does not include day-care centers, nursing homes, general hospitals, special hospitals, prisons, and jails. The establishment of a community living arrangement shall be in conformance with §§ 46.03(22), 59.69, 62.23(7)(i), and 62.23(7a), Wis. Stats., and amendments thereto. Community-based residential facilities (CBRF) are a type of community living arrangement.

CONDITIONAL USE

See "use, conditional" below.

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CRAWLWAYS or CRAWL SPACE

(As it pertains to floodplain, § 275-65) An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

DECK

An uncovered platform, either freestanding or attached to a building, that is supported by pillars or posts. A deck has ground level access.

DIRECTOR

The Director of the Department of Community Development, City of New Berlin, or his/her designee. The Deputy Director of Community Development shall assume all authority and decision making authority in the Director's absence.

DRYLAND ACCESS

(As it pertains to floodplain, § 275-65) A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land ~~which is~~ outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.

EAVE

The projecting lower edge of a roof that overhangs the exterior wall of a building, also known as the fascia.

ENCROACHMENT

(As it pertains to floodplain, § 275-65) Any fill, structure, equipment, building, use or development in the floodway.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

(As it pertains to floodplain, § 275-65) The federal agency which administers the National Flood Insurance Program. ~~This agency was formerly known as the "Federal Insurance Administration (FIA)" and was part of the United States Department of Housing and Urban Development (HUD).~~

FINANCIAL ASSURANCE (As it pertains to nonmetallic mining, § 275-63)

A commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in § 275-65-23 and is sufficient to pay for reclamation activities required by this chapter.

FLOOD FREQUENCY

(As it pertains to floodplain, § 275-65) The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent chance of occurring in any given year.

FLOOD HAZARD BOUNDARY MAP

(As it pertains to floodplain, § 275-65) A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

FLOOD INSURANCE RATE MAP (FIRM)

(As it pertains to floodplain, § 275-65) A map of a community on which the Federal Insurance Administration has delineated both ~~special flood hazard areas~~ (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

FLOOD INSURANCE STUDY

(As it pertains to floodplain, § 275-65) A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

FLOOD or FLOODING

(As it pertains to floodplain, § 275-65) A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

- A. The overflow or rise of inland waters;
- B. The rapid accumulation or runoff of surface waters from any source;
- C. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
- D. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

FLOOD PROFILE

(As it pertains to floodplain, § 275-65) A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

FLOOD PROTECTION ELEVATION

(As it pertains to floodplain, § 275-65) An elevation of two feet of freeboard above the Regional Flood Elevation (see also "freeboard").

FLOOD STORAGE

(As it pertains to floodplain, § 275-65) Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

FLOODFRINGE

(As it pertains to floodplain, § 275-65) That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood and associated with standing water rather than flowing water.

FLOODPLAIN

(As it pertains to floodplain, § 275-65) Land which has been or may be covered by floodwater during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.

FLOODPLAIN ISLAND

(As it pertains to floodplain, § 275-65) A natural geological land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

FLOODPLAIN MANAGEMENT

(As it pertains to floodplain, § 275-65) Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

FLOODPROOFING

(As it pertains to floodplain, § 275-65) Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

FLOODWAY

(As it pertains to floodplain, § 275-65) The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

FREEBOARD

(As it pertains to floodplain, § 275-65) A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

GAZEBO

A freestanding roofed structure.

HIGH FLOOD DAMAGE POTENTIAL

(As it pertains to floodplain, § 275-65) Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

HIGHEST ADJACENT GRADE

(As it pertains to floodplain, § 275-65) The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE

(As it pertains to floodplain, § 275-65) Any structure that is either:

- A. Listed individually on the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a ~~local~~ state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs ~~which that~~ have been certified either by an approved state program, as determined by the Secretary of the Interior, or ~~directly~~ by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION

An occupation or profession for financial gain or profit which is incident to and carried on entirely within a dwelling unit located on a lot, exclusive of attached garage or patio area, by resident occupants of the dwelling unit and which occupation is clearly incidental to and accessory to the residential use of the premises [See also § 275-42~~6(4)~~].

INCREASE IN REGIONAL FLOOD HEIGHT

(As it pertains to floodplain, § 275-65) A calculated upward rise in the regional flood elevation greater than 0.00 feet, based on a comparison of existing conditions and proposed conditions, which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

INDOOR PUBLIC RECREATION FACILITIES

Publicly owned buildings including, but not limited to, recreational buildings, community centers, libraries, museums, galleries, playgrounds, and gymnasiums.

INDOOR RECREATION AND AMUSEMENT FACILITIES

Establishments that primarily engage in providing exclusively indoor recreation and/or amusement for commercial purposes including, but not limited to, playgrounds, miniature golf courses, batting cages, gymnasiums, trampoline parks, swimming pools, bowling alleys, amusement centers, and arcades. May include restaurant or food services.

LAND USE

(As it pertains to floodplain, § 275-65) Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT)

LOT DEPTH

The average distance measured from the front lot line to the rear lot line in the general direction of the side lot lines. ~~See Figure XI-1 and Figure XI-2.~~

LOT FRONTAGE

The dimension of a lot abutting a public street measured along the street right-of-way line. ~~See Figure XI-1.~~

LOT LINE, FRONT

The front property line which is coterminous with the street right-of-way. A front lot line is generally parallel to or less than 45° to the rear lot line. The front lot line is generally opposite the rear lot line. A corner lot or double-frontage lot has more than one front lot line. ~~See Figure XI-3.~~

LOT LINE, REAR

An internal lot line opposite a front yard. A rear lot line is generally parallel to or less than 45° to the front street right-of-way line. Where the street line is an arc, the angle is measured from the tangent of the arc. A lot line greater than 45° from the front street right-of-way line would be a side lot line. ~~See Figure XI-3.~~

LOT LINE, SIDE

An internal lot line generally extending perpendicular to the front lot line. The side lot lines extend between the front lot line and the rear lot line. ~~See Figure XI-3.~~

LOT WIDTH

The width of a parcel of land measured at the building setback line or required front setback. ~~See Figure XI-1 and Figure XI-2.~~

LOT, CORNER

A lot abutting two or more streets at their intersection, provided that the corner of such intersection shall have an angle of 135° or less, measured on the lot side. ~~See Figure XI-1.~~

LOT, FLAG or PANHANDLE

A lot not meeting minimum frontage requirements and where the access to the public or private road is by a narrow private right-of-way or driveway known as the "panhandle." The length of the panhandle shall be measured from the frontage line to the nearest point of intersection with the lot's property line that parallels or almost parallels the frontage line. ~~See Figure XI-1.~~

LOT, INTERIOR

A lot situated with one lot line fronting a single street and bounded by adjacent lots along each of its other lot lines. ~~See Figure XI-1.~~

LOWEST ADJACENT GRADE

~~(As it pertains to floodplain, § 275-65)~~ The elevation of the lowest ground surface that touches any of the exterior walls of a building.

LOWEST FLOOR

~~(As it pertains to floodplain, § 275-65)~~ The lowest floor of the lowest enclosed area (including basement). ~~An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of 44 CFR 60.3.~~

MANUFACTURED HOME or MOBILE HOME

~~(As it pertains to floodplain, § 275-65)~~ A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to required utilities. ~~The term "mManufactured homes" includes a or mobile homes but does not include are not "mobile recreational vehicles"; which remain licensed and ready for highway use and remain on site less than 180 consecutive days.~~

MODEL, CORRECTED EFFECTIVE

(As it pertains to floodplain, § 275-65) A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more-detailed topographic information than that used in the current Effective Model.

MODEL, DUPLICATE EFFECTIVE

(As it pertains to floodplain, § 275-65) A copy of the hydraulic analysis used in the effective FIS and referred to as the "Effective Model."

MODEL, EFFECTIVE

(As it pertains to floodplain, § 275-65) The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

MODEL, EXISTING (PRE-PROJECT)

(As it pertains to floodplain, § 275-65) A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man-made modifications that have occurred within the floodplain since the date of the Effective Model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the Effective Model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

MODEL, REVISED (POST-PROJECT)

(As it pertains to floodplain, § 275-65) A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.

MUNICIPALITY or MUNICIPAL

(As it pertains to floodplain, § 275-65) The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

NAVD or NORTH AMERICAN VERTICAL DATUM

(As it pertains to floodplain, § 275-65) Elevations referenced to mean sea level datum, 1988 adjustment.

NEW CONSTRUCTION

~~(As it pertains to floodplain, § 275-65) For floodplain management purposes, "new construction" means s~~Structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. ~~For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.~~

NGVD or NATIONAL GEODETIC VERTICAL DATUM

~~(As it pertains to floodplain, § 275-65)~~ Elevations referenced to mean sea level datum, 1929 adjustment.

NON-FLOOD DISASTER

~~(As it pertains to floodplain, § 275-65) A fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.~~

NONCONFORMING STRUCTURE

(As it pertains to floodplain, § 275-65) An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ~~chapter ordinance~~ for the area of the floodplain which it occupies. For example, an existing residential structure in the ~~Floodfringe D~~ district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.

NONCONFORMING USE

(As it pertains to floodplain, § 275-65) An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ~~chapter ordinance~~ for the area of the floodplain which it occupies (such as a residence in the floodway).

NONCONFORMING USE

See "use, nonconforming."

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OBSTRUCTION TO FLOW

~~(As it pertains to floodplain, § 275-65) Used for floodplain regulation, a~~Any development which blocks the conveyance of floodwaters such that this development, alone or together with any future development, will cause an increase in regional flood heights.

OFFICIAL FLOODPLAIN ZONING MAP

(As it pertains to floodplain, § 275-65) That map, adopted and made part of this ~~chapter ordinance~~, as described in § 275-65, which has been approved by the Department of Natural Resources and FEMA.

OPEN SPACE USE

(As it pertains to floodplain, § 275-65) ~~Used for floodplain regulation, t~~ Those uses having a relatively low flood damage potential and not involving structures.

ORDINARY HIGH-WATER MARK

(As it pertains to floodplain, § 275-65) The point on the bank or shore of a body of water up to which the presence and action of surface water is so continuous as to leave a distinctive mark; such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

PATIO

A level surfaced area, either freestanding or adjacent to a building. May be covered or uncovered.

PAVILION

A roofed structure, either freestanding or attached to a building.

PERGOLA

A structure with no roof that is open to the sky, either freestanding or attached to a building.

PERSON

(As it pertains to floodplain, § 275-65) An individual or group of individuals, corporation, partnership, association, municipality, or state agency.

PORCH

A roofed structure that projects from the wall of a building that provides ground level access.

PRINCIPAL USE

See "use, principal."

Commented [KH159]: Duplicate

PRIVATE SEWAGE SYSTEM

(As it pertains to floodplain, § 275-65) A sewage treatment and disposal system serving ~~a single one~~ structure, with a septic tank and soil absorption field located on the same parcel as the structure. ~~This term~~ It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field; a holding tank; a system serving more than one structure; or a system located on a different parcel than the structure.

PUBLIC UTILITIES

(As it pertains to floodplain, § 275-65) Those utilities using underground or overhead transmission lines such as electric, telephone, and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

REASONABLY SAFE FROM FLOODING

(As it pertains to floodplain, § 275-65) Means ~~B~~base floodwaters will not inundate the land or damage structures to be removed from the ~~special floodplain hazard area~~ and ~~that~~ any subsurface waters related to the base flood will not damage existing or proposed buildings.

REGIONAL FLOOD

(As it pertains to floodplain, § 275-65) A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a 1% chance of being equaled or exceeded in any given year; and if depicted on the FIRM, the RFE is equivalent to the BFE.

SETBACK

The minimum distance a building or structure shall be located from a lot line or base setback line. The setback line shall be drawn parallel to a lot line. ~~See § 275-46A.~~

SETBACK, FRONT

The minimum horizontal distance between the base setback line and a line parallel to the nearest roofed ~~or enclosed~~ portion of ~~a building, the eave/fascia or any projection thereof,~~ excluding uncovered steps and stoops, gutters, and awnings. See § 275-46A.

SETBACK, ORDINARY HIGH-WATER MARK (OHWM)

The minimum horizontal distance between the ordinary high-water mark of a navigable body of water and a line parallel ~~thereto through to~~ the nearest roofed ~~or enclosed~~ portion of the ~~principal structure eave/fascia, excluding uncovered steps and stoops, gutters, and awnings~~.

SETBACK, REAR

The minimum horizontal distance between the rear ~~internal~~ lot line and a line parallel ~~thereto through to~~ the nearest roofed ~~or enclosed~~ portion of the ~~principal structure eave/fascia, excluding uncovered steps and stoops, gutters, and awnings~~. A rear setback is opposite a front setback. ~~A rear setback is not measured from a public road or street frontage.~~ See § 275-46A.

SETBACK, SIDE

The minimum horizontal distance between the side ~~internal~~ lot line and a line parallel ~~thereto through to~~ the nearest roofed ~~or enclosed~~ portion of the ~~principal structure eave/fascia, excluding uncovered steps and stoops, gutters, and awnings~~. See § 275-46A.

SETBACK, WETLAND

The minimum horizontal distance between the nearest delineated wetland and a line parallel ~~through to~~ the nearest impervious surface.

SIGN, ~~CANOPY OR AWNING OR CANOPY~~

A sign that is mounted or painted on or attached to a canopy, awning, or marquee. ~~See Figure XI-4.~~

SIGN, GROUND

Any sign placed upon or supported by the ground independent of any other structure. ~~See Figure XI-4.~~

SIGN, POLE

A sign that is mounted on a freestanding pole or other support so that the bottom of the sign is 10 feet or more above grade. ~~See Figure XI-4.~~

SIGN, PORTABLE

A sign that is not permanent and is not affixed to a building, structure, or to the ground. ~~Such sign is sometimes mounted on wheels to make it transportable. See Figure XI-4.~~

SIGN, PROJECTING

~~A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building. See Figure XI-4.~~

SIGN, ROOF

A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the deckline of a building with a mansard roof. ~~See Figure XI-4.~~

SIGN, SANDWICH-BOARD

~~A two-sided portable sign, constructed of wood, cardboard or similar rigid material, generally displayed outside a commercial establishment to identify a product or service.~~

SIGN, WALL

A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project more than 12 inches from such building or structure. ~~See Figure XI-4.~~

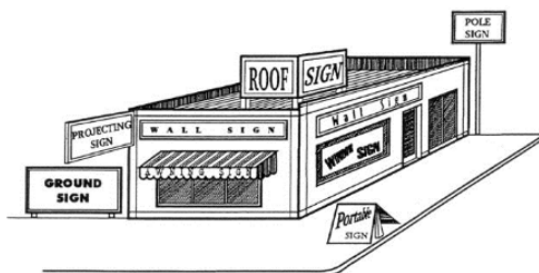
SIGN, WINDOW

~~A sign that is applied or attached to the exterior or interior of a window or located in such manner within the building that it can readily be seen from the exterior of the building through a window. See Figure XI-4.~~

Figure XI-4

Sign Types

Figure XI-4
Sign Types



SMALL WIND ENERGY SYSTEM

[As it pertains to small wind energy systems, § 275-42~~6(5)~~] A small wind energy system means equipment that converts and then stores or transfers energy from the wind into usable forms of energy (as defined by Wisconsin Statutes, § 66.0403(1)(m)). This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or cabling or other components used in the system, which system does not generate an excess of 100 kilowatts of electricity. "Total height" means the vertical distance from the ground level to the tip of a wind generator blade when the tip is at its highest point.

START OF CONSTRUCTION

(As it pertains to floodplain, § 275-65) The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the "actual start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STORY

That portion of a ~~principal~~ building included between the surface of any floor and the surface of the next floor above or, if there is no floor above, the space between the floor and the ceiling next above. A basement shall not be counted as a story.

STORY, HALF

A story which is situated in a sloping roof, the floor area of which does not exceed 2/3 of the floor area of the story immediately below it., ~~and which does not contain an independent dwelling unit.~~

STRUCTURE, ACCESSORY

~~A structure on the same lot as a principal building and customarily incidental or subordinate to the principal building or use. Accessory structures shall meet the requirements of 275-42.~~

SUBDIVISION

(As it pertains to floodplain, § 275-65) Has the meaning given in s. 236.02(12) Wis. Stats.

SUBSTANTIAL DAMAGE

(As it pertains to floodplain, § 275-65) Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50% of the equalized assessed value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

(As it pertains to floodplain, § 275-65) Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50% of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, ~~however,~~ include either:

- A. Any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the Building Official and that are the minimum necessary to assure safe living conditions; or
- B. Any alteration of ~~an~~ historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

UNRECLAIMED ACRE or UNRECLAIMED ACRES (As it pertains to nonmetallic mining, § 275-63)

- A. Those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under § 275-65-~~17G3T~~(4). However, the term does not include any areas described in Subsection B.
- B. "Unreclaimed acre" or "unreclaimed acres" does not include:
 - (1) Those areas where reclamation has been completed and certified as reclaimed under § 275-65-~~17G3T~~(4).
 - (2) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
 - (3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
 - (4) Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

- (5) For purposes of fees under § 275-65-153R, those areas within a nonmetallic mining site which the City has determined to have been successfully reclaimed on an interim basis in accordance with § 275-65-1763T(4).

VARIANCE

(As it pertains to floodplain, § 275-65) An authorization by the Board of Appeals for construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

VIOLATION

(As it pertains to floodplain, § 275-65) The failure of a structure or other development to be fully compliant with this chapter the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE PROFILE

(As it pertains to floodplain, § 275-65) A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of a river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain hazard areas.

WATERSHED

(As it pertains to floodplain, § 275-65) The entire region or area contributing runoff or surface water to a particular watercourse or body of water.

WELL

(As it pertains to floodplain, § 275-65) An Means an excavated opening in the ground made by digging, boring, drilling, driving or other methods to obtain for the purpose of obtaining groundwater, regardless of its intended use.

ORDINANCE NO. 2702

ORDINANCE TO AMEND CHAPTER 275 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF NEW BERLIN

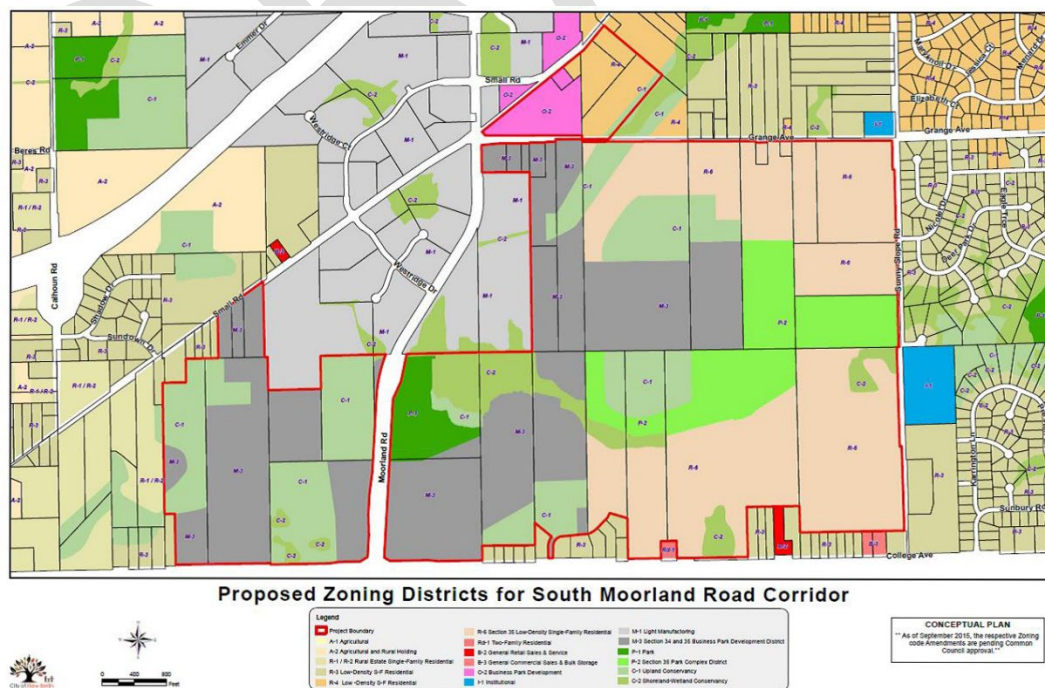
The Common Council of the City of New Berlin do ordain as follows:

SECTION I

Section 275-13.1H(4) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (4) Section 34-35 transitional provisions: South Moorland Road Corridor. Section 35 is an area that is envisioned to be a mix of business park industrial, office, retail, residential, and passive and active park uses. In order to implement the conceptual neighborhood plan, the City has created three new zoning districts specifically for this geographic area. They include a new R-6 (Section 35 Low-Density Single-Family Residential), M-3 (Section 34 and 35 Business Park Development District) and P-2 (Section 35 Park Complex District). The City's Comprehensive Plan, Chapter 10, Land Use, Figure 10.4, identifies the future land uses for this area. Below, Figure I-1 identifies the pending designated zoning districts. All projects that require rezoning within this respective area shall be rezoned in accordance with Zoning Code Figure I-1 and future Plan Commission and Common Council actions. See map below.

Figure I-1 South Moorland Road Corridor Designated Zoning Districts



SECTION II

Section 275-17B(15) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (15) Recreation. Oversee the management and operations of all athletic and recreational facilities, including fees, scheduling and programming. Prepare contracts, leases and agreements involving recreation programming and leasing of equipment.

SECTION III

Section 275-22G of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- G. Reserved

SECTION IV

Section 275-26A of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- A. General requirement. No vacant land shall be occupied or used; and no building or premises shall be erected, altered, or moved, or a change in use created; and no new construction, additions to, or remodeling of structures or internal modifications of areas shall be occupied or reoccupied; and no nonconforming use shall be maintained, renewed, changed, or extended, until an occupancy permit has been issued by the Director of Community Development. Such occupancy permit shall show that the building, site, or premises or part thereof is in compliance with the provisions of this chapter and any conditions of approval as set forth by the City staff, Plan Commission or Common Council. Such permit shall be applied for at the time of occupancy of any land and/or building. For purposes of this section, an "internal modification" shall be a modification to an interior of a structure that requires a building permit under this chapter.

SECTION V

Section 275-29 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- A. Applicability. No sign shall be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a valid sign permit. Application for a sign permit shall be made on forms provided by the City and shall contain or have attached all information and supporting material as specified by the Department of Community Development. No sign permit shall be issued to a business or property that does not have a zoning permit.
- B. Review procedure. Applications for sign permits shall be filed with the permit application center. The review procedure shall follow the development review process set forth in §275-21, except for the following modifications:
 - (1) Step 3: Staff review. The Department of Community Development shall review applications for completeness and has the authority to administratively approve such applications if it meets all the requirements of this chapter.
 - (2) Step 5: Public meeting. Sign applications may be forwarded to the Plan Commission or Community Development Authority if the sign application does not meet the requirements of §275-61. Sign applications may be forwarded to the Architectural Review Committee to review the materials for construction and design integrity of signage.
 - (3) Step 6: Action. The Department of Community Development shall approve or deny a complete application within five business days of receipt. A sign permit shall be issued

upon approval.

- C. Approval criteria. Staff shall approve a sign permit unless they find that:
 - (1) The requested permit is not in compliance with § 275-61; or
 - (2) If completed as proposed, the sign will not comply with one or more requirements of this chapter.
- D. Construction review. The Department of Community Development may refer a sign permit request to Building Inspection Services for review of construction details or specifications prior to approval.
- E. Inspection. The sign owner shall call the Department of Community Development for an electrical inspection (if applicable) upon completion of all permit requirements and installation.
- F. Appeal. An applicant may appeal a decision made by staff to the Plan Commission or the Community Development Authority (where applicable) for determination. An additional review fee as determined by the Director shall be required for any sign application that is forwarded to the Plan Commission or the Community Development Authority (where applicable) for review.
- G. Waiver. An applicant may request a waiver from the Plan Commission or Community Development Authority (where applicable) for the requirements set forth in this section. All sign waiver requests are subject to an application review fee as established by the Director.

SECTION VI

Section 275-33E(2)(c) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (c) An attached or detached garage is required in the residential districts. The garage shall have a minimum floor area of 400 square feet. A detached garage shall count toward maximum square footage as allowed under **§275-42B**.

SECTION VII

Section 275-37D(3) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (3) Conservation standards.
 - (a) Where a property is proposed to be further subdivided, and a lot is located partially within a C-1 or C-2 District and partially within an adjoining zoning district, that area of the lot or parcel in the C-1 or C-2 District used to meet the lot area requirements of the adjoining zoning district shall be determined in accordance with § 275-44G.
 - (b) (Reserved)
 - (c) A single-family dwelling may be allowed within the C-1 District, or within lands containing PEC, SEC or INRA, subject to the issuance of an administrative use approval permit, provided that:
 - [1] The approved parcel of any size is not subject to any other restrictions as part of a plat or CSM.
 - [2] For lots served with either public sewer service or with an approved off-lot private owner waste treatment system (POWTS), no more than 20,000 square feet of canopy cover can be removed within the C-1 District, or within lands containing PEC, SEC or INRA. This shall include the area for the house, driveway, walkways, POWTS, well and accessory uses. POWTS conveyance piping may not cross any public rights-of-way, and the POWTS' treatment itself should be

located directly behind the lot or as close to that as practicable.

- [3] For lots with approved on-site POWTS, no more than 25,000 square feet of canopy cover can be removed within the C-1 District, or within lands containing PEC, SEC or INRA,. This shall include the area for the house, driveway, walkways, septic field, well and accessory uses.
- [4] The dwelling shall comply with the requirements for the R-1/R-2 District under the conventional subdivision requirements.
- [5] The owner shall ensure that any disturbances of the natural features on the site are kept to a minimum. In identifying the natural resource features, the applicant shall consider the City's Map of Potential Conservation Areas.
- [6] The remainder of the C-1 zoned lands, or lands containing PEC, SEC or INRA, shall be placed into a conservation easement.

SECTION VIII

Section 275-41 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

The following are use-specific regulations for uses allowed in Article IV. These regulations apply to all districts except where specified.

A. Agricultural uses.

(1) General farm buildings.

- (a) General farm buildings shall not be used for the storage of nonagricultural equipment, including but not limited to snowmobiles, ATVs, automobiles, boats, campers, recreational equipment, construction equipment, and nonagricultural or industrial inventory.
- (b) The Plan Commission shall consider demonstrated agricultural needs in reviewing agricultural buildings.

(2) Keeping and raising of animals.

(a) General Requirements.

- [1] All applicable zoning district regulations shall apply.
- [2] Animals must be within a fenced-in area and shall remain on the property to which they belong or property to which is leased.
- [3] Adequate facilities shall exist for housing and feeding the animals.

(b) Quantities.

- [1] The keeping and raising of animals in the A-1, A-2, R-1/R-2, C-1 and C-2 Zoning Districts shall be limited to the quantities listed in Table 275-41A and shall apply for all uses outlined in this section:

Table 275-41A			
Type of Animal	Age	Minimum Lot Size (acres)	Number per acre
Large fowl	over 4 months	2	4
Small fowl	over 4 months	1	20
Large livestock	over 2 years	3	1

Table 275-41A			
Type of Animal	Age	Minimum Lot Size (acres)	Number per acre
Large livestock	under 2 years	3	2
Alpacas, goats, llamas, miniature horses & sheep	over 12 months	2	8
Alpacas, goats, llamas, miniature horses & sheep	under 12 months	2	16
Pigmy goats	over 12 months	2	12
Pigmy goats	under 12 months	2	24
Ponies less than 40 inches	over 12 months	2	2
Ponies less than 40 inches	under 12 months	2	4
Potbellied pigs & other small-breed pigs under 300 pounds	over 12 months	2	4
Potbellied pigs & other small-breed pigs under 300 pounds	under 12 months	2	8
Rabbits	over 4 months	1	20

[a] Determining the maximum number of animals. The calculation of the maximum number of animals allowed applies to all subsections in § 275-41A(2). Different animal types may be combined, but the total calculated number of animals may not exceed the maximum per-acre density identified in Table 275-41A. For example, a five-acre lot will allow for five head of large livestock or 100 small fowl; or a three acre lot can have one horse, eight sheep and 20 head of small fowl, or equivalent numbers not to exceed the maximum allowed.

[i] Contiguous land under the same ownership. The total acreage of parcels of land that are contiguous to each other, under that same ownership and have the appropriate zoning category may be used when calculating the maximum number of animals allowed. The minimum lot size for the keeping and raising of animals shall be met prior to additional animals being allowed for additional contiguous lands.

[ii] Contiguous land that is leased. If contiguous land is being leased for agricultural purposes, the leased land area can be used when calculating the maximum number of animals allowed. Once the land is no longer being leased, the maximum number of animals allowed shall be adjusted. A written lease agreement, signed by all property owners, shall be required. The minimum lot size for the keeping and raising of animals shall be met prior to additional animals being allowed for additional contiguous lands. The leased land shall be used exclusively by the lessee.

[iii] When determining the maximum number of animals

allowed on contiguous lands, the land area can only be used once or by one property owner. Double counting is not allowed.

- [b] The keeping and raising of animals in larger quantities than allowed by right shall be considered a conditional use. When applying for a conditional use permit to keep additional animals, the burden of proof shall be placed on the applicant to demonstrate to the reasonable satisfaction of the City that additional carrying capacity exists to support the keeping and raising of the animals as applied for by the applicant. In reviewing the conditional use, the City will consider whether:

- [i] Adequate facilities exist for housing and feeding the animals;
- [ii] Adequate measures exist to manage and dispose of waste products;
- [iii] The number of animals applied for will adversely impact neighboring properties, particularly residential ones, and/or whether the number of animals being applied for will adversely impact the environment (e.g., stormwater runoff, contamination).

- [2] The keeping and raising of animals in the R-2E, R-3, R-4, R-4.5, R-5, R-6 and R-7 Zoning Districts shall be limited to a total of four chickens and/or ducks per property.

(c) Specific Uses

- [1] Concentrated commercial animal feeding operations are prohibited in all districts.
- [2] Exotic animals. Keeping of exotic animals are prohibited in all zoning districts.
- [3] Hogs over 300 pounds. The keeping of hogs over 300 pounds is prohibited in all districts, with the exception of the A-1 District.
- [4] Keeping and raising of animals. The keeping and raising of animals shall be considered an accessory use in the R-1/R-2 Zoning District.
 - [a] The raising of animals shall be for personal use only, with the exception of selling offspring and/or animal products.
 - [b] No pasture constructed after January 12, 2010, shall be located within 50 feet of an existing residence on an adjacent residential parcel.
- [5] Keeping and raising of chickens and/or ducks. The keeping and raising of chickens and/or ducks for personal use shall be considered an accessory use in the R-2E, R-3, R-4, R-4.5, R-5, R-6 and R-7 Zoning Districts.
 - [a] Up to a total of four chickens and/or ducks allowed per property.
 - [b] No roosters.
 - [c] No slaughtering.
 - [d] Chickens and/or ducks shall be kept within a secure enclosure.
 - [e] Enclosures shall be located no closer than 25 feet to neighboring dwellings and a minimum of five feet from the property line.
- [6] Stables, boarding and riding academies are allowed in the A-1, A-2, R-

1/R-2, and C-1 Zoning Districts. Any new structure proposed within a C-1 District shall be considered a conditional use.

B. Residential uses.

- (1) Elderly housing and assisted-living facilities.
 - (a) The density of an elderly housing development shall not exceed 14 dwelling units per acre.
 - (b) All buildings shall be 50 feet from any exterior lot line. The Plan Commission may, however, permit buildings to have covered walks or be attached to other related structures, such as senior centers, hospitals, clinics or shopping centers.
 - (c) Buildings shall be specifically designed for the elderly and handicapped. Projects shall include such features as central locked lobby entrances; common rooms and areas on every floor and wing within a building; elevators; wider hallways with hand railings; walking paths and outdoor sitting areas; and programs and activities designed for the elderly.
 - (d) Visitor and staff parking shall be provided. Underground or attached parking for residents shall be provided at a ratio consistent with expected automobile usage rates.
 - (e) All units in a project shall be rented or sold to the elderly or handicapped to qualify as an elderly project. Mixed projects shall be designed and built under the regular multifamily residential regulations.
 - (f) Nursing homes, true assisted-care elderly facilities, and community-based residential facilities (CBRF) may be constructed as conditional uses in an Rm-1 Zoning District; however, such uses are provided for as principal uses in the I-1 Institutional District.
 - (g) Minimum dwelling unit size for an individual living unit designed for a single-person-occupancy, one-bedroom unit shall be 600 square feet. An additional 100 square feet shall be required for each additional bedroom, with a maximum of five bedrooms per dwelling unit in cases of congregate living. Efficiency units shall be a minimum of 500 square feet. This requirement may be waived by the Plan Commission in the case of a building designed for congregate living, provided that the combination of the individual and common areas together meets the overall living space requirements for the number of people intending to occupy the building.
 - (h) Building exteriors shall incorporate maintenance-free materials, such as brick, stone, vinyl, etc., to the maximum extent practical.
 - (i) In addition, the Plan Commission shall establish separate building area, dwelling unit size, amenity, enclosed parking, screening, setback and yard and other requirements for the health, safety, and welfare for each housing-for-the-elderly project.
 - (j) Buildings or developments not determined to be true elderly or handicapped projects by the Plan Commission shall be subject to all requirements of the regular multifamily zoning district. Qualification as "elderly" under state or federal law does not automatically meet criteria under this zoning provision.
- (2) Single-family dwellings. A single-family dwelling may be allowed as a conditional use in the Rm-1 District if the site meets the minimum lot area, width and yard requirements of the R-4.5 District.
- (3) Conservation area use and design standards.
 - (a) Uses permitted in conservation areas. The following uses are permitted in conservation areas:
 - [1] Conservation of open land in its natural state (for example, woodland,

fallow field, or managed meadow);

- [2] Agricultural and horticultural uses, including raising crops or livestock, associated buildings, excluding residences that are specifically needed to support an active, viable agricultural or horticultural operation. Specifically excluded are commercial livestock operations involving swine, poultry, mink, and other animals likely to produce highly offensive odors.
- [3] Pasture land for horses used solely for recreational purposes. Equestrian facilities shall be permitted but may not consume more than half of the minimum required conservation area.
- [4] Silviculture, in keeping with established standards for selective harvesting and sustained-yield forestry.
- [5] Neighborhood open space uses, such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses, specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Plan Commission.
- [6] Active noncommercial recreation areas, such as play fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required conservation area or five acres, whichever is less. Play fields, playgrounds, and courts shall not be located within 200 feet of abutting properties. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than 10 parking spaces.
- [7] Golf courses may comprise up to half of the minimum required conservation area but shall not include driving ranges or miniature golf courses. Their parking areas and any associated structures shall not be included within the minimum conservation area requirement; their parking and accessways may be paved and lighted.
- [8] Private owner water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation area. The integrity of all conservation areas shall be maintained and not adversely impacted.
- [9] Easements for drainage, access, sewer or water lines, or other public purposes. Off-lot POWTS areas shall be identified through survey markers/monuments. In addition, as-built drawings shall be submitted to the City and/or the grantee of the conservation easement for the area.
- [10] Underground utility rights-of-way. Aboveground utility and street rights-of-way may traverse conservation areas but shall not count toward the minimum required conservation area.
- [11] Single-family residential uses, in compliance with 275-37C(1)(b),

(b) Conservation design standards.

- [1] Conservation areas shall be laid out to ensure that an interconnected network of open space will be provided, to the greatest extent practicable, considering both areas within the proposed subdivision and areas adjacent to it. The required conservation area consists of a mixture of primary environmental corridors (PECs), all of which must be included, and secondary environmental corridors (SECs), and isolated natural resource areas (INRAs). PECs comprise those areas listed in § 275-33G(2) as being subtracted from the total parcel acreage to produce the "adjusted tract acreage." SCAs should include special features of the

property that would ordinarily be overlooked or ignored during the design process. Examples of such features are listed and described in § 235-41 (conservation design review standards) in Chapter 235, Subdivision of Land.

- [2] Conservation areas shall generally remain undivided and may be owned and maintained by a homeowners' association, land trust, another conservation organization recognized by the City, or by a private individual (typically as part of the original farmstead). However, in no case shall less than 30% of the land comprising the adjusted tract acreage be available for the common use and enjoyment of the subdivision residents. These ownership options may be combined so that different parts of the conservation area may be owned by different entities.
- [3] Buffers for adjacent public parkland. Where the proposed development adjoins public parkland, a natural conservation buffer at least 150 feet deep shall be provided within the development along its common boundary with the parkland, within which no new structures shall be constructed, nor shall any clearing of trees or understory growth be permitted (except as may be necessary for street or trail construction). Where this buffer is unwooded, the City may require vegetative screening to be planted or that it be managed to encourage natural forest succession through "no-mow" policies and the periodic removal of invasive alien plant and tree species.

(c) Other requirements.

- [1] No portion of any building lot may be used for meeting the minimum required conservation area, except within conservancy lots of at least 10 acres. However, active agricultural land with farm buildings, excluding areas used for residences, may be used to meet the minimum required conservation area.
- [2] Pedestrian and maintenance access, excluding those areas used for agricultural or horticultural purposes, shall be provided to a conservation area in accordance with the following requirements:
 - [a] Access to conservation areas used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.
- [3] All conservation areas that are not wooded or farmed shall be landscaped in accordance with the landscaping requirements of this chapter and Chapter 235, Subdivision of Land (§ 275-56 and § 235-41B[1]).
- [1] *Editor's Note: See now § 235-40B.*
- [4] Submission of a plan for the maintenance and operation of the conservation areas as required by § 235-41B.[2]
- [2] *Editor's Note: See now § 235-40B.*

(4) Permanent conservation protection through conservation easements.

- (a) The conservation area that is required to be reserved and created through the subdivision process shall be subject to permanent conservation easements prohibiting future development and defining the range of permitted activities. (For example, the clearing of woodland habitat shall generally be prohibited, except as necessary to create trails, active recreation facilities, and to install subsurface septic disposal systems or spray irrigation facilities.) The determination of necessity shall lie with the Common Council.

- (b) In "limited development" subdivisions where applicants voluntarily opt to develop their properties at densities substantially below those which are permitted under this chapter, with lots at 10 acres in area, and when they offer to place a restrictive conservation easement preventing future subdivision of the newly created parcels, the City shall review the proposed easements and may accept them, provided their wording accomplishes the purposes of this chapter and is consistent with the City's Comprehensive Plan and the Wisconsin Uniform Conservation Easement Act.[3]
- [3] *Editor's Note: See § 700.40, Wis. Stats.*
- (c) The holder of the conservation easement shall be as permitted pursuant to § 700.40(1)(b), Wis. Stats., as amended.
- (5) Conservation area ownership and maintenance standards.
 - (a) Permanent protection. All conservation areas shall be permanently restricted from future subdivision and development. Under no circumstances shall any development be permitted in the open space at any time, except for those uses listed in § 275-41B.
 - (b) Ownership options. The following methods may be used, either individually or in combination, to own common facilities. The City may request designation of areas for municipal ownership, of any areas identified in the City's Park and Open Space Plan as future parkland or potential trails, and any areas identified for protection under the SEWRPC's Natural Areas and Critical Species Habitat Protection and Management Plan for Southeastern Wisconsin. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Ownership methods shall conform to the following:
 - [1] Fee-simple dedication to the City. The City may, but shall not be required to, accept any portion of the common facilities, provided that:
 - [a] There is no cost of acquisition to the City;
 - [b] The City agrees to and has access to maintain such facilities;
 - [c] There is no environmental contamination on the site.
 - [2] Condominium association. Common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant state law. All open land and common facilities shall be held as "common elements."
 - [3] Homeowners' association. Common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in state regulations and statutes. In addition, the following regulations shall be met:
 - [a] The applicant shall provide the City a description of the organization of the proposed association, including its bylaws and all documents governing ownership, maintenance, and use restrictions for common facilities.
 - [b] The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development.
 - [c] Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units therein and their successors in title.

- [d] The association shall be responsible for maintenance and insurance of common facilities.
 - [e] The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent is his or her dues. Such dues shall be paid with the accrued interest before the lien may be lifted.
 - [f] Written notice of any proposed transfer of common facilities by the association or the assumption of maintenance for common facilities must be given to all members of the association and to the City no less than 30 days prior to such event.
 - [g] The association or its designee shall have adequate staff to administer, maintain, and operate such common facilities.
 - [h] The bylaws must prohibit amendments without the approval of the City as to conservation areas.
- [4] Private conservation organization. With permission of the City, an owner may transfer either fee-simple title of the open space or easements on the open space to a private nonprofit conservation organization, provided that:
- [a] The conservation organization is acceptable to the City and is a bona fide conservation organization intended to exist indefinitely;
 - [b] The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions;
 - [c] The conservation areas are permanently restricted from future development through a conservation easement; and
 - [d] A maintenance agreement acceptable to the City is established between the owner and the organization.
- [5] Dedication of easements to the City. The City may, but shall not be required to, accept easements for public use of any portion of the common land or facilities. In such cases, the facility remains in the ownership of the condominium association, homeowners' association, or private conservation organization while the City holds the easements. In addition, the following regulations shall apply:
- [a] There shall be no cost of acquisition to the City.
 - [b] Any such easements for public use shall be accessible to residents of the City.
- [6] In the R-6 District, additional perimeter screening shall be required along Sunny Slope Road and any other designated area that requires visual relief. The following shall apply: [Added 1-12-2016 by Ord. No. 2558]
- [a] Screening areas shall be at least 50 feet deep and may be placed in an outlot or defined easement area.
 - [b] Berms shall be utilized and constructed at a slope of 2.5 to one.
 - [c] Perimeter landscaping shall provide a semi-opaque screen during the winter season.
 - [d] Plants in perimeter landscaping areas shall be grouped instead of evenly spread.
 - [e] The screening buffer shall take on a more natural appearance, where organic lines are used over straight formal lines.

Reserved.

(6) Community living arrangements.

- (a) Community living arrangements as provided for in § 62.23(7)(i), Wis. Stats., shall be a principal use in all residential districts and in the Institutional District.
- (b) Community living arrangements that exceed the limit of those defined in § 62.23(7)(i), Wis. Stats., may be approved as a conditional use per § 275-27.

(c) Community living arrangements shall meet all applicable state statutes regarding such uses.(7) In the R-7 District, the following shall apply: [Added 10-13-2020 by Ord. No. 2642]

- (a) In the R-7 District, a development agreement shall be required along with appropriate financial sureties, to be evaluated by the City, no more than annually and no less than every five years, for adequacy, to ensure for the proper maintenance and permitting of the on-site waste treatment facility in perpetuity.

(8) Transient lodging uses. [Added 4-25-2023 by Ord. No. 2668]

- (a) Transient lodging uses for remuneration are prohibited in the residential districts of the City where the period of each individual use is less than seven days. Any person acting as an agent, real estate broker, real estate sales agent, property manager, reservation service or arranges or negotiates for the use of residential property or transient lodging uses, or any person who uses or allows the use of residential property in this manner shall be considered in violation of this section. Each day in which such residential property is used or allowed to be used in violation of this section shall be considered a separate offense. Any rental of single-family property for camping purposes is prohibited.
- (b) Individual transient residential lodging uses for remuneration of more than six but fewer than 30 consecutive days within any consecutive 365-day period may be rented for no more than 181 days in the aggregate. The days during which the transient residential lodging uses for remuneration may be conducted shall run consecutively. Any individual or entity which engages in transient residential lodging uses for remuneration shall notify the City Clerk, in writing, when the first rental within a 365-day period is to begin.

C. Commercial uses.

(1) Adult-oriented establishments.

- (a) Such uses shall not be operated within 1,000 feet of:
 - [1] A church, synagogue, or regular place of worship;
 - [2] A public or private elementary or secondary school;
 - [3] A single-family, two-family, or multifamily zoning district boundary;
 - [4] A public park adjacent to a residential zoning district boundary; or
 - [5] Another adult-oriented establishment.
- (b) Such use may not be operated in the same building, structure or any portion thereof containing another adult-oriented establishment.
- (c) For purposes of this section, the distance between any two adult-oriented establishments shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- (d) Such use shall comply with the licensing and layout requirements set forth in Chapter 152, Licenses and Permits, § 152-17, of the Code of the City of New Berlin.

(2) Automotive fuel sales.

- (a) All fuel pumps and service islands shall comply with the yard requirements of the zoning district in which the use is allowed.
 - (b) The outermost edge of any protective canopy shall not be closer than 25 feet to the base setback line and shall meet the side and rear setbacks. [Amended 4-25-2023 by Ord. No. 2668]
- (3) Automotive service. Such uses shall not include the service of semitractors or semitrailers.
- (4) Bed-and-breakfast establishments. All bed-and-breakfast establishments shall meet the provisions set forth in § 254.61(1), Wis. Stats, and Ch. HSS 197, Wis. Adm. Code.
- (5) Department stores. Department stores are only allowed in shopping centers located on a site that is 10 or more gross acres in size.
- (6) Drive-in theaters.
 - (a) A twenty-five-foot-wide planting screen shall be provided between the drive-in theater and any residential district.
 - (b) There shall be a minimum of 1,000 feet between the access drive to the theater and any street intersection.
- (7) Crematory services shall only be allowed as an accessory use to cemeteries, funeral services or veterinary clinics.
- (8) Hotels and motels. Hotels and motels may exceed the district height regulations, yet no hotel or motel may exceed 55 feet in height except as defined in § 275-35D(5).
- (9) Reserved. (10) Reserved. (11) Personal services. A personal service use may be approved as a conditional use in the O-2, M-1 and M-2 Zoning Districts, provided that it meets the requirements of § 275-27 and that it is in such a location to provide services to the employees of nearby uses in these districts.
- (12) Restaurants. [Amended 10-9-2018 by Ord. No. 2607]
 - (a) A drive-through facility shall not be approved as part of a restaurant unless drive-through facilities are allowed in the subject zoning district and it meets all of the additional use regulations specified in § 275-41F(1) of this chapter.
 - (b) Reserved. (c) Brewpubs.
 - [1] Brewpubs in the City shall follow the definition set forth within § 275-70.
 - [2] Brewpubs shall be required to meet all applicable local codes and licensing requirements, as well as applicable state statutes, federal laws and licensing governing this type of use.
 - [3] One of the conditions of approval for brewpubs shall be that the applicant has applied for and received all necessary liquor licenses and permits to operate this type of business.
 - [4] A brewpub (restaurant) in the City may only brew beer as part of its business for consumption on the premises. No wholesaling of the beer shall be permitted.
 - [5] Applicants shall adhere to the performance requirements outlined in § 275-60 of this Code.
 - (d) Breweries.
 - [1] Breweries in the City shall follow the definition set forth within § 275-70.
 - [2] Breweries shall be required to meet all applicable local codes and licensing requirements, as well as applicable state statutes, federal laws and licensing governing this type of use.
 - [3] One of the conditions of approval for breweries shall be that the applicant

has applied for and received all necessary liquor licenses and permits to operate this type of business.

[4] Applicants shall adhere to the performance requirements outlined in § 275-60 of this Code.

(13) Reserved.

(14) Self-storage facilities.

- (a) No perishable products may be stored unless the Plan Commission determines that adequate health provisions have been made;
- (b) No flammable or explosive materials may be stored unless the Plan Commission determines that adequate safety provisions have been made;
- (c) No sales of merchandise may be conducted from a self-storage facility; and
- (d) No offices may be set up in storage units.

(15) Service commercial uses.

- (a) Service commercial uses in the B-5 District should be limited to uses that will serve the needs of the rural residential community.
- (b) Reserved.
- (c) Traffic, loading, parking and access. The parking and storage of semitractors and semitrailers, except for pickup and deliveries, is prohibited. Parking or storage of construction vehicles and equipment, except during periods of permitted construction activity, is prohibited. All storage and parking of vehicles and equipment, other than required customer and employee off-street parking, shall be inside, except the outside parking of two vehicles in accordance with the type and size limitation of this chapter.

(16) Mobile tower siting regulations. [Amended 9-23-2014 by Ord. No. 2529]

- (a) Purpose. Mobile tower facilities shall be regulated as set forth in this section, subject to 2013 Wisconsin Act 10, which amended § 66.0404, Wis. Stats. These standards shall also be interpreted and enforced in a manner consistent with the Telecommunications Act of 1996.
- (b) Exemptions.
 - [1] Emergency communication facilities used for emergency communication by public officials.
 - [2] City communication facilities.
 - [3] Antennas, amateur radio antennas (e.g., ham radio), and satellite dishes as regulated by § 275-42.
- (c) Definitions. Refer to § 275-70. [Amended 4-25-2023 by Ord. No. 2668]
- (d) Waivers/modifications. The Plan Commission may waive or modify any requirements of this section. Any site for which a waiver from the requirements of this section is granted shall comply with all other requirements of this chapter. Such waiver or modification shall only be granted if the Plan Commission determines that:
 - [1] There will be no appreciable off-site impact caused by the waiver/modification.
 - [2] Compliance with the requirement(s) is impractical or impossible due to site conditions or other circumstances beyond the control of the applicant.
 - [3] The specific requirement is not necessary for a particular site to ensure compliance with the requirements of this section.

- (e) The siting and construction of a new mobile service support structure and facilities or the substantial modification of an existing support structure and mobile service facilities (Class 1 co-location).

- [1] Application information, process and fees. An application for conditional use permit shall be made through the permit application center on forms furnished by the Department of Community Development and shall include information and supporting materials as specified under this section. Applicable application fees and developer deposit shall accompany the application as outlined in Zoning Code § 275-20C. The conditional use application shall be in writing and in an electronic format and shall contain all of the following information:
- [a] The name and business address of, and the contact individual for, the applicant.
 - [b] The location of the proposed or affected support structure.
 - [c] The location of the proposed mobile service facility.
 - [d] Applications to substantially modify an existing support structure shall submit a construction plan, which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - [e] Applications to construct a new mobile service support structure shall submit a construction plan, which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - [f] Applications to construct a new mobile service support structure shall submit an explanation as to why the applicant chose the proposed location and why the applicant did not choose co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that:
 - [i] Co-location within the applicant's search ring would not result in the same mobile service functionality, coverage, and co-location capacity;
 - [ii] Co-location is technically infeasible; or
 - [iii] Co-location is economically burdensome to the mobile service provider.
 - [g] Provide documentation of the applicant's right, title or interest in the property where the facility is to be located. If the applicant is not the property owner, the applicant shall submit a letter from the property owner(s) stating that they are consenting to have a tower placed on their property. When the property owner is the City, the applicant shall obtain approval from the applicable boards or commissions that oversee the facility or land where the tower is proposed to be placed. Any proposal for a new mobile service support structure and facility on City-owned lands (parks, utility, etc.) shall be required to make a submittal to DCD outlining their specific request. DCD shall forward an RAS to the Common Council to decide if it wishes to enter into negotiations on a lease to move forward with a full submittal. If the Council

agrees to investigate further, the Council will refer the request on to the applicable boards, commissions, and committees.

- [h] The facility is appropriately landscaped.
- [i] The facility/tower is in compliance with any other applicable local, state, or federal regulations.
- [j] Structure report. A structure report prepared by a qualified and licensed professional engineer which:
 - [i] Describes the tower or structure height and design, including a cross section and elevation;
 - [ii] Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 - [iii] Describes the tower or structure capacity, including the number and type of antennas that it can accommodate;
 - [iv] Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 - [v] Includes an engineer's stamp and registration number;
 - [vi] Includes safety considerations; and
 - [vii] Includes other information necessary to evaluate the request.
- [k] Design: ground equipment and utility structures.
 - [i] One building that houses all the necessary ground equipment shall be located on the site. All co-located equipment shall be located within the common building to the maximum extent practicable. The building shall either be sized to house all equipment for all future co-location or constructed in a manner that allows expansion. All expansions shall be architecturally consistent and compatible.
 - [ii] The building shall be architecturally designed to be compatible with the architecture characteristics and § 275-59 to the maximum extent practicable.
 - [iii] The building shall meet the minimum setbacks of the zoning district. See also § 275-41C(16)(e)[1][m] below.
 - [iv] Ground-mounted equipment, including but not limited to equipment cabinets and generators, should, to the maximum extent practicable, be enclosed in a building except when screened with appropriate landscaping.
- [l] Landscaping. The parking areas, buildings, and equipment shall be landscaped in accordance with § 275-56. The Plan Commission and CDA may allow an alternative landscaping or screening plan or waive the landscaping requirements if it is determined that the landscaping will not serve a functional value based on existing topography or surrounding land uses.
- [m] Height standards. Height is to be measured from the ground elevation to the top of the tower, excluding any antennas.
- [n] A conditional use status shall not be granted for communication towers unless the tower is located so that there is sufficient

radius of clear land around the tower that its collapse shall be completely contained on the property, subject to the following. If an applicant provides the City with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Plan Commission provides the applicant with substantial evidence that the engineering certification is flawed.

- [o] Setback standards.
 - [i] Roof, existing structure, and/or building-mount facilities. Antenna arrays shall not project into the setback of the structure they are located on or within.
- [2] Completeness determination. If an applicant submits to the City an application for a permit to engage in an activity described under § 275-41C(16)(e), which contains all of the information required under § 275-41C(16)(e)[1], the Director or designee shall consider the application complete. If the Director or designee does not believe that the application is complete, the Director or designee shall notify the applicant, in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- [3] Approval criteria. Within 90 days of its receipt of a complete conditional use application, meeting the criteria listed within this section, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing, to an extension of the ninety-day period:
 - [a] Review the application to determine whether it complies with § 275-41C(16)(e)[1] and all applicable aspects of the City Building Code and subject to the limitations in this section of the Zoning Ordinance.
 - [b] Plan Commission or CDA holds a public hearing.
 - [c] Make a final decision whether to approve or disapprove the application.
 - [d] Notify the applicant, in writing, of its final decision.
 - [e] If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- [4] The Plan Commission or CDA may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under § 275-41C(16)(e)[1][f].
- [5] A party who is aggrieved by the final decision of the Plan Commission or CDA under § 275-41C(16)(e)[3][c] may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.
- (f) Co-location of existing support structure (Class II co-location).
 - [1] Application information. An application for a building permit shall be made through the permit application center on forms furnished by the Department of Community Development and shall include information

and supporting materials as specified under this category. Applicable application fees shall accompany the application as outlined in Zoning Code § 275-20C and the State of Wisconsin. The building permit application shall be in writing and in an electronic format and shall contain all of the following information:

- [a] The name and business address of, and the contact individual for, the applicant.
 - [b] The location of the proposed or affected support structure.
 - [c] The location of the proposed mobile service facility and construction plans.
 - [d] The application complies with this section.
 - [e] The facility/tower is in compliance with any other applicable local, state, or federal regulations.
 - [f] Structure report. A structure report prepared by a qualified and licensed professional engineer which:
 - [i] Describes the tower or structure height and design, including a cross section and elevation;
 - [ii] Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 - [iii] Describes the tower or structure capacity, including the number and type of antennas that it can accommodate;
 - [iv] Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 - [v] Includes an engineer's stamp and registration number;
 - [vi] Includes safety considerations; and
 - [vii] Includes other information necessary to evaluate the request.
- [2] Completeness determination. If an applicant submits to the City an application for a permit to engage in an activity described under § 275-41C(16)(f), which contains all of the information required under § 275-41C(16)(f)[1], the Director or designee shall consider the application complete. If the Director or designee does not believe that the application is complete, the Director or designee shall notify the applicant, in writing, within five days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- [3] Approval criteria. Within 45 days of its receipt of a complete building permit application, meeting the criteria listed within § 275-25, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree, in writing, to an extension of the forty-five-day period:
- [a] Make a final decision whether to approve or disapprove the application.
 - [b] Notify the applicant, in writing, of its final decision.
 - [c] If the application is approved, issue the applicant the relevant permit.

- [d] If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- [4] A party who is aggrieved by the final decision of the City under § 275-41C(16)(f)[3][a] may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.
- (g) General standards.
 - [1] All towers and sites shall be properly maintained and shall be kept in a condition as not to become a public nuisance or eyesore in accordance with Chapter 201, Property Maintenance. Proper maintenance shall include but not be limited to regular lawn and landscaping care and painting of an accessory building, fences, and tower. Additionally, the site shall be kept free of junk and trash.
 - [2] All antenna arrays shall be securely fastened to minimize noise emissions or damages from falling.
 - [3] Limitations on authority. The City review and action in the matter shall be subject to the limitations imposed by Wis. Stats., § 66.0404(4). In the event the applicant believes the City has exceeded its authority in this regard, the applicant shall notify the City in writing, and the Common Council reserves the right to reconsider the matter, to ensure that applicable laws are followed.
- (17) Cosmetic tattoo establishments/permanent cosmetics.
 - (a) The applicant shall provide a copy of all state licenses relating to any application for permanent cosmetics prior to the issuance of a zoning permit.
- (18) Outside seating area, patio, smoking area or other outside activity area (i.e., volleyball courts, horseshoe pits, etc.) for commercial uses.
 - (a) The plan of operation may be amended to allow for the use to extend to an approved outside patio, seating area, and/or other outside activity area. The applicant shall provide the following information:
 - [1] Submit a use, site and architecture application to the Department of Community Development. Refer to § 275-24 submittal criteria.
 - [2] Submit an extension of premises application to the City of New Berlin Clerk's office, if required.
 - (b) If the proposed use is adjacent to a residential zoning district, the applicant shall be referred to the Plan Commission or CDA for consideration. Other applications may be administratively approved, unless, in the sole discretion of the Director, they pose significant potential implications for surrounding uses.
 - (c) An outdoor extension of the premises shall not increase the authorized capacity of the establishment.
- (19) Convenient cash businesses. [Added 9-23-2014 by Ord. No. 2529]
 - (a) Convenient cash businesses may not be located within 2,500 feet of any other convenient cash business.
 - (b) Convenient cash businesses may not operate between the hours of 9:00 p.m. and 8:00 a.m.
- (20) Car wash establishment. [Added 4-25-2023 by Ord. No. 2668]
 - (a) Car wash establishments are allowed as a principal use in the B-1, B-2, B-3, O-1, O-2, M-1 and M-2 Districts if the establishment meets all other criteria.

- (b) Car wash establishments are prohibited in all Agriculture, Residential, B-5 and M-3 Zoning Districts.
- (c) A property containing a car wash establishment shall not be located closer than 100 feet from the border of lands designated as residential in the City's Comprehensive Plan.
- (d) A property containing a car wash establishment shall not be located closer than 100 feet from the border of a residentially zoned or residentially used property due to the intensity of the use of such facilities and the impact which they are likely to have with regard to noise, light pollution and traffic in surrounding neighborhoods and streets. The distance shall be calculated as the shortest measurable distance between the property lines of the property in which the car wash facility is desired to the edge of the residential zoning district, in a straight line without regard to intervening structures. Right-of-way is not included and shall be subtracted from this measurement. A GIS map will be created by the City for any such requests.
- (e) Applicants shall be required to provide supplemental information as required by the City in order to review the car wash establishment for compliance with the City's performance standards in Zoning Code § 275-60 and adequate public facilities, § 275-58. Refer to Zoning Code § 275-20 developer deposit fee whereby the City can utilize the applicant's developer deposit to hire outside consulting agencies to assist with the City's evaluation of the proposal.

D. Office / Industrial uses.

- (1) Financial institutions. A drive-through facility shall not be approved as a part of a financial institution unless the drive-through facility is allowed in the subject zoning district and the drive-through facility meets all of the additional use regulations specified in § 275-41F(1) of this chapter.
- (2) Offices. Where any of the following office uses are not related to another use allowed in the M-1 or M-2 District, it may be approved as a principal use if it meets the requirements set forth in § 275-24:
 - (a) Business offices;
 - (b) Financial institutions;
 - (c) Government offices; and
 - (d) Medical and dental offices.
- (3) Light industrial uses. Light industrial uses may be allowed as an accessory use in the O-2 District when they are in the same building or on the same lot as the corporate headquarters or manufacturing office of a business.
- (4) Warehouses. Warehouses may be allowed as an accessory use in the O-2 District when they are in the same building or on the same lot as the corporate headquarters or manufacturing office of a business.
- (5) Quarry uses. All uses are conditional, and no use in a Q-1 District shall be allowed until the following provisions have been met:
 - (a) Operational plan required. Each applicant for a conditional use in the Q-1 District shall submit an operational plan for the use. The operational plan shall specify:
 - [1] A timetable for operation of the quarry, including the date on which the quarrying, extractive, or other operation will begin and the planned date of the completion of the operation;
 - [2] A phasing plan showing the location and timing on all proposed phases;
 - [3] Hours of operation and days of operation for the quarrying, extractive, or other operation;

- [4] The means by which noise, dust, and other potential nuisances will be controlled;
- [5] The means by which the applicant will control stormwater runoff and erosion to protect watersheds and groundwater aquifers;
- [6] The location, height, and type of all proposed fences;
- [7] All machinery and equipment to be used and/or stored during the quarrying, extractive, or other operation, and the location thereof;
- [8] A transportation plan identifying the mode of transportation to be used, the size and types of vehicles to be used, the number and frequency of trips to and from the site, and the routes to be used by trucks or locomotives;
- [9] The location and type of landscaping to be used to screen the quarrying, extractive, or other operation from adjacent land uses and public rights-of-way; and
- [10] Other information required by the Plan Commission.

(b) Restoration requirements. In order to ensure that the area of quarrying, extractive, or related operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall submit to the City Plan Commission a plan for such restoration in the form of the following. Existing quarry operations shall submit a restoration plan within two years following the adoption of this chapter.

- [1] An agreement with the City whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the City.
- [2] A physical restoration plan showing existing topography (at a contour interval specified by the Plan Commission) and the proposed contours after restoration, plantings and other special features of restoration, and the method by which such restoration is to be accomplished. Every two years following the initial conditional use permit issuance or adoption of this chapter, whichever is applicable, the applicant or his successor shall submit an update to the restoration plan showing restoration progress and existing topography of the quarry site.
- [3] A bond, written by a licensed surety company, a certified check, or other financial guaranty satisfactory to the City in an amount sufficient, in the opinion of the Director of Community Development, to secure the performance of the restoration agreement.
- [4] Such agreement and financial guaranty shall be in a form approved by the City Attorney.
 - [a] If the applicant fails to fulfill the agreement, such bond, check or other financial guaranty shall be deemed forfeited for the purpose of enabling the City to perform the restoration.
 - [b] Restoration shall proceed as soon as practicable and at the order and direction of the Director of Community Development. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years.
 - [c] At any stage during the restoration, the plan may be modified by mutual agreement between the City and the owner or operator.
 - [d] The restoration plan shall specify what fill material will be used,

the method and extent of compaction, and the depth of topsoil upon completion of the quarry, extractive, or related operation. In all cases, fill shall consist of clean earth, and no more than 25% by volume per truckload of building stone or concrete, and no more than 5% by volume per truckload of incidental asphalt. Where there is backfilling, the method of backfilling shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility, or unsightliness. In any case, the finished condition of the restored area, except for rock faces, outcroppings, water bodies, or areas of proposed building or paving construction, shall be of sufficient depth of earth to support plant growth.

- [e] Within one year after the cessation of the operation or any phase of the operation, all temporary structures (except fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition.
 - [f] In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of 1 1/2 horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.
 - [g] Upon completion of quarry operations, the quarry operator shall be required to submit a restoration report prepared by a registered professional engineer certifying that the restoration plan has been fully complied with.
- [5] Restoration shall proceed as soon as practical and at the order and direction of the Director. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years. Aerial photographs of the quarry site shall also be provided at least every other year, and topographical data, to a detail required by the Plan Commission, shall be required at least every two years. The quarry operator shall be required to submit restoration progress reports and a final restoration report prepared by a registered professional engineer certifying that the restoration plan discussed in § 275-41D(5)(b) has been fully complied with.
- (c) Nonconforming quarrying uses. Any nonconforming quarrying use shall, on or before one year from the adoption and publication of this chapter, apply to the Plan Commission for a use and occupancy permit. The Plan Commission shall require a plan of operation, final restoration plan, intermediate restoration plans, as deemed necessary, and may impose such restrictions upon the use of such site, and the height and bulk of any structure, as may be reasonable and not unduly burdensome or onerous under the particular circumstances, provided that such restrictions shall not be more restrictive than the requirements established for the district in which such structure or use is located. In addition, a nonconforming use shall be subject to the requirements of § 275-36B(1), Table 275-36-1 and § 275-41D(5).
- [1] Setback requirements from adjacent properties which are subdivided (as a subdivision is defined in Chapter 236, Wisconsin Statutes), shall be a minimum of 50 feet.
 - [2] The minimum setback from all other adjacent parcels shall be at least 20 feet.

E. Institutional/public/semipublic uses.

- (1) Reserved.
- (2) Educational facilities.
 - (a) An educational facility may be allowed as a conditional use in any residential district if the design, intensity and layout of the development are compatible with surrounding land uses.
 - (b) Colleges, universities, technical schools and other similar graduate schools are prohibited in all residential districts.
- (3) Golf driving ranges.
 - (a) A golf driving range may be approved as an accessory use in the P-1 District when it is accessory to an approved golf course.
 - (b) A golf driving range may be approved as a conditional use per § 275-27 when it is not associated with a golf course.
- (4) Landfills. No conditional use in an L-1 District shall be allowed until the following provisions have been met:
 - (a) Operational plan required. Each applicant for a conditional use in the L-1 Landfill District shall submit an operation plan for the use. The operational plan shall specify:
 - [1] A timetable for operation of the landfill, including the date on which the landfill operation will begin and the planned date of the completion of the operation;
 - [2] A phasing plan showing the location and timing on all proposed phases;
 - [3] Hours of operation and days of operation for the landfill operation;
 - [4] The types of material or refuse to be disposed of;
 - [5] The means by which noise, dust, debris, and other potential nuisances will be controlled;
 - [6] The means by which the applicant will collect and dispose of leachate to protect watersheds and groundwater aquifers;
 - [7] The means by which the applicant will control stormwater runoff and erosion to protect watersheds and groundwater aquifers;
 - [8] The location, height, and type of all proposed fences;
 - [9] All machinery and equipment to be used and/or stored during the landfill operation;
 - [10] A transportation plan identifying the mode of transportation to be used, the size and types of vehicles to be used, the number and frequency of trips to and from the site, and the routes to be used by trucks or locomotives;
 - [11] The location and type of landscaping to be used to screen the landfill operation from adjacent land uses and public rights-of-way; and
 - [12] Other information required by the Plan Commission.
 - (b) Restoration and reuse plan required. A restoration and reuse plan, provided by the applicant, shall contain existing topography (at a contour interval specified by the Plan Commission) and proposed contours after filling or restoration; depth of the restored topsoil; and planting or restoration and restoration commencement and completion dates. Updates of the restoration plan shall be filed annually to show restoration progress. The applicant and/or owner of the sanitary landfill site shall furnish the necessary sureties, which will enable the City to perform the planned restoration of the site in the event of default by the applicant. The

amount of such sureties shall be based upon cost estimates prepared by the City, and the form and type of such sureties shall be approved by the Common Council.

F. Miscellaneous uses.

- (1) Drive-through facilities.
 - (a) Standalone drive-through facilities may be allowed as an accessory or principal use in zoning districts where the use is allowed as a principal use.
 - (b) All drive-through facilities shall comply with the setback requirements of the zoning district where the use is allowed.
 - (c) Protective canopies shall not be closer than 25 feet to the base setback line.
- (d) Drive-through facilities shall meet any additional requirements as set forth in § 275-57.(2) Aboveground/underground storage tanks:
 - (a) Are considered permitted uses in all nonresidential districts.
 - (b) Aboveground installation requires an administrative permit.
 - (c) Shall follow the accessory use requirements of the district in which the tank is located for the appropriate setback requirements.
 - (d) The applicant shall meet all Fire Department requirements.
- (3) Outdoor firing ranges, excluding trap and skeet shooting, are prohibited in all districts.

SECTION IX

Section 275-42 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

A. General Provisions.

- (1) Accessory uses are allowed in any district as may be specified in the appropriate district regulations or in this section.
- (2) Accessory uses are allowed only after the principal structure is present or under construction. The Director of Community Development may administratively approve an accessory structure prior to the principal structure being built, as long as the construction of the principal structure has begun within one year of starting work on the accessory structure. The City has the ability to enforce fines and/or citations.
- (3) Detached accessory buildings and structures that are part of a planned development are subject to Plan Commission review.
- (4) Dimensional requirements.
 - (a) Setbacks. All accessory uses, except where otherwise specified, shall be set back a minimum of five feet from all property lines. Setbacks are measured from the overhang to the lot line. Setbacks shall be regulated as follows:
 - [1] The accessory use setback shall be kept free from accumulation of debris or refuse.
 - [2] The accessory setback shall not be used for the storage of any material or for parking.
 - [3] Only fences, drainage swales, utilities, and landscaping may be allowed within the accessory setback area.
 - (b) All accessory buildings and structures shall be located outside of public easement areas unless Plan Commission approval is granted.

- (c) The use and/or location requirements stipulated elsewhere in this chapter may be modified subject to Plan Commission approval.
 - (d) Lot coverage.
 - [1] Where accessory uses are allowed in the front or side yards, the accessory structures or uses shall not occupy more than 15% of the yard area.
 - [2] Residential districts. Accessory uses shall not occupy more than 20% of the rear yard in any residential district.
 - [3] Office and industrial districts. Accessory uses shall not occupy more than 50% of the rear yard area in any office or industrial district.
 - (5) Demonstrated Agricultural Use. "Agricultural uses" shall be defined as land that is primarily used for agricultural activity, including but not limited to the growing of qualified crops, planting in rows, fertilizing and tilling the land, and any other efforts to enhance growth of the yield. Physical evidence of agricultural activity can include furrows, crops, fencing and livestock. Minimal maintenance of the land and naturally growing crops will not be considered agricultural activity.
 - (a) Accessory uses that are for a demonstrated agricultural use shall only be used for storage and demonstrated agricultural purposes, and not for home occupations, commercial storage, or business operations. All setbacks shall be met for the zoning district and shall be located in the rear or side yards in all residential districts.
 - (b) DCD shall regulate the architecture of agricultural accessory uses under § 275-59D(1) of this chapter.
 - (6) Allowed accessory uses. The following accessory uses may be allowed in all yards and shall be set back a minimum of five feet from all property lines: basketball hoops, bird baths, district heating/cooling, flagpoles, fountains, gardens, gazebos (fabric roof), generators, geothermal systems, greenhouses (polycarbonate type roof and walls), lawn sculptures, patios (uncovered), pergolas (detached), pools (seasonal and under 4' in height), religious statues, tree houses, and wishing wells. A building permit may be required for these uses.
 - (7) Prohibited accessory uses. Skateboard ramps are prohibited within residentially zoned districts.
- B. Accessory buildings. All accessory buildings shall require the issuance of a building permit.
- (1) Accessory buildings greater than 144 square feet (includes accessory buildings, garages (detached), gazebos, pavilions/covered patios (detached), permanent greenhouses, playhouses, pole barns and pool houses).
 - (a) Size.
 - [1] Square footage. Square footage shall be based on the first-floor footprint. Eaves up to 24" are excluded from this measurement. Overhangs and other attached accessory structures, as defined in §275-42D, exceeding 24" shall be counted towards the square footage.
 - [a] Single-family and two-family residential zoning districts.
 - i. The maximum combined allowable square footage is outlined in Table 275-42-1.
 - ii. Properties which are 5 acres or greater with a demonstrated agricultural use, as determined by the Director, may exceed the maximum combined allowable square footage listed in Table 275-42-1.

Table 275-42-1		
Lot Area (acres)	Maximum Combined Allowable Square Footage of Accessory Buildings greater than 144 SF	Maximum Number of Accessory Buildings
Less than 2	840	2
2.0 - less than 2.5	1,500	2
2.5 - less than 3.0	1,750	3
3.0 - less than 3.5	2,000	3
3.5 - less than 4.0	2,250	3
4.0 - less than 4.5	2,500	3
4.5 - less than 5.0	2,750	3
5.0 and greater	3,000	3

[b] All other zoning districts. There is no maximum allowable square footage of accessory buildings within these zoning districts. Lot coverage percentages shall be met.

[2] Height.

[a] General farm buildings.

- i. General farm buildings, including barns, silos, sheds, and storage bins intended for allowed agricultural uses, shall be sized to meet demonstrated agricultural needs.
- ii. No farm buildings or parts of farm buildings shall exceed 60 feet in height.
- iii. Accessory buildings exceeding 35 feet in height shall provide one additional foot of required front, side, and rear yard for each one foot over 35 feet in height.

[b] Single-family and two-family residential zoning districts.

- i. An accessory building height may only be one story and shall not exceed 18 feet in height. A half story may be permitted, pursuant to § 275-70.
- ii. DCD may grant a waiver for accessory buildings with a height up to 21 feet to match the exterior of the principal structure or for a larger footprint accessory building.
- iii. Accessory dwelling units (ADU's) / Living quarters are not permitted within accessory buildings.

[c] All other zoning districts. The maximum height allowed shall comply with the use table for that district.

(b) Quantity.

[1] Single-family and two-family residential zoning districts.

Lot Area (acres)	Maximum Number of Accessory Buildings
Less than 2.5	2
2.5 and greater	3
5.0 and greater with a demonstrated agricultural use, as determined by the Director	No limit

- [2] All other zoning districts. There is no maximum number of accessory buildings within these zoning districts. Lot coverage percentages shall be met.
- (c) Location.
- [1] Yards. May be located in the front, side or rear yard.
- [2] Setbacks. Setbacks are measured from the overhang to the lot line.
- [a] The setbacks of the zoning district shall be met.
- [b] The Plan Commission/Community Development Authority shall have the ability to modify setbacks for all accessory buildings in any non single-family residential district.
- [3] Building separation. A minimum of 10' of separation is required between other structures, measured wall to wall. In the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.
- (d) Building materials. Accessory buildings may be made from either masonry or wood frame materials, subject to §275-42B(1)(c)[3].
- (e) Pad/foundation requirements. Accessory buildings greater than 144 square feet shall be constructed on a foundation or concrete slab.
- (f) Use Approval Permit. DCD staff shall determine if Architecture Review Committee review and approval is required.
- [1] Accessory buildings located within non single-family residential zoning districts with a maximum size of 2,500 square feet shall require the issuance of an administrative permit by DCD staff.
- [2] Accessory buildings in non single-family residential zoning districts that exceed 2,500 square feet shall require Plan Commission review and approval.
- (2) Accessory buildings 144 square feet or less (includes gazebos, pavilions/covered patios (detached), permanent greenhouses, playhouses, pool houses, and sheds).
- (a) Size.
- [1] Square footage. Square footage shall be based on the first-floor footprint. Eaves up to 24" are excluded from this measurement. Overhangs and other attached accessory structures, as defined in §275-42D, exceeding 24" shall be counted towards the square footage.
- [a] Single-family and two-family residential zoning districts.
- i. The maximum size is 144 square feet. Accessory buildings 144 square feet or less do not count towards

the maximum combined allowable square footage outlined in Table 275-42-1.

- ii. Properties which are 5 acres or greater with a demonstrated agricultural use, as determined by the Director, may exceed the maximum combined allowable square footage listed in Table 275-42-1.

[b] All other zoning districts. There is no maximum allowable square footage of accessory buildings within these zoning districts. Lot coverage percentages shall be met.

[2] Height.

[a] General farm buildings.

- i. General farm buildings, including barns, silos, sheds, and storage bins intended for allowed agricultural uses, shall be sized to meet demonstrated agricultural needs.
- ii. No farm buildings or parts of farm buildings shall exceed 60 feet in height.
- iii. Accessory buildings exceeding 35 feet in height shall provide one additional foot of required front, side, and rear yard for each one foot over 35 feet in height.

[b] Single-family and two-family residential zoning districts.

- i. An accessory building height may only be one story and shall not exceed 18 feet in height. A half story may be permitted, pursuant to § 275-70.
- ii. DCD may grant a waiver for accessory buildings with a height up to 21 feet to match the exterior of the principal structure or for a larger footprint accessory building.
- iii. Accessory dwelling units (ADU's) / Living quarters are not permitted within accessory buildings.

[c] All other zoning districts. The maximum height allowed shall comply with the use table for that district.

(b) Quantity.

[1] Single-family and two-family residential zoning districts.

Lot Area (acres)	Maximum Number of Accessory Buildings
Less than 2.5	2
2.5 and greater	3
5.0 and greater with a demonstrated agricultural use, as determined by the Director	No limit

[2] All other zoning districts. There is no maximum number of accessory buildings within these zoning districts. Lot coverage percentages shall be met.

(c) Location.

[1] Yards. May be located in the side or rear yard.

- [2] Setbacks. Setbacks are measured from the overhang to the lot line.
 - [a] Sheds located in the side yard shall meet the setbacks of the zoning district. Sheds located in the rear yard shall be located a minimum of 5' from all property lines.
 - [b] The Plan Commission/Community Development Authority shall have the ability to modify setbacks for all accessory buildings in any non single-family residential district.
- [3] Building separation. A minimum of 10' of separation is required between other structures, measured wall to wall. In the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.
- (d) Building materials. Accessory buildings may be made from either masonry or wood frame materials, subject to §275-42B(2)(c)[3].
- (e) Pad/foundation requirements. Accessory buildings 144 square feet or less must be placed over a concrete slab, a solid base of patio block, asphalt, poly-carbonate or on a floor of pressure treated wood.
- (f) Use Approval Permit. DCD staff shall determine if Architecture Review Committee review and approval is required.
 - [1] Accessory buildings located within non single-family residential zoning districts with a maximum size of 2,500 square feet shall require the issuance of an administrative permit by DCD staff.

C. Accessory dwelling units.

- (1) Residential quarters may be allowed in the B-2, B-3 and B-5 Districts, provided that the following regulations are met:
 - (a) The accessory dwelling is located in the same building as the business;
 - (b) The accessory dwelling shall meet all minimum floor area requirements of the Rm-1 Zoning District;
 - (c) Adequate off-street parking for the occupant and visitors is provided as well as access to and from a public roadway; and
 - (d) A sufficient amount of yard space is provided for ordinary outdoor activities.
- (2) Residential quarters for the caretaker or clergy may be provided in the I-1 District.
- (3) Family dwelling unit. An accessory family dwelling unit, commonly called an "in-law suite," may be permitted in the agricultural and single-family residential zoning districts, provided:
 - (a) The family dwelling unit is attached and architecturally integrated with the principal dwelling unit. Detached accessory dwelling units are prohibited.
 - (b) The family dwelling unit shall require a zoning permit in compliance with § 275-24.
 - (c) The family dwelling unit may be built simultaneously with a new residence or after an existing residence has been constructed.
 - (d) The owner is required to reside on the property. The owner may live in either the principal unit or the family dwelling unit.
 - (e) The occupants of the principal unit and family dwelling unit shall be related by blood, adoption, marriage or other legally recognized relationship which creates a common household. A deed restriction on the family dwelling unit and property shall be recorded to limit the occupants as defined hereunder.

- (f) No more than two people shall live in the family dwelling unit.
 - (g) The maximum size of the family dwelling unit shall be no greater than 50% of the living space of the principal unit.
 - (h) The family dwelling unit may have a separate entrance, provided the entrance is not in the front of the principal unit.
 - (i) The family dwelling unit shall have a minimum of one interior connection to the principal unit or attached to the principal building.
- D. Accessory structures, attached. All accessory structures attached to a building shall require the issuance of a building permit, including balconies (covered or uncovered), carports attached to a building (only if supplemental to a garage), pavilions/covered patios (attached), pergolas (attached), and porches. Attached accessory structures exclude those defined in 275-42B.
 - (1) Yards. May be located in the front, side or rear yard.
 - (2) Setbacks. Setbacks are measured from the overhang to the lot line.
 - (a) The setbacks of the zoning district shall be met.
 - (3) Building separation. A minimum of 10' of separation is required between other structures, measured wall to wall. In the case of proper fire separation, the Building Inspector may allow accessory structures to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.
- E. Antennas (terrestrial), amateur radio antennas (e.g., ham radio), and satellite dishes. The standards below shall be interpreted and enforced in a manner consistent with the Telecommunications Act of 1996 and applicable FCC regulations.
 - (1) Location.
 - (a) Terrestrial antennas, amateur radio antennas (e.g., ham radio), and digital satellite receiving dishes 36 inches or less in diameter may be located in the rear yard or on the roof of the principal structure in all residential districts.
 - (b) Earth station dish antennas may be located in the rear yard in any residential district.
 - (c) Terrestrial antennas and earth station dish antennas may be located in the side and rear yard or on the roof of the principal structure in nonresidential districts, including agricultural districts.
 - (d) Amateur radio antennas (e.g., ham radio) may be located in the rear or side yard.
 - (2) Measurements.
 - (a) All freestanding antennas shall be located not less than five feet from a lot line. Adjustable antennas shall not be closer than five feet to the lot line in any position.
 - (b) All freestanding terrestrial antennas, roof antennas, and amateur radio antennas (e.g., ham radio) shall meet the height requirements for the district in which they are located, except as provided in § 275-45B of this chapter.
 - (c) Ground-mounted earth station dish antennas shall not exceed 15 feet in height.
 - (d) All antennas, including earth station dish antennas, shall be constructed and anchored in such a manner to withstand winds of not less than 80 miles per hour, and such installations shall be constructed of noncombustible and corrosive-resistant materials.
 - (3) Additional regulations.
 - (a) All antennas, including earth station dish antennas, shall be filtered and/or shielded so as to prevent the emission or reflection of electromagnetic radiation

that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to its installation, the owner of the dish antenna shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.

- (b) Not more than one terrestrial and one earth station dish antenna per dwelling unit shall be allowed on a lot or parcel in a residential zoning district.
- (c) Earth station dish antennas shall be located and designed to reduce their visual impact on surrounding properties.
- (d) No form of display or identification may be displayed on the dish or framework other than the customary manufacturer's identification plates.
- (e) All antennas, and the construction supports and installation thereof, shall conform to applicable City Building Code and Electrical Code regulations and requirements. Appropriate permits shall be issued by the Building Inspector. Prior to the issuance of a permit for a building-mounted earth station dish antenna, the applicant shall submit a plan or document prepared by a registered professional engineer which certifies that the proposed dish antenna installation is structurally sound to accommodate wind load, snow load, and dead load.
- (f) Portable or trailer-mounted antennas are not allowed, with the exception of temporary installation for on-site testing and demonstration purposes for a period not to exceed two days at any one location.
- (g) In the event the property owner of a parcel of land located in a residential district determines and documents that the placement of an antenna in a rear yard would prevent its use for its intended purpose, the property owner may apply to the Plan Commission for a variance to allow the installation of the antenna in a side yard location. The procedure for issuing the Plan Commission variance shall follow the procedure set forth in § 275-30B of this chapter. If the owner determines and documents that a side yard location is not functional, then the Plan Commission may allow a roof-mounted earth station dish antenna.

F. Decks. All attached and detached decks shall require the issuance of a building permit.

- (1) Yards. May be located in the front, side or rear yard.
- (2) Setbacks.
 - (a) The setbacks of the zoning district shall be met.
 - (b) Decks located in the rear yard that are 4' in height or less shall be located a minimum of 5' from all property lines.
 - (c) See also § 275-46E(3) regarding decks sized for entry purposes.

G. Donation boxes. Donation boxes shall be monitored on at least a biweekly basis, or within five business days of a request by the Code Compliance Specialist, so that the contents are collected and that graffiti which becomes a blight is precluded. There shall be no accumulation of any items outside of the donation box. Donation boxes are required to be cleaned or repainted to remove graffiti that would otherwise result in a blight to the area. The owner's contact information shall be displayed clearly on the box. The donation box shall not obstruct traffic, sidewalks, fire lanes, or impact the required the required number of parking spaces.

H. Fences.

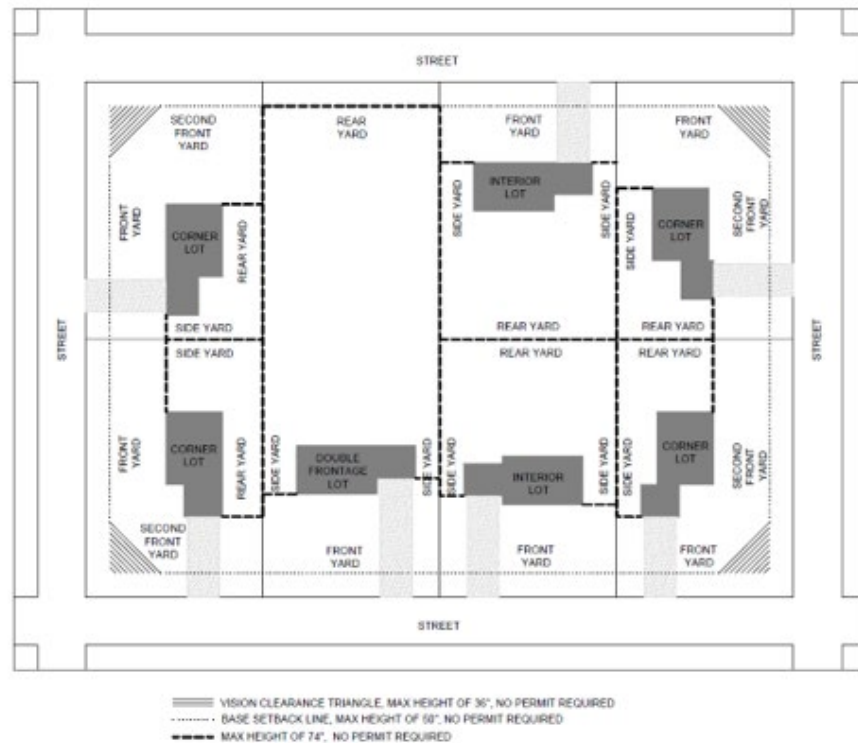
- (1) Height. Fence height shall be measured from the average grade of the ground beneath the fence.
 - (a) Residential.
 - [1] Front yard. No fence in the front yard shall be located closer to the street than the base setback line and shall not exceed 50 inches in height. No

fence in the vision clearance triangle shall exceed three feet in height above mean street grade. On corner lots, the side facing the side street (or second street) shall also be considered a front yard.

- [2] Side and rear yards. Fences located in the side or rear yards shall not exceed 74 inches in height. On double frontage lots, the side facing the rear street shall be considered a rear yard.

- (b) Nonresidential. Fences shall not exceed 98 inches in height.

**Figure V – 1
Fence Location**



- (2) Location.

- (a) Fences made of maintenance-free materials may be located on the lot line. Such materials include, but are not limited to, cedar, metal fences (chain-link, wrought-iron, aluminum), PVC/recycled materials, removable fencing, pressure-treated wood and other maintenance-free materials, as approved by the Director. Common-lot-line fencing that has a finished side facing both properties and is maintained by both owners with a prior agreement is allowed with a survey. Fences that are not made of maintenance-free materials shall be located at least two feet from the property line.
- (b) Fences shall be located outside of public easement areas unless Plan Commission approval is granted.
- (c) Fences shall not block or impact existing drainage patterns. Any grade changes made in the area of the fence installation must follow the requirements in § 275-55.

- (3) Construction and maintenance.

- (a) All structural and support components of a fence shall face away from adjacent properties.

- (b) All fences shall be constructed straight and plumb. Any fence that is to be constructed or maintained in other than a straight and plumb condition, including but not limited to certain types of split-rail fences, shall require Plan Commission review and approval.
 - (c) Fences in nonresidential districts shall adhere to § 275-59.
 - (d) All fences shall be maintained in good repair at all times. No signs or display shall be allowed on a fence. No materials shall be stored between the fence and the lot line.
- (4) Permits. No permit is required for fences meeting the above criteria. A permit shall be required for:
 - (a) Residential fences located in the front yard that exceed 50 inches but not more than 74 inches, provided that all other requirements for fences are met. DCD review and approval is required.
 - (b) Residential fences exceeding 74 inches in height, provided that all other requirements for fences are met. Plan Commission review and approval is required.
- (5) Exception.
 - (a) A snow fence temporarily constructed for the purpose of catching wind-blown snow shall not be subject to these fence requirements, provided that it shall be installed no earlier than November 1 of each year and shall be removed no later than April 1 each year.
 - (b) Windscreens are allowed on a seasonal basis within Institutional and Park Zoning Districts and may display content. Windscreens shall be maintained and in good repair.
- I. Firewood and compost piles.
 - (1) Firewood and compost piles with a maximum height of 6 feet shall be allowed as an accessory use in all zoning districts. Firewood piles that are stacked against a permanent structure have no height restriction.
 - (2) Yards. Firewood and compost piles may be located in the rear yard.
 - (3) Setbacks. Firewood and compost piles shall be located a minimum of 5' from all property lines.
- J. Home occupations. Home occupations may be allowed as accessory uses in any agricultural or residential district, provided that they comply with the following standards:
 - (1) General regulations.
 - (a) Home occupations shall be allowed only after staff review and administrative approval in accordance with the procedures set forth in Article III of this chapter.
 - (b) The total area devoted to a home occupation shall not exceed 20% of the building area of the principal dwelling unit.
 - (c) A home occupation shall produce no offensive noise, vibration, dust, odors, smoke, heat, pollution, glare, or radio, electrical, or television interference or otherwise produce a nuisance as determined by the Plan Commission.
 - (d) No materials that decompose by detonation shall be allowed in conjunction with a home occupation.
 - (e) No home occupation shall be allowed which changes the outside appearance of the dwelling or is visible from the street.
 - (f) Materials used in or produced by a home occupation may not be stored or displayed outside the dwelling without Plan Commission approval.

- (g) No more than one nonresident employee shall be employed by a home occupation.
 - (h) Retail and wholesale sales shall be prohibited, except for the retail or wholesale sales of products or goods produced or fabricated on the premises as a result of the home occupation.
 - (i) The applicant shall demonstrate that there is sufficient off-street parking available to the home occupation. All vehicular parking for both the residence and the home occupation shall be located on the premises.
 - (j) A home occupation shall be carried on wholly within the principal dwelling. No home occupation nor any storage of goods, materials, or products connected with a home occupation shall be allowed in any accessory building or detached garage.
 - (k) Home occupation uses shall meet all applicable Fire and Building Code safety requirements.
 - (l) No home occupation involving visits to the site of the home occupation by customers or the loading or unloading of business-oriented material shall be operated between the hours of 8:00 p.m. and 8:00 a.m.
- (2) Prohibited home occupations. The following uses are prohibited as home occupations:
- (a) Animal hospitals or pet boarding;
 - (b) Antique shop;
 - (c) Automobile or other motor vehicle repair or paint shops;
 - (d) Dance studios for more than six students;
 - (e) Furniture stripping and/or refinishing;
 - (f) Gift shops;
 - (g) Gun or ammunition sales;
 - (h) Manufacturing or assembling items for sale from components not made on the same premises;
 - (i) Mortuaries;
 - (j) Music studios for more than three students;
 - (k) Photographic studios;
 - (l) Private clubs;
 - (m) Restaurants;
 - (n) Small engine repair shops;
 - (o) Stables or kennels;
 - (p) Tourist homes or boardinghouses; and
 - (q) Any other home occupations not meeting the criteria established by this chapter.

K. Hot tubs.

- (1) Yards. Hot tubs may be located in the side or rear yard.
- (2) Setbacks.
 - (a) Hot tubs located in the side yard shall meet the setbacks of the Zoning District.
 - (b) Hot tubs located in the rear yard shall be located a minimum of 5' from all property lines.

- (3) Building separation. May be permitted as close as necessary to a principal or accessory building.
- L. Outdoor displays and sales.
- (1) The outside display of merchandise may be allowed as an accessory use in all commercial, manufacturing and industrial districts if all of the following provisions are met:
- (a) The display shall not exceed 500 square feet in commercial districts or 1,000 square feet in the manufacturing and industrial districts; excluding seasonal displays, temporary events or displays approved as part of the plan of operation;
 - (b) The display does not obstruct traffic, sidewalks, or fire lanes; and
 - (c) The display area is not being used for the storage of merchandise only.
- (2) Display of vehicles for sale. Not more than one automobile, boat, recreational vehicle, or other personal vehicle may be displayed in a driveway or parking lot for sale, unless a sales lot has been approved by the Plan Commission in an appropriate business district. The vehicle must be owned and registered to the occupant of the premises, and such sales shall not occur more than three times in any given year. Vehicles shall not be displayed on lawn areas or within a public right-of-way.
- (3) Outdoor displays placed under permanent canopies for automotive fuel sales shall be permitted.
- (4) Items that are visible and are not located within an approved area for outdoor displays and sales are considered outdoor storage and shall meet the requirements in § 275-42M.
- M. Outdoor storage, permanent. Outdoor storage may be allowed as an accessory use as defined in the use summary tables for each zoning district, subject to Department of Community Development staff review and approval, and provided that such storage is screened from view of any public right-of-way or residential area.
- N. Outdoor storage, temporary. Temporary outdoor storage may be allowed as an accessory use in all zoning districts, subject to the following provisions:
- (1) Temporary outdoor storage units (example: shipping containers/crates) shall abide by the restrictions below:
- (a) An administrative permit application shall be submitted and a zoning permit issued prior to the temporary outdoor storage unit being placed on the property, if it will be stored on the property for more than 30 days.
 - (b) Only one temporary outdoor storage unit will be allowed per tax key. The Department of Community Development will review requests for any additional temporary outdoor storage units.
 - (c) Temporary outdoor storage units shall not exceed eight feet in height, 10 feet in width and 20 feet in length.
 - (d) No flammable or explosive materials may be stored in the temporary outdoor storage unit.
 - (e) No temporary outdoor storage unit will be used to store materials related to an off-premises business or a home occupation.
- (2) Location:
- (a) Temporary storage units shall be placed on a hard, all-weather surface, driveway or turnaround area. (This does not include areas of dirt or grass.)
 - (b) Temporary outdoor storage areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.
 - (c) Temporary outdoor storage units will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

- (3) Duration:
 - (a) Temporary outdoor storage units shall not be stored on a property longer than 30 days unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of the temporary outdoor storage unit with an application and permit shall not exceed 60 days unless as specified in the next condition.
 - (b) Property owners that have applied for and received a valid building permit shall be allowed to store temporary outdoor storage units on the property no longer than 180 days or until final occupancy is issued, whichever comes first.
 - (c) If the project has a valid building permit, the property owner shall not be required to apply for an administrative permit.
 - (d) If the temporary outdoor storage unit is scheduled to remain on the property over 180 days, then the property owner shall apply for an administrative permit.
 - (e) Once the project or property owner receives final occupancy and/or the building permits have been closed out and final inspected, the property owner must remove the temporary outdoor storage unit within 30 days.
 - (f) Temporary outdoor storage units and small homes are prohibited as a permanent use.
- O. Pools. All above ground and in ground pools shall require the issuance of a building permit.
 - (1) Yards. Pools may be located in the side or rear yard.
 - (2) Setbacks.
 - (a) Pools located in the side yard shall meet the setbacks of the zoning district.
 - (b) Pools located in the rear yard shall be located a minimum of 5' from all property lines.
 - (3) Building separation. A minimum of 10' of separation is required between pools and any wall or structure overhang.
- P. Refuse containers. Refuse containers may be allowed as an accessory use in all zoning districts, subject to the following provisions. City-issued trash and recycling bins intended for weekly pickup and dumpsters used by commercial, industrial or multifamily developments for the primary use of everyday garbage disposal or recycling are exempt from this section and shall refer to Chapter 220 of the Municipal Code.
 - (1) Refuse containers (example: dumpsters/Bagster bags) shall abide by the restrictions below:
 - (a) Only one refuse container will be allowed per tax key. The Department of Community Development will review requests for any additional refuse containers.
 - (b) Refuse containers shall not exceed eight feet in height, 10 feet in width and 24 feet in length.
 - (c) No flammable or explosive materials may be stored in a refuse container.
 - (d) No refuse container will be used to store materials related to an off-premises business or a home occupation.
 - (2) Location:
 - (a) Refuse containers areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.
 - (b) Refuse containers will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.
 - (3) Duration:

- (a) Refuse containers shall not be stored on a property longer than 15 days, unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of a refuse container with an application and permit shall not exceed 75 days.
- (b) Property owners that have applied for and received a valid building permit for an addition, remodel or alteration shall be allowed to store a refuse container on the property no longer than 180 days.
- (c) Permits for new construction shall be allowed to store a refuse container until final occupancy. To prevent construction debris from leaving the site, refuse containers must be changed regularly.

Q. Retaining walls. See §275-55A(5).

R. Small wind energy systems.

- (1) Authority. This subsection is adopted pursuant to authority granted pursuant to Wisconsin Statutes, §§ 62.23(7) and 66.0401.
- (2) Purpose. The purpose and intent of this subsection is to oversee the permitting of small wind energy systems and to preserve and protect public health, safety and welfare without significantly increasing the cost or decreasing the efficiency of a small wind energy system.
- (3) Definitions. Refer to § 275-70.
- (4) General regulations. A small wind energy system shall comply with the use regulations of the applicable zoning district and with the following requirements:
 - (a) A wind tower for a small wind energy system shall be set back a distance equal its total height from:
 - [1] Any public right-of-way, unless written permission is granted by the governmental entity with jurisdiction over said road right-of-way.
 - [2] Any overhead utility line, unless written permission is granted by the affected utility.
 - [3] Any property line abutting the property that is not residentially zoned, unless written permission is granted by the owner of the abutting property.
 - (b) Access. All ground-mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access. The tower shall be designated and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 12 feet above the ground.
 - (c) The tower shall be designed and installed so that the distance between the bottom of the blade at its lowest point of rotation shall not be less than 20 feet above the ground.
 - (d) Electrical wires. All electrical wires associated with the small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, shall be located underground.
 - (e) Lighting. The wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration. The wind generator and tower shall remain painted or finished the color or finish that was originally applied by the manufacturer and was approved by the Director of Community Development.
 - (f) Signs. All signs other than the manufacturer's or installer's identification, appropriate warning signs or owner identification on a wind generator tower

building, or other structure associated with the small wind energy system visible from any public road, shall be prohibited.

- (g) The small wind energy systems, including the tower and associated structure, shall comply with all applicable state building codes, construction and electrical codes and the national electrical codes.
 - (h) Utility notification and interconnection. Small wind energy systems that connect to the electrical utility shall comply with the Public Service Commission of Wisconsin Rules for Interconnecting Distributed Generation Facilities.
 - (i) Noise. Audible noise due to wind energy system operations shall not exceed 50 dBA for any period of time when measured at the exterior of any residence, school, hospital, church or public library and the property line of the adjacent neighbors existing on the date of the approved clean energy system permit. In the event audible noise due to wind energy system operations contains a steady pure tone such as a whine, screech or hum not produced under normal operating conditions, it is prohibited. In the event the ambient noise level exceeds the applicable standards given above, the applicable standard shall be adjusted so as to equal the ambient noise level.
 - (5) Small wind energy system permit.
 - (a) An applicant for a small wind energy system permit shall provide the following:
 - [1] A survey map showing property lines and physical dimensions, including the location, dimensions and types of existing structures on the property, location of the proposed small wind energy system tower, right-of-way of any public road that is contiguous with the property, and the overhead utility lines.
 - [2] Wind energy system specifications include the manufacturer and model, rotor diameter, tower height, tower type and kilowatt specifications.
 - [3] Information regarding noise anticipated to be attributed to the wind energy system.
 - (b) The small wind energy system permit shall expire if the small wind energy system is not installed and functioning within 12 months from the date the permit is issued.
 - (6) Abandonment. The small wind energy system is deemed to be abandoned if it is out of service for a continuous twelve-month period. If the City provides a notice of abandonment, the small wind energy system must be removed at the owner's expense within 90 days of the notice of abandonment. If the owner fails to remove the wind energy system, the City may pursue a legal action to have the wind energy system removed at the owner's expense, including the applicable legal fees. The owner shall have the right to respond to the notice of abandonment within 30 days of receipt of the notice. The City shall withdraw the notice of abandonment if the owner provides information that demonstrates the small wind energy system has not been abandoned.
 - (7) The Director of Community Development shall issue the small wind energy system permit, provided that it complies with the limitations and conditions as set forth herein, as well as applicable provisions of the Wisconsin Administrative Code and Wisconsin statutes. In the event that the application is rejected, the Director of Community Development shall notify the applicant in writing and provide a written statement of the reasons why the application was rejected. The applicant may appeal the decision of the Director of Community Development to the Plan Commission.
- S. Solar energy conversion systems. Solar energy conversion systems (including solar collectors attached to the principal structure and solar collectors erected as an accessory structure) may be allowed as an accessory use in all zoning districts and shall be subject to the following provisions:

- (1) Application. Applications for the erection of a solar energy conversion system shall conform to the application and approval procedure for a building permit set forth in § 275-25 of this chapter and the Electrical Code. In addition, the application shall include a copy of any solar easements obtained from adjacent property owners.
 - (a) A building permit application submittal for a solar energy conversation system shall require a complete set of plans, including a site plan and any structure details drawn to scale. This plan set will be reviewed to ensure that a solar panel does not negatively impact the public health, safety and welfare.
 - (2) Construction. Solar energy conversion systems shall be constructed and installed in conformance with all applicable state and local building and zoning codes.
 - (3) Location and height. Solar energy conversion systems shall meet all setback and yard requirements for the district in which they are located. Solar energy conversion systems shall conform to all height requirements of this chapter.
- T. Sport courts, tennis courts and permanent volleyball courts.
- (1) Yards. Sport courts, tennis courts and permanent volleyball courts may be located in the rear yard.
 - (2) Setbacks. Sport courts, tennis courts and permanent volleyball courts shall be located a minimum of 5' from all property lines.
- U. Swing sets and gym sets.
- (1) Yards. Swing sets and gym sets may be located in the rear yard.
 - (2) Setbacks. Swing sets and gym sets shall be located a minimum of 5' from all property lines.

SECTION X

Section 275-43 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- A. Application process. As applicable, temporary uses, structures and special events shall obtain a permit. Applications and necessary materials shall be submitted to staff and may be subject to application fees and developer deposit fees. The temporary use, structure or special event shall be reviewed in accordance with the provisions of this section and other applicable sections of this chapter. Temporary uses, structures, and special events requiring a permit include:
- (1) Festivals, food truck festivals, art/craft fairs, outdoor markets, plant/flower sales, circuses, concerts, wine/food tastings, beer gardens, races, parades, block parties, sporting events, exhibitions, outdoor seating/dining, pop up live music, car shows, fundraisers/outings (e.g., golf outings/company picnics), game day/nights (bingo/trivia), outdoor movie theater, material storage and associated work for Municipal projects as approved by the City, and/or other similar events unless approved as part of an existing plan of operation or an approved calendar of events.
 - (2) The use of public streets, rights-of-way or sidewalks.
 - (3) An event that creates a substantial impact on the operations of the City, surrounding neighbors or neighborhoods and requires public safety and City services above and beyond their normal functions, at the discretion of City staff.
 - (4) Events held on private property that are open to the public may be classified as a special event if there is a significant impact on the City's operations and residents.
- B. Submittal requirements. An application will be considered complete if it contains all the information required under this section.
- (1) Completed application shall be submitted prior to the event.

- (a) Class I events, as outlined in DHS 110.44(20r), with more than 5,000 people, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 120 days prior to the proposed event.
 - (b) Class II events with 501-5,000 people, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 90 days prior to the proposed event
 - (c) Class III events with 151-500 people, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 45 days prior to the proposed event.
 - (d) Class IV events with 150 people or less, including personnel, volunteers, vendors, and attendees shall be filed with the City at least 15 days prior to the proposed event.
- (2) Deposits for Class I Events. Application fee in the form of a deposit shall be submitted to the City for all Class I events. The deposit shall be used to cover City staff review, planning time and coordination to review the application itself and through the completion of the event. Staff will use their direct billable hours to debit the submitted deposit amount. Should the deposit itself go down to zero, the applicant shall replenish the deposit to the original amount. Any remaining deposit funds after the permit is issued or denied shall be returned to the applicant. The deposit will start at \$1,000.
- (3) Detailed plan of operation including the following information:
 - (a) A description, date, time and location of the event. Special events in residential neighborhoods may require notification of adjacent neighbors. Include proposed site requests, including but not limited to: amplified music or entertainment and the hours, fireworks, closure of public streets or rights-of-way meeting the requirements of §230-6 of the Municipal Code, parking, electricity, temporary structures, temporary fencing, waste/recycling collection and disposal, and portable restrooms and hand wash stations. Additional items to consider include additional security personnel, emergency plan for inclement weather, potable water for consumption on site, and medical/first aid kits.
 - (b) The estimated maximum number of participants, spectators and vendors at the proposed event. If the event is a multi-day event, it should be noted the estimated attendance per day.
 - (c) Whether alcohol will be sold or served at the event.
 - (d) Whether food and/or merchandise will be sold at the event.
- C. Time limits. Temporary use, structure and special event permits shall be valid for a specified period of time. A permit shall lapse if not used within the dates approved.
- D. Required findings. The application shall be approved as submitted or in a modified form if the Director of the Department of Community Development finds that:
 - (1) The proposed temporary use, structure, or special event will be located, operated, and maintained in a manner consistent with the policies of the New Berlin Comprehensive Plan and the provisions of this chapter;
 - (2) The approval of the application will not be detrimental to property or improvements in the surrounding area or detrimental to public health, safety or general welfare. The City may require that the permit holder provide written notice 15 days in advance of the special event to any property owners or tenants as determined during the City department's review. Notice shall include the type of event, name of the special event sponsor(s), date, time and location, event coordinator's name and contact information during the event; and
 - (3) The proposed temporary use, structure or special event complies with all applicable standards of this section, unless otherwise expressly stated.

- (4) Special Events requiring a road closure, except for City run events, shall comply with the following standards:
- (a) A public street shall not be barricaded for recreational purposes for more than 12 hours.
 - (b) The applicant shall provide evidence of written consent of not less than 80% of the property owners abutting the portion of the street to be closed. The applicant is also required to provide evidence that all abutting property owners have been advised of the request for closure.
 - (c) Road closures are only permitted for local streets that are public, not arterial streets that are public. The applicant shall be required to provide a map showing the portion of the street to be closed and where the barricades will be placed.
 - (e) The applicant must be the owner of a property on the street where the event is to be held and shall assume responsibility under the permit for the event, which includes compliance with all City Ordinances, the clean-up of the public right of way, and the return of all City barricades within 48 hours of the event.
 - (f) Barricades to close the street must remain in place for the duration of the event. The applicant must ensure that a drive lane through the blockaded street area of not less than 15' in width shall be provided so that all City emergency service vehicles are able to access properties within the blocked street.
 - (g) If alcohol is being served at the event, it may only be to persons of age and may not be provided to any uninvited guests. Alcohol cannot be sold.
 - (h) Grills may be permitted in the right-of-way, subject to the limitations of this section. Smokers, fireplaces, fire pits, chimineas, and inflatable play structures are prohibited in the right-of-way.
 - (i) All waste and debris must be cleaned up and properly disposed of after the event ends. Public rights-of-way must be restored to the condition that existed prior to the commencement of the event.
 - (j) If complaints are received by the Police Department which are not satisfactorily resolved, the Police Department shall have the authority to revoke the permit and to terminate the event.
 - (k) A permit request may be denied if complaints have been received regarding Special Events on the same street in the past, or if the applicant has failed to comply with the requirements of any City Permits in the past.
 - (l) Special Events requiring a road closure shall not occur on holidays.
- (5) The City may approve temporary events on City property or within public rights-of-way if the additional conditions are met:
- (a) A certificate of insurance (COI) is required to be submitted for the event prior to the event occurring. It shall include the following:
 - [1] COI limits shall name the City of New Berlin as additionally insured.
 - [2] The parties agree to indemnify and hold harmless the other from any and all claims for injury or property damage to the extent that such claims arise out of the negligence of their employees, representatives, agents, contractors or officers as a result of this Agreement. Any indemnity that the City would agree to would be subject to the following limitations: Notwithstanding the forgoing, nothing contained within this agreement is intended to be a waiver or estoppel of the City of New Berlin or its insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within §§ 893.80, 895.52 and 345.05, Wis. Stats. To the extent that indemnification is available and enforceable, the City of New Berlin

or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. Under no circumstances shall the City of New Berlin be required to indemnify the contractor for its own negligent or intentional conduct.

[3] Each party shall provide the other with a certificate of insurance naming each other as an additional insured. The amount of such insurance shall be mutually agreed between the parties. Each party waives their right of subrogation against the other. Both parties' insurance policies shall have a noncancellation provision except upon 30 days' written notice to the other party.

(b) City services. All requests by the applicants for City services must be made at the time of application. The applicant shall be responsible for reimbursement to the City for any city personnel, services, equipment, and facilities provided for the special event. Reimbursement costs shall be calculated to include wages, overtime and fringe benefits and is due within 30 days of receipt of invoice. The City reserves the right to require full or partial payment of estimated costs in advance. All permit, signage and barricade costs are due prior to the special event.

(c) Cleaning/damage deposit. The applicant may be required to submit to the City a deposit depending on the size and number of attendees. The deposit will be refunded to the applicant after an inspection of the premises is conducted and the City determines there is no loss or cleaning costs. The applicant shall be fully responsible for necessary cleanup associated with the permitted event, which must be completed no later than 12 hours after the conclusion of the event. The City reserves the right to retain the entire deposit if cleanup is not satisfactorily completed in the time frame specified.

[1] A deposit of \$5,000 shall be submitted for a Class I Special Event.

[2] A deposit of \$200 shall be submitted for a Class II Special Event.

(d) And any other conditions that may be established by the Mayor, City Attorney, Board or Commission, and/or City staff that seeks to protect the City.

E. Conditions of approval. In approving a temporary use, structure, or special event permit, the Director of the Department of Community Development may impose reasonable conditions, including, but not limited to, limitations on hours, illumination, storage, and parking, necessary to:

- (1) Achieve the general purposes of this section and the specific purposes of the zoning district in which the temporary use will be located or be consistent with the New Berlin Comprehensive Plan;
- (2) Protect the public health, safety, and general welfare; and
- (3) Ensure the operation and maintenance of the temporary use, structure, or special event in a manner compatible with existing uses on adjoining properties and in the surrounding area.

F. Temporary construction, security, or real estate sales offices.

- (1) General. The owner of a construction project may place on the construction site a temporary office for use by construction, security, or real estate sales personnel.
- (2) Location. The temporary office shall be located on the lot on which construction or development is occurring and shall not be located within 25 feet of any abutting residential use.
- (3) Sanitation. Sanitation and plumbing requirements may be waived by the Director, provided that adequate facilities are available elsewhere on the site.

- (4) Time limits. The office shall be removed within 15 days after final inspection of the permanent structure or expiration of the corresponding building permit, whichever event occurs first. In the case of residential development projects, the office must be removed within 15 days of the sale or lease of all dwelling units.
- G. Staff shall have the authority to review and send items to the appropriate board, commission and/or Council for their review and approval if there are potential effects on surrounding land uses.

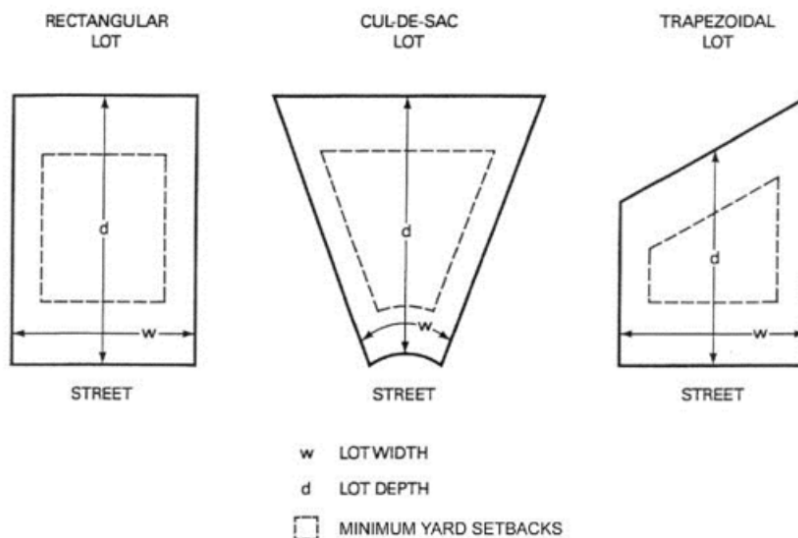
SECTION XI

Section 275-44 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

§ 275-44. Lot measurement and requirements.

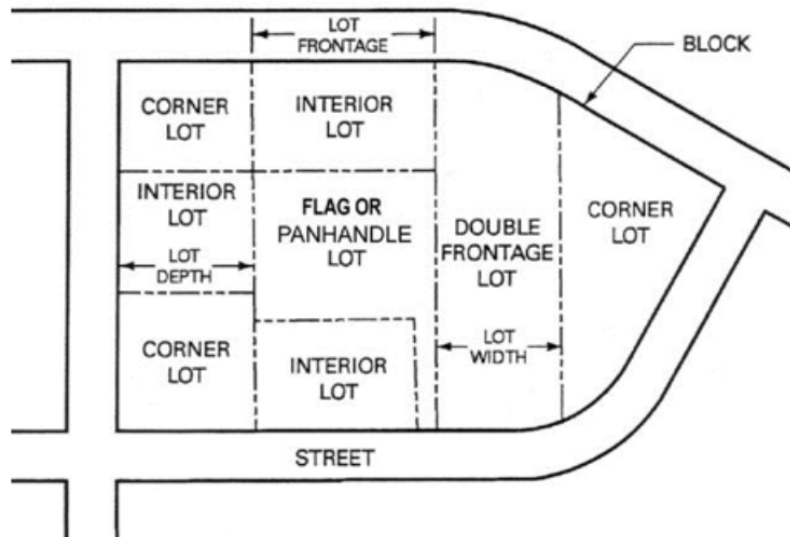
- A. Measurement of lot area. The lot area is the total area within the lot lines of a lot, excluding any street right-of-way or ultimate right-of-way in all districts.
- B. Percentages and fractions. When a measurement results in a fractional number or percentage, any fraction of $\frac{1}{2}$ or more shall be rounded up to the next higher whole number, and any fraction of $\frac{1}{2}$ or less shall be rounded down to the next lower whole number. Any percentage of 0.5% or greater shall be rounded up to the next higher whole number, and any percentage less than 0.5% shall be rounded down to the next lower whole number.
- C. Dimensions. See Figure VI-1. See also § 275-70. [Added 4-25-2023 by Ord. No. 2668]

Figure VI-1
Lot Width and Lot Depth



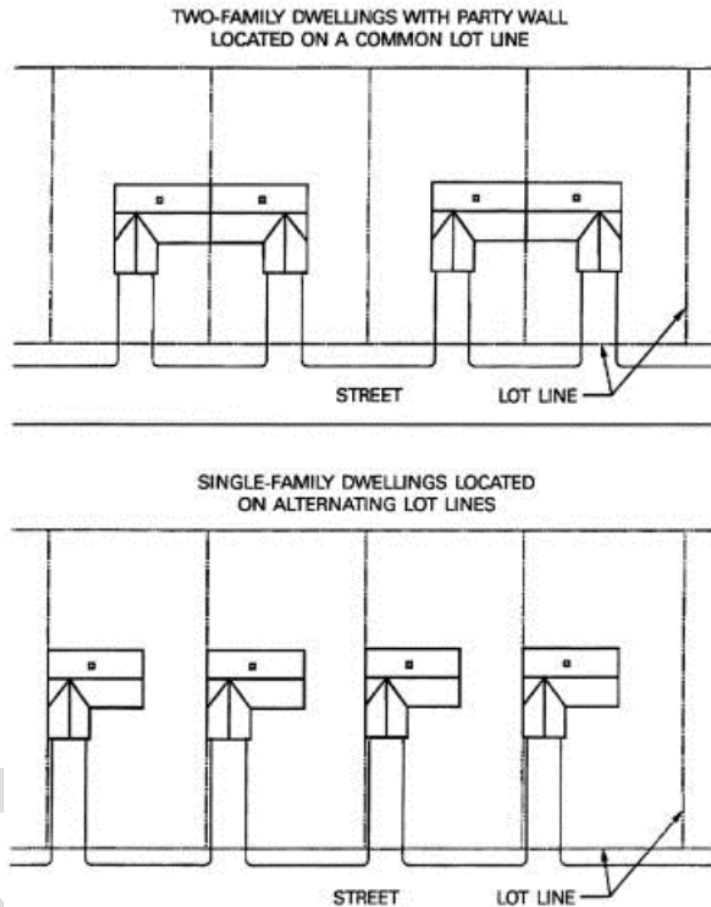
- D. Lot types. See Figure VI-2. See also § 275-70. [Added 4-25-2023 by Ord. No. 2668]

Figure VI-2
Lot Types



- E. Zero-lot-line residential development. Zero-lot-line residential developments (see Figure VI-3) may be permitted in the Rd-1 and Rm-1 Districts where the following provisions are met: [Amended 4-25-2023 by Ord. No. 2668]
- (1) Lot area and width. Lots shall have a minimum area of 6,200 square feet and shall not be less than 50 feet in width with one dwelling unit per lot.
 - (2) Setback and yards.
 - (a) There shall be a minimum setback of 50 feet from the right-of-way of all public streets or from private drives. There shall be a side yard requirement on one side of a building of not less than 15 feet. The dwelling unit shall be placed on one side property line with a zero-foot side yard. The minimum distance between buildings shall be 30 feet. There shall be a rear yard of not less than 15 feet for all lots unless the Plan Commission permits the rear lot line to be a second zero lot line.
 - (b) All buildings shall be a minimum of 50 feet from an adjacent single-family lot line in a single-family residential district.
 - (3) Other requirements.
 - (a) Buildings constructed shall be of the row (party wall) dwelling type and shall consist of a row of attached dwelling units.
 - (b) Each dwelling unit shall have separate utility connections. Attached dwellings may have one sanitary and stormwater lateral run and two separate water meters.

Figure VI-3
Examples of Zero-Lot-Line Residential Development



- F. Lots of record. An existing legal lot that contains less area than the lot requirements of this chapter may be used as a building site, provided that the proposed use is allowed in the zoning district.
- (1) Minimum lot size requirements shown in the zoning districts apply to the creation of new lots and do not affect existing legally created lots or parcels, provided that the lot is a lot of record in the Waukesha County Register of Deeds' office prior to the effective date of this chapter.
 - (2) Vacant buildable lots of record can be used as a building site, provided that the use is allowed in the zoning district and the lot has frontage on and access to a public street. If an existing structure on a lot of record were to be damaged or destroyed, it would be allowed to be rebuilt in accordance with the Building Code and these Zoning Regulations.
 - (3) New building permits issued under this section shall be required to meet the setback and other yard requirements of this chapter. A building proposed with lesser dimensions and requisites than those stated in the code shall be issued a building permit only after a variance by the Board of Appeals.
 - (4) If two or more lots with continuous frontage, one or more of which contains less land area or width than required by this chapter, have the same ownership as of the effective date of this chapter, the lots involved may be considered to be an individual parcel for the purpose of this chapter. If a permanent shared driveway easement is used to achieve access to either parcel, said property owners shall be required to enter into a recordable document prohibiting the sale of either property independent of the other. Said

restrictions shall be confirmed through a deed restriction recorded as to both parcels and said restriction may not be amended without the consensus/approval of the City.

- (5) If two or more adjoining lots with the same ownership are used or built on as one parcel, then the individual lots may not be considered separate until all buildings, utilities, and appurtenant structures are removed, vacated, or set back in accordance with the standards of this chapter.
 - (6) If two adjoining lots, where only one may have frontage and/or access to a public ROW, and both are considered legal lots of record, both lots may be developed into one home site each but both parcels shall have a deed restriction recorded against them for a permanent driveway access and this access easement shall not be removed without consensus/approval of the City.
- G. Where a lot is located partially within a C-1 or C-2 District and/or is subject to a conservation easement and partially within another district, that portion of the lot within the C-1 or C-2 District may be used to meet the minimum area requirements of the adjoining use district, provided that the area within the C-1 or C-2 District is reduced by an amount computed using the adjusted tract acreage approach as described under § 275-33G(2). The adjusted tract acreage shall not apply to land divisions (CSMs). A conservation easement shall be used to protect the C-1, C-2 or conservation area.

SECTION XII

Section 275-45 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

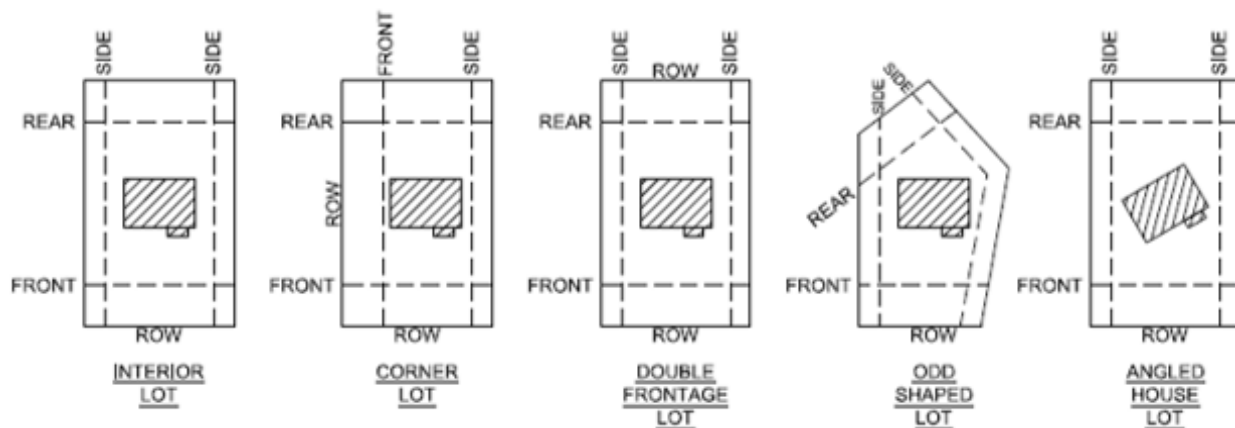
- A. Measurement of height. The "height of a structure" shall mean the vertical distance from the average grade adjoining the walls of the structure to the average of the highest points of the roof surface of a flat roof, or to the deckline of a mansard roof, or the mean height level between eaves and ridge for a gable, hip or gambrel roof.
- B. Height modifications. The district height limitations set forth elsewhere in this chapter may be exceeded, but such modification shall be in accord with the following standards:
- (1) Architectural projections. Architectural projections which are integral to a principal structure, such as spires, steeples, belfries, parapet walls, cupolas, domes, flues, and chimneys.
 - (2) Special structures. Special structures, such as elevator penthouses, gas tanks, grain elevators, observation towers, scenery lofts, heating and air-conditioning equipment and necessary mechanical appurtenances, cooling towers, fire towers, ornamental towers, substations, and smokestacks.
 - (3) Essential services. Essential services, such as utilities, water towers, electric power and communication transmission lines.
 - (4) Solar collectors. Solar collectors and wind energy conversion systems (windmills), provided that they shall not exceed a height equal to their distance to the nearest lot line.
 - (5) Communication structures. The height of telecommunications structures is regulated in § 275-41C(16).
 - (6) Agricultural structures. Agricultural structures, such as barns, silos, and windmills, may exceed a height of 35 feet, provided that all required yards are increased not less than one foot for each additional foot the structure exceeds 35 feet.

SECTION XIII

Section 275-46 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

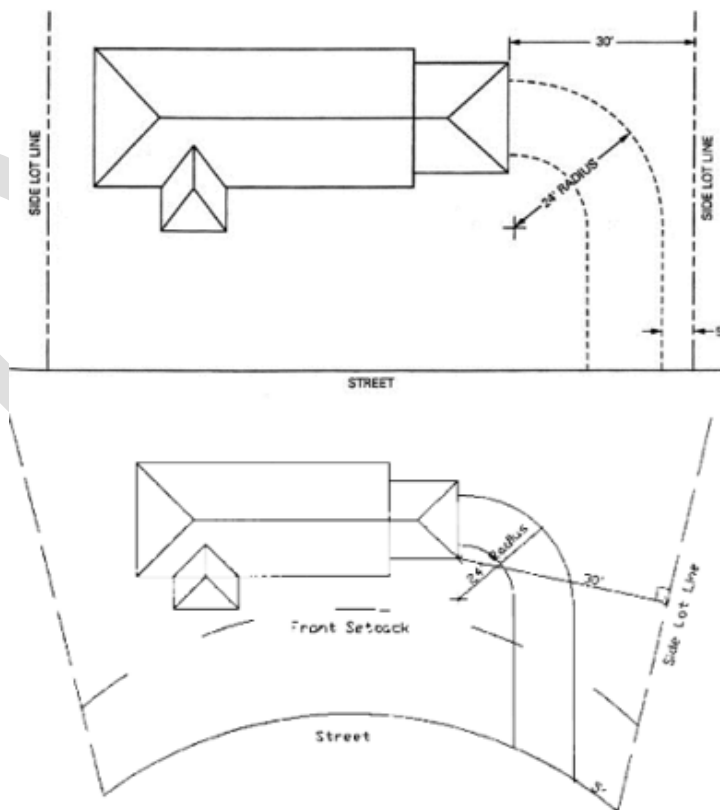
- A. Measurement of a setback. The minimum distance a building or structure shall be located from a lot line or base setback line. The setback line shall be drawn parallel to a lot line. See Figure VI-4.

**Figure VI-4
Measurement of Setbacks**



- (1) Side-entry garage setback. When a garage is proposed with an entry facing an interior lot line, the garage shall be set back a minimum of 30 feet from the lot line opposite the garage door to provide for adequate maneuvering space. The setback shall be measured perpendicular from the edge closest to the street of each garage door opening. There shall be a twenty-four-foot access radius in and out of the garage door.

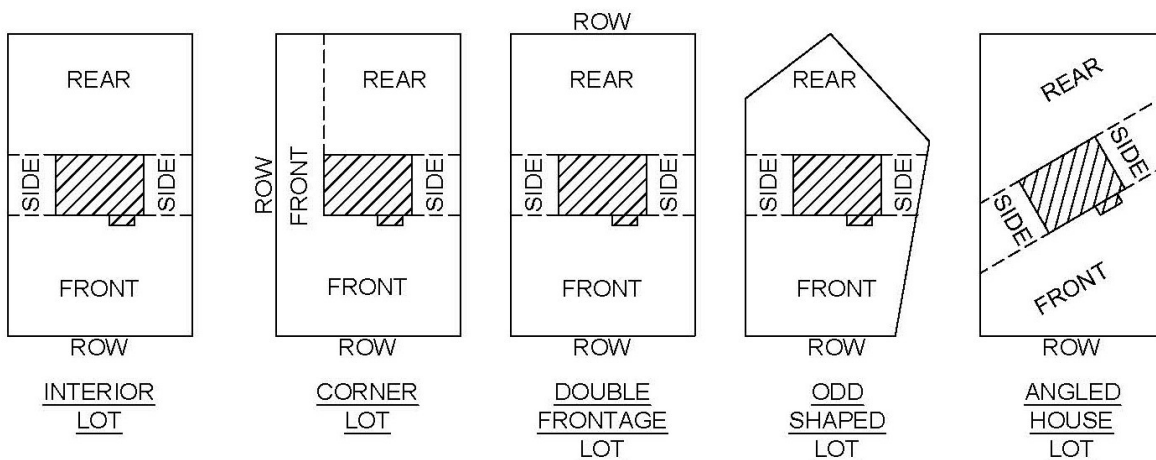
**Figure VI-5
Side-Entry Garage Setback**



- (2) Average front setback. For new structures, additions to existing structures or accessory structures, the required front setback may, with Plan Commission approval or with an administrative adjustment per §275-30.1D, be decreased in any residential or business districts to the average of the existing front setbacks of the abutting structures on each side but in no case less than 15 feet in any residential district and five feet in any business district.

B. Measurement of a yard. See Figure VI-6. See also § 275-70.

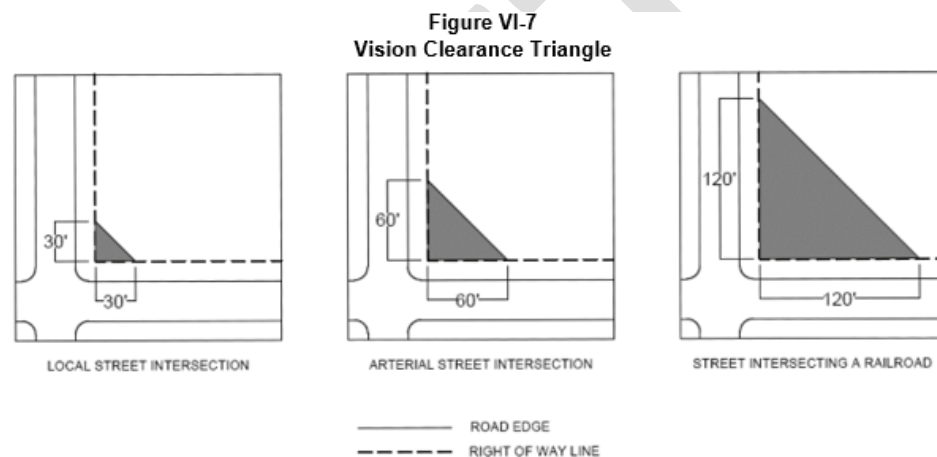
Figure VI-6
Location of Yards



- C.** Corner lots. Structures on corner lots shall provide a front yard as required by this chapter on the street that the structure faces. A second front yard shall be provided on the side of the structure abutting a second public or private street. The second front yard is referred to as the "side on corner." The setbacks on each street shall be the same distance. The remaining yards shall be a side yard and a rear yard. The functional rear of the house shall face the rear yard, which shall be opposite of the front yard. Staff may administratively approve reductions to the front setbacks for the side on corner up to 25% on lots less than 100 feet in width.
- D.** Double-frontage lots. Structures on lots abutting two opposite streets shall be provided with a front yard and a rear yard. The Director or a designee shall select where the front yard shall be applied and where the rear yard shall be applied in a manner that prohibits access to a double-frontage lot from two arterial streets. The selected front yard shall be required to comply with the front setback requirements for the district in which the lot is located. The selected rear yard shall be required to comply with the rear setback requirements for the district in which the lot is located, and the rear yard shall be screened from arterial streets with fencing or landscaping, as may be appropriate. Accessory structures may be placed in the designated rear yard but shall be located no closer to the street right-of-way than the required setback for accessory structures. For purposes of selecting the front yard, the architectural front of the structure shall be designated as the front yard.
- E.** Yard and setback modifications. The district yard and setback requirements set forth elsewhere in this chapter may be modified, but such modification shall be in accord with the following standards:
- (1) Essential services. Essential services, such as utilities, electric power and communication transmission lines are exempt from the setback requirements of this chapter.
 - (2) Architectural projections. Architectural projections, limited to eaves and wing walls may project into any yard, but such projection shall not exceed three feet.
 - (3) Attached accessory uses. Uncovered stairs, decks sized for entry purposes only, stoops,

landings, fire escapes, gutters, and awnings may project into any yard but not to exceed six feet and not closer than five feet to any lot line.

- (4) Vision clearance triangle. No obstructions, such as structures, parking, landscaping or vegetation, shall be permitted in any district between the heights of three feet and 10 feet above the plane through the mean curb grades within the triangular space formed by any two intersecting right-of-way lines and a line joining those points.
- (a) Intersection of local streets. The corner cutoff distances establishing the vision triangle clearance space shall be 30 feet.
 - (b) Intersection with arterial streets. In the case of arterial streets, one or more of which has an established right-of-way of 80 feet or more, intersecting with any other street, the corner cutoff distances establishing the vision triangle clearance space shall be 60 feet.
 - (c) Intersection with a railway. In the case of a railway intersecting with a street, the corner cutoff distances establishing the vision triangle clearance space shall be 120 feet.



- (5) Building connections. For nonresidential uses, building interconnections between buildings and adjacent parcels for shared or common operations shall not be considered for setback purposes.

SECTION XIV

Section 275-53 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- A. Applicability. This section sets forth review principles and standards to guide the Plan Commission and staff in the review of all development requiring a site plan pursuant to § 275-24, Zoning permits, except where permits are considered to be redevelopment.. For redevelopment, as defined in the definition section of this Zoning Code,[1] the application shall follow the criteria listed in § 275-53C below. Uses requiring a site plan shall conform to the principles and standards of this section in addition to complying with all development standards set forth in this Article VIII.
- [1] Editor's Note: See Art. XI, Definitions.
- B. Review principles and standards. The Plan Commission shall approve site plans only after determining that:
- (1) The site plan is consistent with the purposes and requirements of this chapter, including these general development regulations.
 - (2) The site plan is consistent with the goals, objectives, principles, standards, policies, and

urban design criteria set forth in the New Berlin Comprehensive Plan.

- (3) No land shall be used or structure erected where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, or low bearing strength of underlying soil, erosion susceptibility of underlying soil, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community.
- (4) No zoning permit or building permit shall be issued for a lot that does not abut a fully dedicated and improved public street, unless it meets the requirements of 275-44F(6).
- (5) There is a proper relationship between the existing and proposed streets and highways within the vicinity of the project in order to assure the safety and convenience of pedestrian and vehicular traffic.
- (6) The proposed on-site buildings, structures, and entryways are situated and designed to minimize adverse effects upon owners and occupants of adjacent and surrounding properties by providing for adequate design of ingress/egress, interior/exterior traffic flow, stormwater drainage, erosion, grading, lighting, and parking, as specified by this chapter or any other codes or laws.
- (7) Natural features of the landscape are retained where they can enhance the development on the site, or where they furnish a barrier or buffer between the project and adjoining properties used for dissimilar purposes, or where they assist in preserving the general safety, health, welfare, and appearance of the neighborhood.
- (8) Adverse effects of the proposed development and activities upon adjoining residents or owners are minimized by appropriate screening, fencing, or landscaping as provided or required in this chapter.
- (9) Land, buildings, and structures are readily accessible to emergency vehicles and the handicapped.
- (10) When a site plan modification or addition is reviewed, all existing nonconformities and outstanding code violations shall be identified, resolved, and remedied.
- (11) All hazards identified in the site plan review process shall be resolved or mitigated.

C. Redevelopment standards.

- (1) Open space is not required to meet the zoning district requirements for new development but shall not go below the amount of open space existing on the lot at the time of the proposed redevelopment and/or site modifications. For sites that do not meet the minimum open space requirements, the applicant shall incorporate low-impact development techniques.
- (2) Existing parking lots and drive aisles that do not meet the required setbacks shall not encroach any further into the setback.
- (3) Sites shall provide adequate parking spaces to meet the requirements in 275-57, unless a waiver is requested and granted by the Plan Commission.
- (4) The applicant shall meet all applicable stormwater and drainage requirements.
- (5) Existing parking lot lighting shall be evaluated on a case-by-case basis when a project includes parking lot modification or expansion. At a minimum, a lighting plan shall be provided for the parking lot modification area(s).
- (6) A reoccupancy, internal facility remodel, parking lot repair and maintenance or façade improvement does not require the implementation of these requirements or the requirements in this article. Only a building expansion or parking lot expansion will prompt the requirements to be enforced.

SECTION XV

Section 275-63A through 275-63C of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

A. General provisions.

- (1) Title. This section shall be known and may be cited as the "Nonmetallic Mining Reclamation Ordinance for the City of New Berlin."
- (2) Purpose. The purpose of this section is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of New Berlin after the effective date of this section, in compliance with Ch. NR 135, Wis. Adm. Code, and Subchapter I of Ch. 295, Wis. Stats.
- (3) Statutory authority. This section is adopted under authority of § 295.14(1), Wis. Stats., § NR 135.32, Wis. Adm. Code, and § 62.11(3), Wis. Stats.
- (4) Restrictions adopted under other authority. The purpose of this section is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by § 295.12(1)(a), Wis. Stats., and contained in Ch. NR 135, Wis. Adm. Code. It is not intended that this section repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.
- (5) Interpretation. In their interpretation and application, the provisions of this section shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code. Where any terms or requirements of this section may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this section is required by Wisconsin Statutes, or by a standard in Ch. NR 135, Wis. Adm. Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Ch. NR 135, Wis. Adm. Code.
- (6) Severability. Should any portion of this section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this section shall not be affected.
- (7) Applicability.
 - (a) Overall applicability. The requirements of this section apply to all operators of nonmetallic mining sites within the City of New Berlin, except as exempted in §275-63A(7). This section does not apply to nonmetallic mining sites where nonmetallic mining permanently ceased before August 1, 2001. This section applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of the City of New Berlin or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in §275-63E(3).
 - (b) Exemptions. This section does not apply to the following activities:
 - [1] Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under § 30.19, 30.195 or 30.20, Wis. Stats., and complies with Ch. NR 340, Wis. Adm. Code.
 - [2] Excavations subject to the permit and reclamation requirements of § 30.30 or 30.31, Wis. Stats.
 - [3] Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - [4] Excavations or grading conducted for the construction, reconstruction,

maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.

- [5] Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
 - [6] Excavations for building construction purposes conducted on the building site.
 - [7] Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
 - [8] Any mining operation, the reclamation of which is required in a permit obtained under Ch. 293, Wis. Stats.
 - [9] Any activities required to prepare, operate or close a solid waste disposal facility under Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this section apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
 - [10] Nonmetallic mining.
 - [a] Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
 - [b] This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.
 - [c] If a nonmetallic mining site covered under §275-63A(7)(b)[10][a] and [b] and is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this subsection still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.
 - [11] Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.
 - [12] Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under § 30.21, Wis. Stats.
- (8) Administration. The provisions of this section shall be administered by the City of New Berlin Department of Community Development.
- (9) Effective date. The provisions of this section shall take effect on July 24, 2001, the date of publication.

(10) Definitions. See § 275-70.

B. All nonmetallic mining sites subject to this section shall be reclaimed in conformance with the standards contained below:

(1) General standards.

- (a) Refuse and other solid wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to Chs. 289 and 291, Wis. Stats.
- (b) Area disturbed and contemporaneous reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.
- (c) Public health, safety and welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.
- (d) Habitat restoration. When the land use required by the reclamation plan approved pursuant to this section requires plant, fish or wildlife habitats, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.
- (e) Compliance with environmental regulations. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws, including those related to environmental protection, zoning and land use control. Note: Other applicable environmental, zoning or land use regulations may include Chs. NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 151, 340, 500-590, and 812, Wis. Adm. Code, Chs. 30 and 91, Wis. Stats., and Section 404 of the Clean Water Act (33 U.S.C. § 1344), which may be applicable to all or part of either an existing or proposed nonmetallic mining project, so long as they do not require or directly regulate the reclamation of nonmetallic mining sites as addressed under Subchapter I of Ch. 295, Wis. Stats.

(2) Surface water and wetlands protection. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chs. NR 102 to NR 105, Wis. Adm. Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this section. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

(3) Groundwater protection.

- (a) Groundwater quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.
- (b) Groundwater quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Ch. NR 140, Wis. Adm. Code, to be exceeded at a point of standard application defined in that chapter.

(4) Topsoil management.

- (a) Removal. Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this section in order to achieve

reclamation to the approved post-mining land use. Removal of onsite topsoil and topsoil substitute material removal, when specified in the reclamation plan, shall be performed prior to any mining activity associated with any specific phase of the mining operation.

- (b) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of onsite topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this section. Note: Existing resources that may be used to identify the soil present on a site include the County Soil Surveys and information obtained from a soil scientist or the University of Wisconsin Soil Science Extension Agent or other available resources. Topsoil or topsoil substitute material shall be removed from areas to be affected by mining operations to the depth indicated in the reclamation plan or as determined in the field by a soil scientist, project engineer or other qualified professional.
- (c) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this section, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

(5) Final grading and slopes.

- (a) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to § NR 135.19, Wis. Adm. Code, to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining, including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either:
 - [1] A site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope; or
 - [2] The operator shall perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.
- (b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under § NR 135.26, Wis. Adm. Code; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.
- (c) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically six feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body, to allow for a safe exit.

- (6) Topsoil redistribution for reclamation. Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this section in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.
- (7) Revegetation and site stabilization. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this section, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site. Note: Field test plot demonstrations are highly recommended to ensure that reclamation success standards are met and financial assurance is released as quickly as possible. When field test plots are employed, they should be approved as part of the reclamation plan under § NR 135.19, Wis. Adm. Code.
- (8) Assessing completion of successful reclamation.
- (a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this section. Criteria to evaluate reclamation success shall be quantifiable.
 - (b) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - [1] Onsite inspections by the City or its agent;
 - [2] Reports presenting results obtained during reclamation evaluations, including summarized data on revegetation, photo documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or
 - [3] A combination of inspections and reports.
 - (c) In those cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a premining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.
 - (d) Revegetation success may be determined by:
 - [1] Comparison to an appropriate reference area;
 - [2] Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
 - [3] Comparison to an approved alternate technical standard.
 - (e) Revegetation using a variety of plants indigenous to the area is favored.
- (9) Intermittent mining. Intermittent mining may be conducted, provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to § 275-63E is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.
- (10) Maintenance. During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this section, or to meet the goals specified in the reclamation plan approved pursuant to this section.

C. Permitting. Nonmetallic mining reclamation permit application required. No person may engage in

nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance unless the activity is specifically exempted in §§ 275-63A(7) or 275-70 definition of "Nonmetallic mining site" paragraph (b).

- (1) Required submittal. All operators of any nonmetallic mining sites shall apply for a reclamation permit from the City. All applications for reclamation permits under this section shall be accompanied by the following information:
 - (a) A brief description of the general location and nature of the nonmetallic mine.
 - (b) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.
 - (c) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
 - (d) The name, address and telephone number of the person or organization who or which is the operator.
 - (e) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by § 275-63B(4).
- (2) The operator of any nonmetallic mine site shall submit an application that meets the requirements specified below to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151, prior to beginning operations.
 - (a) The information required by § 275-63C(1).
 - (b) The plan review and annual fees required by § 275-63Q and § 275-63R.
 - (c) A reclamation plan conforming to § 275-63D.
 - (d) A certification that the operator will provide, as a condition of the reclamation permit, financial assurance as required by § 275-63E upon granting of the reclamation permit and before mining begins.
 - (e) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this section.

SECTION XVI

Section 275-65J of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- J. Definitions. Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.
- (1) A ZONES – Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
 - (2) AH ZONE – See "AREA OF SHALLOW FLOODING".
 - (3) AO ZONE – See "AREA OF SHALLOW FLOODING".
 - (4) ACCESSORY STRUCTURE OR USE – A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. An accessory structure shall not be used for human habitation.

- (5) ALTERATION – An enhancement, upgrade or substantial change or modification other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.
- (6) AREA OF SHALLOW FLOODING – A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.
- (7) BASE FLOOD – Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
- (8) BASEMENT – Any enclosed area of a building having its floor sub-grade on all sides.
- (9) BUILDING – See STRUCTURE.
- (10) BULKHEAD LINE – A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
- (11) CAMPGROUND – Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
- (12) CAMPING UNIT – Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
- (13) CERTIFICATE OF COMPLIANCE – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
- (14) CHANNEL – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (15) CRAWLWAYS or CRAWL SPACE – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
- (16) DECK – An unenclosed exterior structure that has no roof or sides and has a permeable floor which allows the infiltration of precipitation.
- (17) DEPARTMENT – The Wisconsin Department of Natural Resources.
- (18) DEVELOPMENT – Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
- (19) DRYLAND ACCESS – A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (20) ENCROACHMENT – Any fill, structure, equipment, use or development in the floodway.
- (21) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – The federal agency that

administers the National Flood Insurance Program.

- (22) **FLOOD INSURANCE RATE MAP (FIRM)** – A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
- (23) **FLOOD or FLOODING** – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
 - (a) The overflow or rise of inland waters;
 - (b) The rapid accumulation or runoff of surface waters from any source;
 - (c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
 - (d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (24) **FLOOD FREQUENCY** – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.
- (25) **FLOODFRINGE** – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
- (26) **FLOOD HAZARD BOUNDARY MAP** – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- (27) **FLOOD INSURANCE STUDY** – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
- (28) **FLOODPLAIN** – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.
- (29) **FLOODPLAIN ISLAND** – A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (30) **FLOODPLAIN MANAGEMENT** – Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
- (31) **FLOOD PROFILE** – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (32) **FLOODPROOFING** – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
- (33) **FLOOD PROTECTION ELEVATION** – An elevation of two feet of freeboard above the Regional Flood Elevation. (Also see: FREEBOARD.)

- (34) FLOOD STORAGE – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- (35) FLOODWAY – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (36) FREEBOARD – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
- (37) HABITABLE STRUCTURE – Any structure or portion thereof used or designed for human habitation.
- (38) HEARING NOTICE – Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
- (39) HIGH FLOOD DAMAGE POTENTIAL – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
- (40) HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (41) HISTORIC STRUCTURE – Any structure that is either:
- (a) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
- (42) INCREASE IN REGIONAL FLOOD HEIGHT – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (43) LAND USE – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
- (44) LOWEST ADJACENT GRADE – Elevation of the lowest ground surface that touches any of the exterior walls of a building.
- (45) LOWEST FLOOR – The lowest floor of the lowest enclosed area (including basement).
- (46) MAINTENANCE – The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
- (47) MANUFACTURED HOME – A structure transportable in one or more sections, which is

built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."

- (48) **MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION** – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
- (49) **MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING** – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
- (50) **MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING** – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
- (51) **MOBILE RECREATIONAL VEHICLE** – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
- (52) **MODEL, CORRECTED EFFECTIVE** – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
- (53) **MODEL, DUPLICATE EFFECTIVE** – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.
- (54) **MODEL, EFFECTIVE** – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.
- (55) **MODEL, EXISTING (PRE-PROJECT)** – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
- (56) **MODEL, REVISED (POST-PROJECT)** – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
- (57) **MUNICIPALITY or MUNICIPAL** – The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
- (58) **NAVD or NORTH AMERICAN VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1988 adjustment.
- (59) **NGVD or NATIONAL GEODETIC VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1929 adjustment.
- (60) **NEW CONSTRUCTION** – Structures for which the start of construction commenced on or after the effective date of a floodplain zoning regulation adopted by this community and includes any subsequent improvements to such structures.
- (61) **NON-FLOOD DISASTER** – A fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

- (62) **NONCONFORMING STRUCTURE** – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
- (63) **NONCONFORMING USE** – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- (64) **OBSTRUCTION TO FLOW** – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
- (65) **OFFICIAL FLOODPLAIN ZONING MAP** – That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.
- (66) **OPEN SPACE USE** – Those uses having a relatively low flood damage potential and not involving structures.
- (67) **ORDINARY HIGHWATER MARK** – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (68) **PERSON** – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
- (69) **PRIVATE SEWAGE SYSTEM** – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
- (70) **PUBLIC UTILITIES** – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
- (71) **REASONABLY SAFE FROM FLOODING** – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- (72) **REGIONAL FLOOD** – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
- (73) **START OF CONSTRUCTION** – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- (74) **STRUCTURE** – Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
- (75) **SUBDIVISION** – Has the meaning given in s. 236.02(12), Wis. Stats.
- (76) **SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
- (77) **SUBSTANTIAL IMPROVEMENT** – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (78) **UNNECESSARY HARDSHIP** – Where special conditions affecting a particular property, which were not self created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.
- (79) **VARIANCE** – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- (80) **VIOLATION** – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
- (81) **WATERSHED** – The entire region contributing runoff or surface water to a watercourse or body of water.
- (82) **WATER SURFACE PROFILE** – A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
- (83) **WELL** – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

SECTION XVII

Section 275-70 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

A ZONES

(As it pertains to floodplain, § 275-65) Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

ACCESSORY DWELLING UNIT

An additional dwelling unit on the same property as the principal use. To be considered an accessory dwelling unit, kitchen (sink and stove or stove hookups), sleeping and bathroom (full bathroom) facilities must all be provided. "Accessory dwelling" does not mean a mobile home, recreational vehicle, or travel trailer. Accessory dwelling units shall meet the requirements of §275-42.

ACCESSORY STRUCTURE OR USE

(As it pertains to floodplain, § 275-65) A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. An accessory structure shall not be used for human habitation.

AH ZONE

(As it pertains to floodplain, § 275-65) See "area of shallow flooding."

ALTERATION

(As it pertains to floodplain, § 275-65) An enhancement, upgrade or substantial change or modification, other than an addition or repair, to a dwelling or to electrical, plumbing, heating, ventilating, air-conditioning and other systems within a structure.

AO ZONE

(As it pertains to floodplain, § 275-65) See "area of shallow flooding."

AREA OF SHALLOW FLOODING

(As it pertains to floodplain, § 275-65) A designated AO, AH, AR/AO, AR/AH, or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

ASSISTED-LIVING FACILITIES

Residences for the elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide additional services, such as recreational activities, financial services, and transportation. Residential care apartment complexes (RCACs) are a type of assisted living.

BALCONY

A platform that projects from the wall of a building, is surrounded by a railing, and has no stair access. May be covered or uncovered.

BASE FLOOD

(As it pertains to floodplain, § 275-65) Means the flood having a 1% chance of being equaled or exceeded in any given year, as published by FEMA as part of an FIS and depicted on a FIRM.

BASEMENT

(As it pertains to floodplain, § 275-65) Any enclosed area of a building having its floor subgrade on all sides.

BUILDING, ACCESSORY

A building detached from a principal building on the same lot and customarily incidental or subordinate to the principal building or use. Accessory buildings shall meet the requirements of §275-42.

CANOPY

A permanent overhang or structure without walls for the purpose of shielding windows, doors, patios, decks, driveways, sidewalks, or service areas from the elements.

CHANNEL

(As it pertains to floodplain, § 275-65) A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

COMMUNITY LIVING ARRANGEMENTS

The following facilities, licensed or operated or permitted under the authority of the Wisconsin State Statutes: child welfare agencies under § 48.60, group foster homes for children under § 48.02(7m), and community-based residential facilities under § 50.01. The term does not include day-care centers, nursing homes, general hospitals, special hospitals, prisons, and jails. The establishment of a community living arrangement shall be in conformance with §§ 46.03(22), 59.69, 62.23(7)(i), and 62.23(7a), Wis. Stats., and amendments thereto. Community-based residential facilities (CBRF) are a type of community living arrangement.

CRAWLWAYS or CRAWL SPACE

(As it pertains to floodplain, § 275-65) An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

DECK

An uncovered platform, either freestanding or attached to a building, that is supported by pillars or posts. A deck has ground level access.

DIRECTOR

The Director of the Department of Community Development, City of New Berlin, or his/her designee. The Deputy Director of Community Development shall assume all authority and decision making authority in the Director's absence.

DRYLAND ACCESS

(As it pertains to floodplain, § 275-65) A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.

EAVE

The projecting lower edge of a roof that overhangs the exterior wall of a building, also known as the fascia.

ENCROACHMENT

(As it pertains to floodplain, § 275-65) Any fill, structure, equipment, building, use or development in the floodway.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

(As it pertains to floodplain, § 275-65) The federal agency which administers the National Flood Insurance Program.

FINANCIAL ASSURANCE (As it pertains to nonmetallic mining, § 275-63)

A commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in § 275-63 and is sufficient to pay for reclamation activities required by this chapter.

FLOOD FREQUENCY

(As it pertains to floodplain, § 275-65) The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent chance of occurring in any given year.

FLOOD HAZARD BOUNDARY MAP

(As it pertains to floodplain, § 275-65) A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

FLOOD INSURANCE RATE MAP (FIRM)

(As it pertains to floodplain, § 275-65) A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

FLOOD INSURANCE STUDY

(As it pertains to floodplain, § 275-65) A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

FLOOD or FLOODING

(As it pertains to floodplain, § 275-65) A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

- A. The overflow or rise of inland waters;
- B. The rapid accumulation or runoff of surface waters from any source;
- C. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
- D. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

FLOOD PROFILE

(As it pertains to floodplain, § 275-65) A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

FLOOD PROTECTION ELEVATION

(As it pertains to floodplain, § 275-65) An elevation of two feet of freeboard above the Regional Flood Elevation (see also "freeboard").

FLOOD STORAGE

(As it pertains to floodplain, § 275-65) Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

FLOODFRINGE

(As it pertains to floodplain, § 275-65) That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood and associated with standing water rather than flowing water.

FLOODPLAIN

(As it pertains to floodplain, § 275-65) Land which has been or may be covered by floodwater during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.

FLOODPLAIN ISLAND

(As it pertains to floodplain, § 275-65) A natural geological land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

FLOODPLAIN MANAGEMENT

(As it pertains to floodplain, § 275-65) Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

FLOODPROOFING

(As it pertains to floodplain, § 275-65) Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

FLOODWAY

(As it pertains to floodplain, § 275-65) The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

FREEBOARD

(As it pertains to floodplain, § 275-65) A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

GAZEBO

A freestanding roofed structure.

HIGH FLOOD DAMAGE POTENTIAL

(As it pertains to floodplain, § 275-65) Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

HIGHEST ADJACENT GRADE

(As it pertains to floodplain, § 275-65) The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE

(As it pertains to floodplain, § 275-65) Any structure that is either:

- A. Listed individually on the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior, or by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION

An occupation or profession for financial gain or profit which is incident to and carried on entirely within a dwelling unit located on a lot, exclusive of attached garage or patio area, by resident

occupants of the dwelling unit and which occupation is clearly incidental to and accessory to the residential use of the premises [See also § 275-42].

INCREASE IN REGIONAL FLOOD HEIGHT

(As it pertains to floodplain, § 275-65) A calculated upward rise in the regional flood elevation greater than 0.00 feet, based on a comparison of existing conditions and proposed conditions, which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

INDOOR PUBLIC RECREATION FACILITIES

Publicly owned buildings including, but not limited to, recreational buildings, community centers, libraries, museums, galleries, playgrounds, and gymnasiums.

INDOOR RECREATION AND AMUSEMENT FACILITIES

Establishments that primarily engage in providing exclusively indoor recreation and/or amusement for commercial purposes including, but not limited to, playgrounds, miniature golf courses, batting cages, gymnasiums, trampoline parks, swimming pools, bowling alleys, amusement centers, and arcades. May include restaurant or food services.

LAND USE

(As it pertains to floodplain, § 275-65) Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT)

LOT DEPTH

The average distance measured from the front lot line to the rear lot line in the general direction of the side lot lines.

LOT FRONTAGE

The dimension of a lot abutting a public street measured along the street right-of-way line.

LOT LINE, FRONT

The front property line which is coterminous with the street right-of-way. A front lot line is generally parallel to or less than 45° to the rear lot line. The front lot line is generally opposite the rear lot line. A corner lot or double-frontage lot has more than one front lot line.

LOT LINE, REAR

An internal lot line opposite a front yard. A rear lot line is generally parallel to or less than 45° to the front street right-of-way line. Where the street line is an arc, the angle is measured from the tangent of the arc. A lot line greater than 45° from the front street right-of-way line would be a side lot line.

LOT LINE, SIDE

An internal lot line generally extending perpendicular to the front lot line. The side lot lines extend

between the front lot line and the rear lot line.

LOT WIDTH

The width of a parcel of land measured at the building setback line or required front setback.

LOT, CORNER

A lot abutting two or more streets at their intersection, provided that the corner of such intersection shall have an angle of 135° or less, measured on the lot side.

LOT, FLAG or PANHANDLE

A lot not meeting minimum frontage requirements and where the access to the public or private road is by a narrow private right-of-way or driveway known as the "panhandle." The length of the panhandle shall be measured from the frontage line to the nearest point of intersection with the lot's property line that parallels or almost parallels the frontage line.

LOT, INTERIOR

A lot situated with one lot line fronting a single street and bounded by adjacent lots along each of its other lot lines.

LOWEST ADJACENT GRADE

(As it pertains to floodplain, § 275-65) The elevation of the lowest ground surface that touches any of the exterior walls of a building.

LOWEST FLOOR

(As it pertains to floodplain, § 275-65) The lowest floor of the lowest enclosed area (including basement).

MANUFACTURED HOME or MOBILE HOME

(As it pertains to floodplain, § 275-65) A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include "mobile recreational vehicle".

MODEL, CORRECTED EFFECTIVE

(As it pertains to floodplain, § 275-65) A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more-detailed topographic information than that used in the current effective model.

MODEL, DUPLICATE EFFECTIVE

(As it pertains to floodplain, § 275-65) A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

MODEL, EFFECTIVE

(As it pertains to floodplain, § 275-65) The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

MODEL, EXISTING (PRE-PROJECT)

(As it pertains to floodplain, § 275-65) A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man-made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the Effective Model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

MODEL, REVISED (POST-PROJECT)

(As it pertains to floodplain, § 275-65) A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.

MUNICIPALITY or MUNICIPAL

(As it pertains to floodplain, § 275-65) The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

NAVD or NORTH AMERICAN VERTICAL DATUM

(As it pertains to floodplain, § 275-65) Elevations referenced to mean sea level datum, 1988 adjustment.

NEW CONSTRUCTION

(As it pertains to floodplain, § 275-65) Structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures.

NGVD or NATIONAL GEODETIC VERTICAL DATUM

(As it pertains to floodplain, § 275-65) Elevations referenced to mean sea level datum, 1929 adjustment.

NON-FLOOD DISASTER

(As it pertains to floodplain, § 275-65) A fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

NONCONFORMING STRUCTURE

(As it pertains to floodplain, § 275-65) An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.

NONCONFORMING USE

(As it pertains to floodplain, § 275-65) An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies (such as a residence in the floodway).

OBSTRUCTION TO FLOW

(As it pertains to floodplain, § 275-65) Any development which blocks the conveyance of floodwaters such that this development, alone or together with any future development, will cause an increase in regional flood heights.

OFFICIAL FLOODPLAIN ZONING MAP

(As it pertains to floodplain, § 275-65) That map, adopted and made part of this ordinance, as described in § 275-65, which has been approved by the Department of Natural Resources and FEMA.

OPEN SPACE USE

(As it pertains to floodplain, § 275-65) Those uses having a relatively low flood damage potential and not involving structures.

ORDINARY HIGH-WATER MARK

(As it pertains to floodplain, § 275-65) The point on the bank or shore of a body of water up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

PATIO

A level surfaced area, either freestanding or adjacent to a building. May be covered or uncovered.

PAVILION

A roofed structure, either freestanding or attached to a building.

PERGOLA

A structure with no roof that is open to the sky, either freestanding or attached to a building.

PERSON

(As it pertains to floodplain, § 275-65) An individual or group of individuals, corporation, partnership, association, municipality, or state agency.

PORCH

A roofed structure that projects from the wall of a building that provides ground level access.

PRIVATE SEWAGE SYSTEM

(As it pertains to floodplain, § 275-65) A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field; a holding tank; a system serving more than one structure; or a system located on a different parcel than the structure.

PUBLIC UTILITIES

(As it pertains to floodplain, § 275-65) Those utilities using underground or overhead transmission lines such as electric, telephone, and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

REASONABLY SAFE FROM FLOODING

(As it pertains to floodplain, § 275-65) Means base floodwaters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

REGIONAL FLOOD

(As it pertains to floodplain, § 275-65) A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a 1% chance of being equaled or exceeded in any given year; and if depicted on the FIRM, the RFE is equivalent to the BFE.

SETBACK

The minimum distance a building or structure shall be located from a lot line or base setback line. The setback line shall be drawn parallel to a lot line. See § 275-46A.

SETBACK, FRONT

The minimum horizontal distance between the base setback line and a line parallel to the nearest roofed portion of the eave/fascia. See § 275-46A.

SETBACK, ORDINARY HIGH-WATER MARK (OHWM)

The minimum horizontal distance between the ordinary high-water mark of a navigable body of water and a line parallel to the nearest roofed portion of the eave/fascia.

SETBACK, REAR

The minimum horizontal distance between the rear lot line and a line parallel to the nearest roofed portion of the eave/fascia. A rear setback is opposite a front setback. See § 275-46A.

SETBACK, SIDE

The minimum horizontal distance between the side lot line and a line parallel to the nearest roofed portion of the eave/fascia. See § 275-46A.

SETBACK, WETLAND

The minimum horizontal distance between the nearest delineated wetland and a line parallel to the nearest impervious surface.

SIGN, AWNING OR CANOPY

A sign that is mounted or painted on or attached to a canopy, awning, or marquee.

SIGN, GROUND

Any sign placed upon or supported by the ground independent of any other structure.

SIGN, POLE

A sign that is mounted on a freestanding pole or other support so that the bottom of the sign is 10 feet or more above grade.

SIGN, PORTABLE

A sign that is not permanent and is not affixed to a building, structure, or to the ground.

SIGN, ROOF

A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the decline of a building with a mansard roof.

SIGN, WALL

A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project more than 12 inches from such building or structure.

SMALL WIND ENERGY SYSTEM

[As it pertains to small wind energy systems, § 275-42] A small wind energy system means equipment that converts and then stores or transfers energy from the wind into usable forms of energy (as defined by Wisconsin Statutes, § 66.0403(1)(m)). This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or cabling or other components used in the system, which system does not generate an excess of 100 kilowatts of electricity. "Total height" means the vertical distance from the ground level to the tip of a wind generator blade when the tip is at its highest point.

START OF CONSTRUCTION

(As it pertains to floodplain, § 275-65) The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or

the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STORY

That portion of a building included between the surface of any floor and the surface of the next floor above or, if there is no floor above, the space between the floor and the ceiling next above. A basement shall not be counted as a story.

STORY, HALF

A story which is situated in a sloping roof, the floor area of which does not exceed 2/3 of the floor area of the story immediately below it.

STRUCTURE, ACCESSORY

A structure on the same lot as a principal building and customarily incidental or subordinate to the principal building or use. Accessory structures shall meet the requirements of 275-42.

SUBDIVISION

(As it pertains to floodplain, § 275-65) Has the meaning given in s. 236.02(12) Wis. Stats.

SUBSTANTIAL DAMAGE

(As it pertains to floodplain, § 275-65) Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50% of the equalized assessed value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

(As it pertains to floodplain, § 275-65) Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50% of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not include either:

- A. Any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the Building Official and that are the minimum necessary to assure safe living conditions; or
- B. Any alteration of historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

UNRECLAIMED ACRE or UNRECLAIMED ACRES (As it pertains to nonmetallic mining, § 275-63)

- A. Those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under § 275-63T(4). However, the term does not include any areas described in Subsection B.
- B. "Unreclaimed acre" or "unreclaimed acres" does not include:

- (1) Those areas where reclamation has been completed and certified as reclaimed under § 275-63T(4).
- (2) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
- (3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
- (4) Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
- (5) For purposes of fees under § 275-63R, those areas within a nonmetallic mining site which the City has determined to have been successfully reclaimed on an interim basis in accordance with § 275-63T(4).

VARIANCE

(As it pertains to floodplain, § 275-65) An authorization by the Board of Appeals for construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

VIOLATION

(As it pertains to floodplain, § 275-65) The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE PROFILE

(As it pertains to floodplain, § 275-65) A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of a river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

WATERSHED

(As it pertains to floodplain, § 275-65) The entire region or area contributing runoff or surface water to a particular watercourse or body of water.

WELL

(As it pertains to floodplain, § 275-65) Means an excavated opening in the ground made by digging, boring, drilling, driving or other methods to obtain groundwater, regardless of its intended use.

SECTION XVIII

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

SECTION XIX

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 XX

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 11th day of March, 2025.

APPROVED:

David Ament, Mayor

Countersigned:

Rubina Medina, City Clerk



March 11, 2025

TO: Common Council
Mayor Ament
Alderman Harenda

FROM: Sarah Holtz on behalf of the Utility Committee

RE: Items from the February 25, 2025 Utility Committee Meeting requiring Common Council action.

A.	UT 06-25 Recommend to the Common Council to award the professional services contract for the 2025 flow monitoring and I/I quantification project to raSmith to assist the Utility with the 2025 Sanitary Sewer Flow Monitoring Program.
<u>Council Motion:</u>	
	This item was considered at the Utility Committee meeting on February 25, 2025. It was recommended to the Common Council on a vote of 4 - 0. I do hereby make a motion to approve the award of the professional services contract for the 2025 flow monitoring and I/I quantification project to raSmith to assist the Utility with the 2025 Sanitary Sewer Flow Monitoring Program.

UTILITY STAFF REPORT

EXECUTIVE SUMMARY

CUSTOMER/PROJECT:	2025 Flow Monitoring Project
LOCATION:	City Wide
REQUEST:	Award Professional Services Contract to raSmith for 2025

UTILITY MANAGER RECOMMENDATION:
Recommend to the Common Council to award the professional services contract for the 2025 flow monitoring and I/I quantification project to raSmith to assist the Utility with the 2025 Sanitary Sewer Flow Monitoring Program.

DETAILS IN ATTACHED STAFF REPORT

CITY OF NEW BERLIN
UTILITIES DEPARTMENT
STAFF REPORT

2025 Flow Monitoring Project

DATE STAFF REPORT CREATED:	February 20 th , 2025
CUSTOMER/PROJECT NAME:	2025 Flow Monitoring Project
ISSUE/DESCRIPTION OF PROJECT:	Flow Monitoring and I/I Quantification Project
REQUESTED ACTION:	Recommend to the Common Council to award the professional services contract for the 2025 flow monitoring and I/I quantification project to raSmith to assist the Utility with the 2025 Sanitary Sewer Flow Monitoring Program.
FISCAL IMPACT:	\$50,000.00
SOURCE OF FUNDS:	Sewer Operations
RATIONALE:	Quantifying data collected by utility flow monitors to determine sources of inflow and infiltration.
PREVIOUS ACTION:	N/A
FINDINGS:	N/A
UTILITY MANAGER RECOMMENDATION:	See Executive Summary
ATTACHMENTS:	raSmith Proposal

**CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE
FOR PROFESSIONAL SERVICES**

1. Introduction. This document (hereinafter referred to as “Terms and Conditions”) is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as “City”) and the Service Provider identified below (hereinafter referred to as “Service Provider”). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other Services, collectively referred to as the “Services” between the City and the Service Provider. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Service Provider and are not intended for the benefit of any other party.

2. Proposal. The Service Provider is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.

3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Service Provider agrees to provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with the professional practices of the profession.

4. Access to the Site. The City shall provide access to the Service Provider to work in and on City property.

5. Insurance. Service Provider shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Service Provider shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Service Provider agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through a liability insurance endorsement. Service Provider shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

6. Independent Service Provider. The parties warrant that no employer/employee relationship is established between the Service Provider and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Service Provider is an independent

Service Provider and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

7. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved. Notwithstanding any other clause written herein, Service Provider understands and agrees that the City is a municipal entity and therefore, is subject to the Open Records Law of the State of Wisconsin. Wisconsin Statute §19.36(3) requires governmental entities to make available for inspection a copy of any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any other documentation pertaining to this agreement, Service Provider shall provide the information as requested and charge no more than the cost to copy said information. The parties agree that upon completion or termination of this contract, all project contract documents or instruments of service, including electronic files of computer-aided record drawings and field inspection reports shall be delivered to and shall become the property of the City. These records, drawings, reports, etc. may be used without restriction by the City for any public purpose and to implement construction and use of the project. Any such use or reuse of these documents outside the scope of the project shall be without compensation or liability to the Service Provider, excepting for errors and omissions associated with the completed project, services and documents performed under this agreement.

8. Advertisements. Service Provider shall not identify the City as a client or customer of the Service Provider, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

9. Changes. In the event that the parties determine that a modification to the terms of the providing of these Services or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

10. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

11. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

12. Limitation on Liability. The City's liability to the Service Provider shall not exceed the sums paid by the City to the Service Provider under this contract. In addition, to the extent that the Service Provider seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinafter

shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Service Provider for its own negligence or intentional conduct.

13. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Service Provider may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

14. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Service Provider shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Service Provider be entitled to any penalty for the termination nor shall the Service Provider be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Service Provider has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Service Provider of any such deficiency and in the event that the Service Provider fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Service Provider will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Service Provider's failure to comply with the terms of the contract. Under no circumstances shall the Service Provider be entitled to any lost profits arising from the contract.

15. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

16. Hold Harmless. The Service Provider will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Service Provider's performance of the work under these Terms

and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

17. Indemnity. The City shall not be liable for failure on the part of the Service Provider or any other party performing under this contract in accordance with all applicable laws and regulations. Service Provider waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of or in any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

18. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin and represents the complete understanding of the parties with respect to the subject matter set forth herein, and may only be amended in a subsequent agreement executed by all parties.

CITY:
City of New Berlin

SERVICE PROVIDER:

R. A. Smith, Inc.

[Insert Service Provider Name]

By: _____

Alex Parker - Utility Manager

[Print Name & Title]

By: _____

Benjamin High, P.E. - Project Manager

[Print Name & Title]

By: _____

Title: _____

Date: _____

January 24, 2025

Mr. Alex Parker
Utility Manager
City of New Berlin
3805 South Casper Drive
New Berlin, WI 53151

SENT VIA EMAIL

Re: Proposal for Professional Services
raSmith Project No.: 2254605

Dear Mr. Parker:

raSmith appreciates the opportunity to work with the City of New Berlin Utilities Department on the 2025 Flow Monitoring and I/I Quantification project. As your trusted advisor, we are committed to understanding your challenges and providing cost-effective and timely solutions.

Scope of Services

A. Flow Monitoring

Per the results of the 2024 Flow Monitoring and I/I Quantification project, and the desire to quantify the past rehabilitation project areas, we propose to assist the Utility with their 2025 sanitary sewer flow monitoring program as in past years.

We will be quantifying data from the basins monitored during the 2025 program along with the lift stations and MMSD sites located in the City during the time period of March 2025 to November 2025. We will also be quantifying the I/I reductions that have been experienced due to recent rehabilitation projects that have occurred over the past few years. We will perform the following steps for installing the monitoring equipment, performing monthly site visits with the Utility and quantifying the I/I for the monitored sites in the City:

1. Flow Monitor Installation and Monthly Site Visits
 - a. Determine installation locations for flow monitors based on the results of the 2024 Flow Monitoring I/I Quantification program, previous Utility studies and rehabilitation projects, basins identified in the latest MMSD facility plan, and other Utility interests, which includes the use of MMSD funding to address private property issues in the City.
 - b. Assist Utility staff with the set-up and installation of the Utility owned flow monitors. The amount of meters installed in the program will be determined after identifying the basin locations and flow monitoring equipment available. A 2-day setup and installation, including Utility staff, will be anticipated for this project.
 - c. Utility staff will continue to perform downloads and maintenance on the meters as done in recent programs. We will continue to meet with the Utility once a month throughout the monitoring period to briefly analyze the collected data, verify the integrity of each monitoring site, and ensure that quality data is being collected.

- d. At the conclusion of the monitoring period, Utility staff will perform monitor removal and cleaning with limited services from our staff.
- 2. Flow Monitoring I/I Quantification
 - a. Acquire data from the City's rain gauges and lift stations for the monitoring time period.
 - b. Correlate rainfall data with flow monitoring data.
 - c. Develop flow statistics (maximums, minimums, averages, base flow).
 - d. Perform I/I per inch-mile and %RDII calculations.
 - e. Make recommendations for prioritizing cleaning, televising, and dye testing sewers. Further recommendations can be drawn to steer current and future public and private sewer rehabilitation efforts as well.
 - f. Submit a final summary report to the City.

B. CMAR Reporting

We will continue to help the City with their annual CMAR submittal to the WDNR. Below is a list of the tasks included in this item:

- 1. CMAR data collection.
- 2. CMAR form data entry.
- 3. CMAR form submittal to the WDNR.

C. MMSD PPII Program Submittals

We will continue to help the City with all submittals to the MMSD in regards to various PPII projects. This work includes but is not limited to the following:

- 1. Meetings with MMSD personnel
- 2. Work Plan development and submittals
- 3. Funding Agreement reviews

Completion Schedule

The flow monitors will be installed from March 2025 to November 2025. Data quantification will be ongoing with the monitoring portion of the project, with the final report delivery 90 days after the monitors are removed.

The CMAR and the MMSD related work will be completed during the 2025 calendar year.



Mr. Alex Parker
Utility Manager, City of New Berlin
Page 3 / January 24, 2025

Professional Fees

The above services will be provided for a lump sum fee of **\$50,000.00**. Services will be billed each month based on the work completed.

Usual and customary expenses such as mileage, printing, delivery and postage are not included in the lump sum fee and will be billed at cost as a reimbursable expense.

Client Responsibilities/Assumptions

The terms and conditions set forth herein are valid for 120 days from the date of this proposal and are conditioned upon our completion of all services within 365 days.

If you would like to authorize raSmith to proceed with your project, please sign the City of New Berlin General Terms and Conditions of Service for Professional Services that this letter is attached to and forward a signed copy of the entire Agreement to our office. Once received, we will execute and return a copy for your records. We look forward to working with you on this project.

If you have any questions, please contact me at (262) 317-3273 or ben.high@rasmith.com.

Sincerely,
raSmith

A handwritten signature in blue ink, appearing to read 'Benjamin G. High', followed by a smaller, less legible signature.

Benjamin G. High, P.E.
Project Manager

bth:H:\2254605\Contract\EP 012425 Parker_New Berlin Flow Monitoring.docx



MOTION SHEET

TO: Common Council
Mayor Ament
Ald. Stribl

FROM: 4th of July Commission

DATE: March 11, 2025

RE: February 26, 2025, 4th of July Commission items requiring Common Council action

A.	Discussion and possible action to recommend to the Common Council for approval of a contract with Area Tent for rentals and service from July 3 rd through July 5 th totaling \$21,821.15, as approved by the 4 th of July Commission on January 22nd, 2025.
<u>Council Motion:</u>	
	This item was considered at the 4th of July Commission meeting on February 26, 2025. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval of the contract for Area Tent rentals and service. Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Area Tent in the amount of \$21,821.15. Area Rental has provided this rental and service in previous years. This agreement has been reviewed and approved as to its form by the City Attorney.
B.	Discussion and possible action to recommend to the Common Council for approval of a contract with Chrome Fireworks in the amount of \$40,000 for 4 th of July Fireworks as approved by the 4 th of July Commission on January 22, 2025.
<u>Council Motion:</u>	
	This item was considered at the 4th of July Commission meeting on February 26, 2025. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval of the contract with Chrome Fireworks. Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Chrome Fireworks in the amount of \$40,000. This agreement has been reviewed and approved as to its form by the City Attorney, with the note that the City will need to use a permit for the fireworks.



C.	Discussion and and possible action to recommend to the Common Council approval of a contract with BCI Entertainment LLC in the amount of \$30,000 for 4 th of July Festival Drone show on July 5 th 2025.
<u>Council Motion:</u>	
	This item was considered at the 4th of July Commission meeting on February 26, 2025. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval of the contract with BCI Entertainment LLC. Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with BCI Entertainment LLC in the amount of \$30,000. This agreement has been reviewed and approved as to its form by the City Attorney.
D.	Discussion and possible action to recommend to the Common Council approval of a contract with Pat's Services, INC. in the amount of \$10,645 for 4 th of July Festival for portable sanitation services for July 1 st -July 6 th 2025.
<u>Council Motion:</u>	
	This item was considered at the 4th of July Commission meeting on February 26, 2025. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval of the contract for Pat's Services. Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Pat's Services, INC. in the amount of \$10,645. This agreement has been reviewed and approved as to its form by the City Attorney.



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Katie Roth, Recreation Manager
Polly Oldenburg, 4th of July Coordinator

RE: Discussion and recommendation to the Common Council for approval of a contract with Area Tent for rentals and service from July 3rd through July 5th totaling \$21,821.15, as approved by the 4th of July Commission on January 22nd, 2025.

DATE: 3-3-25

REQUESTED ACTION: Recommend to the Common Council approval of a contract with Area Tent in the amount of \$21,821.15 for 4th of July Festival.

FISCAL IMPACT: This expense falls within the budgeted expense for this line item.

RATIONALE/BACKGROUND: Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Area Tent in the amount of \$21,821.15. Area Rental has provided this rental and service in previous years. This agreement has been reviewed and approved as to its form by the City Attorney

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE

1. Introduction. This document (hereinafter referred to as “Terms and Conditions”) is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as “City”) and the Service Provider identified below (hereinafter referred to as “Service Provider”). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other Services, collectively referred to as the “Services” between the City and the Service Provider. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Service Provider and are not intended for the benefit of any other party.

2. Proposal. The Service Provider is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary. If no Scope of Services is attached to this agreement, the parties agree that the following description of the services to be provided, as well as the compensation to be provided for those services shall apply: *Tent services for City of New Berlin 4th of July Family Festival: June 30th-July 7th, 2025.*

Dates on which services are to be provided: June 30th-July 7th, 2025..

The Services being provided hereunder shall be completed on or before: July 7th 2025.

The cost of the Services being provided are as follows: \$21,821.15

3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Service Provider agrees to provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with the professional practices of the profession.

4. Access to the Site. The City shall provide access to the Service Provider to work in and on City property.

5. Storage of Materials. The storage of materials and storage of Contractor’s equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.

6. Insurance. Service Provider shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Service Provider shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general

liability coverage shall be for this project and not the policy as a whole. Service Provider agrees to require that the insurer list the City as an Additional Insured on a primary and noncontributory basis and to provide adequate evidence of said status through a liability insurance endorsement. Service Provider shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Service Provider. The parties warrant that no employer/employee relationship is established between the Service Provider and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Service Provider is an independent Service Provider and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved. Notwithstanding any other clause written herein, Service Provider understands and agrees that the City is a municipal entity and therefore, is subject to the Open Records Law of the State of Wisconsin. Wisconsin Statute §19.36(3) requires governmental entities to make available for inspection a copy of any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any other documentation pertaining to this agreement, Service Provider shall provide the information as requested and charge no more than the cost to copy said information. The parties agree that upon completion or termination of this contract, all project contract documents or instruments of service, including electronic files of computer-aided record drawings and field inspection reports shall be delivered to and shall become the property of the City. These records, drawings, reports, etc. may be used without restriction by the City for any public purpose and to implement construction and use of the project. Any such use or reuse of these documents outside the scope of the project shall be without compensation or liability to the Service Provider, excepting for errors and omissions associated with the completed project, services and documents performed under this agreement.

9. Advertisements. Service Provider shall not identify the City as a client or customer of the Service Provider, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these Services or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work

stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Service Provider shall not exceed the sums paid by the City to the Service Provider under this contract. In addition, to the extent that the Service Provider seeks indemnification from the City and the City consents to provide such indemnity, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Service Provider for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Service Provider may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Service Provider shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Service Provider be entitled to any penalty for the termination nor shall the Service Provider be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Service Provider has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Service Provider of any such deficiency and in the event that the Service Provider fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice,

declare this contract to be terminated. Service Provider will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Service Provider's failure to comply with the terms of the contract. Under no circumstances shall the Service Provider be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply and will control.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The Service Provider will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Service Provider's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Service Provider or any other party performing under this contract in accordance with all applicable laws and regulations. Service Provider waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of or in any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

22. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin and represents the complete understanding of the parties with respect to the subject matter set forth herein, and may only be amended in a subsequent agreement executed by all parties.

23. Ongoing Services. If this is a contract for ongoing services, the parties shall indicate that fact by initially this paragraph in the margin, indicating this paragraph applies. The parties agree that these Terms and Conditions shall be applicable to an ongoing series of Services, which may be entered into and arranged between the parties from time to time during the period of time commencing _____ and concluding on _____, inclusive. A separate proposal and/or description of Scope of Services shall be provided for in each instance where the Service Provider is providing services to the City; however, in all instances of any work being provided by the Service Provider during the aforementioned time period, this set of Terms and Conditions shall apply.

24. COVID-19 Pandemic. The Service Provider acknowledges that in December of 2019 a novel strain of the Coronavirus (now referenced as COVID-19) was detected and has now spread throughout many countries, including the United States. Based upon this, the World Health Organization has declared a Public Health Emergency of international concern; and the United States Department of Health and Human Services has declared a Public Health Emergency. The Service Provider further acknowledges that it is aware of the COVID-19 pandemic and that the existence of said pandemic will not constitute a force majeure or otherwise preclude the Service Provider's ability to perform the terms of this agreement absent the issuance of any Order by a governmental entity with jurisdiction that would preclude such performance.

CITY:
City of New Berlin

SERVICE PROVIDER:
Area Tent

By: _____

Gregory Kessler
Director of Community Development

By: _____

[Print Name & Title]

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.

17000 W Cleveland Ave.
New Berlin, WI 53151
(262)827-1444
(262)827-4924 (Fax)



3586 Hillside Dr.
Delafield, WI 53018
(262) 646-4444

Status: Reservation
Contract #: 68139-1

Event Beg: Thu 7/ 3/2025 7:30AM
Event End: Sat 7/ 5/2025 5:00PM
Operator: Ben Landry

Customer #: 22124

NEW BERLIN 4TH OF JULY *

Phone 262-797-2443

3805 S CASPER DR
PO BOX 510921
NEW BERLIN, WI 53151

Delivery Mon 6/30/2025 8:00AM - 5:00PM

POLLY 262-787-8164
MALONE PARK
16400 W AL STIGLER PKWY
NEW BERLIN, WI 53151

Pickup Mon 7/ 7/2025 8:00AM - 5:00PM

POLLY 262-787-8164
MALONE PARK
16400 W AL STIGLER PKWY
NEW BERLIN, WI 53151

- 1) DEL MON OR TUE ANYTIME
2) CALL WHEN ON THE WAY

- 1) PICK UP MON OR TUE ANYTIME

DEL CONTACT - JUSTIN

- 1) BILLING CUSTOMER
2) EVENT 4TH OF JULY
3) GRASS, OK TO STAKE
4) CUSTOMER MUST CALL DIGGERS HOTLINE 10 DAYS PRIOR TO INSTALL AT 800-242-8511
5) DELIVERY FEE BASED ON AREA RENTAL TRUCK PARKING WITHIN 50 FEET OF INSTALLATION
6) CUSTOMER TO SET UP AND RESTACK TABLES & CHAIRS IN THE SAME MANNER IN WHICH DELIVERED
7) CUSTOMER MUST SUPPLY ELECTRICITY TO ALL POWERED EQUIPMENT
8) BRING ADJUSTABLE LEGS FOR STAGE INSTALLATION (GRASS INSTALL)
9) BRING PLYWOOD SUBFLOOR FOR DANCE FLOOR INSTALLATION (GRASS INSTALL)
DAMAGE WAIVER AVAILABLE FOR 10% OF RENTAL COST

40x80 REQUESTED TO BE BLUE AND WHITE
60x150 REQUESTED TO HAVE (1) WHITE AND (1) RED AND WHITE
40X40 REQUESTED TO BE WHITE

This is a 4 year agreement. The rental rate for subsequent years will be escalated by 3% annually. Please see the yearly rental rate breakdown below.

2024 \$19,763.66
2025 \$20,356.57
2026 \$20,967.27
2027 \$21,596.28

Rental Amount does not include Sale Items or Delivery

ADDED 40X40 W/ CENTER POLE LIGHT AND (2) SECTIONS OF SIDEWALL

**ADDITION TO 2025 CONTRACT = \$1,064.58

Qty	Key	Items	Replacement Cost	Status	Each	Price
WEST TENT						
1	127-0253	60X150WA TENSION TENT	\$0.00 each	Reserved	\$4,508.66	\$4,508.66
		9' SIDEPOLES - SIDEWALL ON FAR WEST 150' SIDE - CTR POLE LIGHTS ON ALL POLES				
1	127-0580-1	*60X30WA END W/ROPES	\$0.00 each	Reserved	\$0.00	\$0.00
1	127-0590-1	*60X30WA END W/HOLES	\$0.00 each	Reserved	\$0.00	\$0.00
3	127-0620-1	*60X30WA MID	\$0.00 each	Reserved	\$0.00	\$0.00
8	128-0035-1	SIDEWALL,9'X20'SOLID,TRAD.	\$0.00 each	Reserved	\$25.2925	\$202.34
		9' SIDEWALL TO GO ON 60X WEST END				
1	126-0010	10X10WCT FRAME TENT	\$0.00 each	Reserved	\$189.68	\$189.68
		TO BE BUTTED UP NEXT TO 60X NEAR STAGE FOR BAND CHANGING ROOM				
1	126-8010-1	*10X10WCT TOP	\$0.00 each	Reserved	\$0.00	\$0.00
2	128-0045-1	SIDEWALL,CT.SOLID,10'ROPES	\$0.00 each	Reserved	\$17.51	\$35.02

Qty	Key	Items	Replacement Cost	Status	Each	Price
2	128-0046-1	SIDEWALL,CT.SOLID,10'HOLES	\$0.00 each	Reserved	\$17.51	\$35.02
EAST TENT						
1	127-0256	60X150WE TENSION TENT	\$0.00 each	Reserved	\$4,508.66	\$4,508.66
		9' SIDEPOLES - SIDEWALL ON FAR EAST 150' SIDE - CTR POLE LIGHTS ON ALL POLES				
1	127-0550-1	*60X30WE END W/ROPES	\$0.00 each	Reserved	\$0.00	\$0.00
1	127-0560-1	*60X30WE END W/HOLES	\$0.00 each	Reserved	\$0.00	\$0.00
3	127-0570-1	*60X30WE MID	\$0.00 each	Reserved	\$0.00	\$0.00
8	128-0035-1	SIDEWALL,9'X20'SOLID,TRAD.	\$0.00 each	Reserved	\$25.2913	\$202.33
		9' SIDEWALL TO GO ON 60X EAST END				
1	126-0010	10X10WCT FRAME TENT	\$0.00 each	Reserved	\$189.68	\$189.68
		TO BE BUTTED UP NEXT TO 60X NEAR STAGE FOR BAND CHANGING ROOM				
1	126-8010-1	*10X10WCT TOP	\$0.00 each	Reserved	\$0.00	\$0.00
2	128-0045-1	SIDEWALL,CT.SOLID,10'ROPES	\$0.00 each	Reserved	\$17.51	\$35.02
2	128-0046-1	SIDEWALL,CT.SOLID,10'HOLES	\$0.00 each	Reserved	\$17.51	\$35.02
PIE TENT						
1	127-0146-1	40X80RA TENSION TENT	\$0.00 each	Reserved	\$1,532.07	\$1,532.07
		REQUESTS BLUE AND WHITE - CTR POLE LIGHTS ON ALL POLES				
2	127-0509-1	*40XR END SECTION	\$0.00 each	Reserved	\$0.00	\$0.00
2	127-0510-1	*40XR MID SECTION	\$0.00 each	Reserved	\$0.00	\$0.00
NORTH TENT						
1	127-0141	40X40WA TENSION TENT	\$0.00 each	Reserved	\$954.00	\$954.00
2	127-0511-1	*40XW END SECTION	\$0.00 each	Reserved	\$0.00	\$0.00
2	128-0030-1	SIDEWALL,8'X20'SOLID,TRAD.	\$0.00 each	Reserved	\$25.29	\$50.58
		8' SIDEWALL TO BE PLACED IN A CORNER - FOR DJ				
LIGHTS						
21	095-0255-1	LIGHT,4BULB,CENTER POLE MOUNTED,FLOODS	\$0.00 each	Reserved	\$58.4424	\$1,227.29
		CTR POLE LIGHTS ON ALL TENTS - MUST PLUG IN AND VERIFY ALL LIGHTS WORK				
1	095-0195-1	LIGHT,STRING 50'WHITE CORD(5)40W BULBS	\$0.00 each	Reserved	\$46.69	\$46.69
		STRING LIGHTS FOR CUSTOM PORTA-JOHN LIGHTING				
4	035-0170	LIGHT TOWER,30',4-1000W FLOODS	\$0.00 each	Reserved	\$175.0925	\$700.37
		*****CUSTOMER IS RESPONSIBLE FOR CABLE***** *****\$175.00 CHARGE IF CABLE IS BROKE. X_____				
FLOORING						
64	096-0061	DANCE FLOOR,4'X4'	\$0.00 each	Reserved	\$38.9097	\$2,490.22
		16X24 IN BOTH 60X150 TENTS GROUND MUST BE LEVEL WITH NO UNDULATIONS (PEAKS OR VALLEY'S)				
64	096-0063	DANCE FLOOR 4'X4' SECTIONS	\$0.00 each	Reserved	\$0.00	\$0.00
STAGE						
64	096-0050-1	STAGE,4'X4'SECTIONS UP TO 32" TALL	\$0.00 each	Reserved	\$36.9642	\$2,365.71
		20X20X24 WITH 2 EXTRA PIECES ON EACH SIDE AND TWO SETS OF STEPS IN EACH 60X150				
1	096-0108-1	.LEGS BLUE 24"	\$0.00 each	Reserved	\$0.00	\$0.00
4	096-0095-1	STAGE,STEPS UP TO 32" TALL	\$0.00 each	Reserved	\$68.0925	\$272.37
TABLES						
30	096-0025-1	TABLE,BANQ.8'X30" SEATS-8 (DO NOT STAPLE TABLES , \$5.00 CHARGE PER TABLE) (TABLES ARE MADE OF PLYWOOD AND ARE DESIGNED TO BE COVERED) 1.50 CHARGE PER TABLE IF NOT BROKEN DOWN AND STACKED UPON PICKUP	\$0.00 each	Reserved	\$11.673	\$350.19
60	096-0036-1	TABLE,CABARET 30"RD.X42" TALL (DO NOT STAPLE TABLES , \$5.00 CHARGE PER TABLE) (TABLES ARE MADE OF PLYWOOD AND ARE DESIGNED TO BE COVERED) 1.50 CHARGE PER TABLE IF NOT BROKEN DOWN AND STACKED UPON PICKUP	\$0.00 each	Reserved	\$13.6183	\$817.10
60	500-0090-1	^TABLE TOPS 30"	\$0.00 each	Reserved	\$0.00	\$0.00
60	500-0038-1	STEM CABERET	\$0.00 each	Reserved	\$0.00	\$0.00
60	500-0039-1	base	\$0.00 each	Reserved	\$0.00	\$0.00
CHAIRS						
120	096-0001-1	CHAIR,BLACK POLY A .30 CHARGE PER CHAIR IF NOT BROKEN DOWN AND STACKED UPON PICKUP	\$0.00 each	Reserved	\$1.5078	\$180.93

Qty	Key	Items	Replacement Cost	Status	Each	Price
MISC RENTAL ITEMS						
30	145-1100-1	CABLE COVER	\$0.00 each	Reserved	\$14.591	\$437.73
4	145-0065-1	EXTINGUISHER FIRE	\$0.00 each	Reserved	\$13.6175	\$54.47
1	Misc - 2	LABOR	\$0.00 each	Selling	\$160.00	\$160.00
		CUSTOM LIGHT INSTALLATION USING CAGE LIGHTS AND PIPE FRAME BY TOILETS 6 UPRIGHTS, 6 BASES, 5 CROSSES STAKED INTO ASPHALT				
1	MISC-1	DELIVERY/PICKUP	\$0.00 each	Selling	\$240.00	\$240.00

Rental Contract

I have read all pages associated with this contract. Front and Back.

Area Rental has 5 Business Days to accept or decline the contract after submission of the signed contract based on equipment and staffing availability.

Tent rental customer agrees to call diggers hotline 10 Days prior to installation date.

EQUIPMENT DAMAGE WAIVER, 10% of Rental Charge

INITIAL: ACCEPTED _____ DECLINED _____

Signature: _____

NEW BERLIN 4TH OF JULY *

Rental:	\$21,421.15
Sales:	\$160.00
Delivery Charge:	\$240.00
Subtotal:	\$21,821.15
Total:	\$21,821.15
Paid:	\$0.00
Amount Due:	\$21,821.15

1. Lessee understands and agrees that said equipment remains the property of Lessor and that failure of the Lessee to return said equipment to Lessor within the time provided may constitute a crime and subject the Lessee to prosecution, therefore, unless such failure is occasioned through Lessee's required compliance with military orders. Equipment must not be taken more than 150 miles from origin without Lessor's approval.
2. Lessee agrees to pay Lessor for any loss of or damage to said equipment while in his custody or other expenses resulting from Lessee's use of said equipment. Lessee agrees to pay full rental fee of said equipment until payment for such repairs or replacements have been made to Area Rental. If Lessee accepts damage waiver, Lessee is not responsible for damage to equipment not caused through Lessee neglect up to maximum limit of \$5,000, the Lessee would be responsible for all damages over and above the \$5,000. The Lessee is fully responsible for the following regardless if the damage waiver was accepted or declined: damage to tires, cost of cleaning and reconditioning necessary resulting from use in painting, sandblasting or similar use of equipment, cost of repair or replacement from negligent use from misuse or abuse of the equipment or unnecessary exposure to the elements, or use for purposes for which the equipment was not designed, or for loading beyond capacity. Tractors, loaders and skid steer loaders are not to be used for the purpose of demolition.
3. Lessee authorizes Lessor to bill Lessee's credit card for all charges and expenses incurred pursuant to said contract.
4. Lessee agrees to indemnify and save harmless the Lessor from claims: loss and damage, including costs and attorney's fees arising from or occasioned by the operation, use or presence of the leased equipment or any act or default of Lessee, his agents or servant. Lessee assumes all risks, liabilities and costs for all injuries to or death of any person or persons and damage to the property of anyone arising or occasioned by the operation, use or presence of the leased equipment. Lessee shall reimburse Lessor for all attorney fees, court costs and expenses incurred by Lessor to enforce collection to preserve and enforce Lessor's rights under this contract.
5. Lessee shall assume all liability for any and all damage to personal property from any cause whatsoever while being transported in said trailer and/or equipment including damage caused by water or theft.
6. For the purpose of enforcing Lessor's ownership of said equipment and to protect Lessor's rights under the contract, Lessee agrees that Lessor may retake possession of equipment at any time and for such purpose to enter upon the premises of Lessee. Lessee hereby waives any right of action against Lessor by reason of such retaking or entry.

Lessee acknowledges that he has examined said equipment and/or trailer, together with any coupling mechanism and that said equipment and/or trailer and coupling mechanism are in good condition and that said trailer and/or equipment is securely connected to Lessee's automobile. Lessee agrees to assume all liability for any damages to the towing vehicle arising out of the use of said trailer and/or equipment. Lessee agrees to periodically inspect said equipment and/or trailer and coupling mechanism and to maintain the same in a safe, dependable and secure condition while in his custody. Lessee is fully responsible for the suitability of the towing vehicle and hitch assemblies ability to transport the weight of the trailer and load. Regardless of the party at fault, Lessee understands and agrees to be responsible for damage to said trailer or equipment regulating from collision or other accident.

7. Lessee agrees that in the event any of the Property becomes unsafe or in a state of disrepair, Lessee will immediately discontinue the use thereof and promptly notify Lessor. Lessee accepts responsibility for evacuating any tent when wind or gust exceed 25 MPH or when other unsafe conditions arise. Lessor is not responsible for any damage caused by tents falling regardless of the cause. Grounds must be suitable for the use of installation equipment, Lessor is not responsible for grass, grounds or asphalt damage.
8. Reservations canceled or significantly altered less than 72 hours before the Property is to be delivered or picked up by Lessee are subject to a cancellation fee equal to the full contract cost. All other reservation cancellations are subject to a cancellation fee of 1/3 of the contract cost. Counts may be reduced by up to 15 percent of the dollar amount of the contract without penalty a minimum of 72 hours before the Property is to be delivered or picked up. Deliveries are tail gate to tail gate. A \$15 per man per 15 minutes is assessed on delays of pick ups or deliveries.
9. Lessee assumes full responsibility for any additional expenses incurred by Reason of Breakdown of said equipment. Lessee must pay for all gas used. Sales tax is added to all rentals. Lessee pays for time out, not time used. There are minimum charges on Lessor's equipment regardless if Lessee used up all of that time. In case of equipment breakdown, it is Lessee's responsibility to return equipment for service or replacement. Time adjustments may be made, however, Lessee is still responsible for rental fees. Any equipment kept overnight is charged on a daily basis. Any rental credits must be used within a 3 week period of the original rental contract. Lessee will be charged for service calls due to Lessee error.
10. This contract represents the entire agreement between the parties hereto and there are no collateral, oral or other agreements or understandings. Inquiry proposals are null and void if not accepted within 15 days.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/24/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AssuredPartners of Illinois, LLC 4350 Weaver Pkwy Warrenville IL 60555	CONTACT NAME: Certificate Team PHONE (A/C, No, Ext): 630-355-2077 E-MAIL ADDRESS: certs.apil@assuredpartners.com FAX (A/C, No): 630-355-7996
INSURED Area Rental & Sales Co., LLC 17000 W Cleveland Ave. New Berlin WI 53151	INSURER(S) AFFORDING COVERAGE INSURER A : Central Mutual Insurance Company INSURER B : INSURER C : INSURER D : INSURER E : INSURER F : NAIC # 20230

COVERAGES**CERTIFICATE NUMBER:** 365249732**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	Y		CLP 8964679	3/1/2025	3/1/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BAP 8964678	3/1/2025	3/1/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			CXS8964680	3/1/2025	3/1/2026	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A				PER STATUTE E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Additional Insured(s) for General Liability: City of New Berlin.

CERTIFICATE HOLDER**CANCELLATION**

City of New Berlin
3805 S Casper Drive
New Berlin, WI 53151

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Katie Roth, Recreation Manager
Polly Oldenburg, 4th of July Coordinator

RE: Discussion and recommendation to the Common Council for approval of a contract with Chrome Fireworks in the amount of \$40,000 for 4th of July Fireworks as approved by the 4th of July Commission on January 22, 2025.

DATE: 3-3-25

REQUESTED ACTION: Recommend to the Common Council approval of a contract with Chrome Fireworks in the amount of \$40,000 for 4th of July Fireworks.

RATIONALE/BACKGROUND: Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Chrome Fireworks in the amount of \$40,000. This agreement has been reviewed and approved as to its form by the City Attorney, with the note that the City will need to use a permit for the fireworks.

**CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE
4th OF JULY FIREWORKS**

1. Introduction. This document (hereinafter referred to as “Terms and Conditions”) is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as “City”) and the Service Provider identified below (hereinafter referred to as “Service Provider”). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other Services, collectively referred to as the “Services” between the City and the Service Provider. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Service Provider and are not intended for the benefit of any other party.

2. Proposal. The Service Provider is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary. If no Scope of Services is attached to this agreement, the parties agree that the following description of the services to be provided, as well as the compensation to be provided for those services shall apply: optional rain date of Saturday, July 5th, 2025.

Dates on which services are to be provided: Friday, July 4th, 2025.

The Services being provided hereunder shall be completed on or before: Friday, July 4th, 2025.

The cost of the Services being provided are as follows: \$40,000

3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Service Provider agrees to provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with the professional practices of the profession.

4. Access to the Site. The City shall provide access to the Service Provider to work in and on City property.

5. Storage of Materials. The storage of materials and storage of Contractor’s equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.

6. Insurance. Service Provider shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and which have an A.M. Best A rating or better with such limits as the

City may establish and require from time to time. Specifically the Service Provider shall carry general liability coverage with limits of not less than \$5,000,000.00. Service Provider shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Service Provider agrees to require that the insurer list the City as an Additional Insured on a primary and noncontributory basis and to provide adequate evidence of said status through a liability insurance endorsement. Service Provider shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Service Provider. The parties warrant that no employer/employee relationship is established between the Service Provider and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Service Provider is an independent Service Provider and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved. Notwithstanding any other clause written herein, Service Provider understands and agrees that the City is a municipal entity and therefore, is subject to the Open Records Law of the State of Wisconsin. Wisconsin Statute §19.36(3) requires governmental entities to make available for inspection a copy of any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any other documentation pertaining to this agreement, Service Provider shall provide the information as requested and charge no more than the cost to copy said information. The parties agree that upon completion or termination of this contract, all project contract documents or instruments of service, including electronic files of computer-aided record drawings and field inspection reports shall be delivered to and shall become the property of the City. These records, drawings, reports, etc. may be used without restriction by the City for any public purpose and to implement construction and use of the project. Any such use or reuse of these documents outside the scope of the project shall be without compensation or liability to the Service Provider, excepting for errors and omissions associated with the completed project, services and documents performed under this agreement.

9. Advertisements. Service Provider shall not identify the City as a client or customer of the Service Provider, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these Services or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Service Provider shall not exceed the sums paid by the City to the Service Provider under this contract. In addition, to the extent that the Service Provider seeks indemnification from the City and the City consents to provide such indemnity, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Service Provider for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Service Provider may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Service Provider shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Service Provider be entitled to any penalty for the termination nor shall the Service Provider be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Service Provider has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give

written notice to the Service Provider of any such deficiency and in the event that the Service Provider fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Service Provider will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Service Provider's failure to comply with the terms of the contract. Under no circumstances shall the Service Provider be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply and will control.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of NFPA 1123, OSHA and applicable City of New Berlin ordinances and Wisconsin State statutes and Administrative code and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

Additionally, the City agrees to erect fencing to assist in the protection of the site from which the fireworks will be launched as depicted on the attached map, Exhibit A so as to prevent unauthorized persons from entering that area. In addition, the City will provide the Service Provider with resources to deal with any person or persons who may trespass into the area where the launching is to occur. The Service Provider further agrees to inspect the launch area as well as the display areas where ash from the fireworks may fall to ensure that any unexploded or partially detonated fireworks are collected and appropriately disposed of, solely at the expense of the Service Provider. The Service Provider further agrees to inspect the display area in the morning following the show to pick up any undetonated or partially detonated shells.

19. Hold Harmless. The Service Provider will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Service Provider's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Service Provider or any other party performing under this contract in accordance with all applicable laws

and regulations. Service Provider waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of or in any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

22. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin and represents the complete understanding of the parties with respect to the subject matter set forth herein, and may only be amended in a subsequent agreement executed by all parties.

23. Ongoing Services. If this is a contract for ongoing services, the parties shall indicate that fact by initially this paragraph in the margin, indicating this paragraph applies. The parties agree that these Terms and Conditions shall be applicable to an ongoing series of Services, which may be entered into and arranged between the parties from time to time during the period of time commencing _____ and concluding on _____, inclusive. A separate proposal and/or description of Scope of Services shall be provided for in each instance where the Service Provider is providing services to the City; however, in all instances of any work being provided by the Service Provider during the aforementioned time period, this set of Terms and Conditions shall apply.

24. COVID-19 Pandemic. The Service Provider acknowledges that in December of 2019 a novel strain of the Coronavirus (now referenced as COVID-19) was detected and has now spread throughout many countries, including the United States. Based upon this, the World Health Organization has declared a Public Health Emergency of international concern; and the United States Department of Health and Human Services has declared a Public Health Emergency. The Service Provider further acknowledges that it is aware of the COVID-19 pandemic and that the existence of said pandemic will not constitute a force majeure or otherwise preclude the Service Provider's ability to perform the terms of this agreement absent the issuance of any Order by a governmental entity with jurisdiction that would preclude such performance.

CITY:
City of New Berlin

SERVICE PROVIDER:
Chrome Fireworks and Displays LLC

By: _____

By: _____

[Print Name & Title]

Chrome Fireworks- Owner James Krueger

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.



PO Box 44186 ☆ Madison, WI ☆ 53744
608.732.4545 ☆ chromefireworks@gmail.com
www.chromefireworks.com

Sponsor

City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151

2025 CONTRACT

This contract entered into this _____ day of _____ 202__, engages the services of Chrome Fireworks & Displays, LLC, hereinafter referred to as "Chrome", to produce and perform a pyrotechnic display on behalf of Sponsor under the following terms:

1. The date of the display will be Fri July 4, 2025. In case of inclement weather, the display will be rescheduled for Sat July 5, 2025. Chrome will have complete authority to cancel the display if, in the reasonable opinion of Chrome, the health, safety, and well-being of the pyrotechnicians, spectators or property would be jeopardized by proceeding with the display including inclement weather or imminent threat thereof.

This contract, together with the City of New Berlin's Terms and Conditions, represents the entire agreement between the parties hereto and there are no collateral or other agreements or understandings. Where there is conflict between this contract and the City of New Berlin's Terms and Conditions, the City's Term and Conditions will control.

2. The cost of the display will be \$ 40,000. Upon signing this Contract, Sponsor will pay an initial payment to Chrome in the amount of \$ 10,000 invoiced in January. The remaining balance will be paid within 10 days of the display. A late fee of 1.5% per month shall apply to any unpaid balance remaining beyond a 10-day period. Should a cancellation occur once crew is enroute or onsite, the cost of insurance, labor and any non-reusable items will be billed or deducted from the deposit, minimum 50% of budget amount. If Chrome and Sponsor agree to cancel and event, likely due to display date weather issues, and a nearby reschedule date cannot be obtained, the Sponsor agrees to reimburse Chrome for incurred expenses including insurance at 15% of the budget amount plus any permit fees and other costs incurred by Chrome for the Sponsor's display.

3. Sponsor will procure and furnish a suitable location for the fireworks display with adequate distances from audience, roof tops, flammable materials and other hazards in compliance with NFPA 1123 guidelines - including a minimum spectator set back of at least 600 feet at all points from the largest diameter mortars. Sponsor will secure all police, fire, local and state permits, and shall arrange for all security bonds if required by law for the location of the display. Sponsor will furnish all necessary police, fire and other appropriate protection necessary for proper crowd control and protection, automobile parking, and supervision in clearing of debris after the display. Sponsor will be solely responsible for keeping all unauthorized persons out of the display firing area and behind the safety zone lines.

4. Chrome reserves the right to make substitutions as to the amount, size and description of fireworks as is reasonably necessary to address site, weather, health, supply availability and safety concerns should they arise.

5. **Prior Cancellation:** Should the fireworks display(s) agreed upon in this Contract be cancelled by the Client prior to the fireworks display date, shall result in liquidated damages payable to Chrome Fireworks from the Sponsor for an amount equal to 40% of the Contract price plus any and all other related costs incurred by the Display Operator in resolving matters related to failure of Client to fulfill this Contract,

including but not limited court costs, attorney fees, litigation expenses, witness fees/expenses, travel expenses and similar costs), prejudgment interest, post judgment interest, fees, and expenses incurred by the Display Operator.

6. **Bad weather and Shoot Trailers:** In event of worsening weather conditions at the planned showtime, Chrome will need flexibility on shoot times, earlier or later depending on weather conditions. Chrome often provides electronic & shoot trailer shows for utmost performance of the firework show. The downfall of these electronic setups is that they CANNOT be dismantled. The show will need to be fired or secured/ stored until the nearby rain date. It is very hazardous and potentially fatal to our crews to dismantle this type of display. Chrome needs flexibility of the Sponsor to shoot the show or adequately secure the setup until the rain date.

7. **Setup:** Chrome will provide qualified pyrotechnicians who will deliver, set-up, execute, dismantle and cleanup the pyrotechnic display. In some cases, the crew shall arrive the night prior to the event to begin setup.

8. **Clean Up & Searches:** The pyrotechnicians shall conduct an after-display search of the grounds in an effort to locate and dispose of any unexploded fireworks. The search shall be reasonably dictated by such elements including, but not limited to terrain, ground cover, weather conditions and time of completion of display. Chrome pyrotechnicians will provide reasonable cleanup for the site immediately following the display. All equipment, firework packaging, and larger debris will be removed to the best of the crew's ability before leaving the display area. Sponsor shall provide a nearby dumpster or other adequate space for boxes, spent cakes and refuse after the display.

After our cleanup pieces of paper, cardboard, multi-shot cake inserts and fuse casing will remain but should disappear with weather, time and/or lawn mowing. In concentrated areas of debris particles for example, Chrome often uses leaf rakes if the site and ground cover allows, without being required, our crews provide reasonable effort to clean up the large debris for the Sponsor.

9. Chrome will conduct a reasonable search of the display area before departure, in an attempt to locate any damages or unexploded shells. Sponsor acknowledges that an early morning search of the area is of utmost importance, or as soon as reasonably possible following the display. This search is to locate anything abnormal including site damage or unexploded fireworks that might not have been spotted by Chrome in the night. In the event that Sponsor discovers any unexploded fireworks, Sponsor will immediately contact Chrome and Chrome shall be responsible for removing said fireworks as soon as possible after receipt of such notice. **Please notify Jim Krueger via cell phone 608-732-4545. If you have a cell # for your crew lead they may be notified also.**

10. \$5,000,000 Insurance: Unless otherwise agreed, Chrome shall provide General Liability and Property Damage Insurance for the fireworks display in the amount of \$5,000,000 naming the Sponsor as an additional insured party. The current industry standard is \$1,000,000 of such coverage. A certificate evidencing liability insurance shall be provided to Sponsor before the display. Sponsor will notify Chrome of any additional insureds prior to issuing the insurance certificate.

The sponsor and landowner along with other entities and individuals listed on the certificate of insurance shall be deemed an additional insured per this contract. No additional written agreement is needed for endorsement.

Chrome is also covered with \$5,000,000 of MCS-90 Transportation insurance which is compliant with Dept. of Transportation interstate regulations.

The pyrotechnicians on site are covered with a \$500,000 Workers Comp insurance policy, proof of all insurances are readily available by request.

11. Chrome shall take all steps reasonably anticipated to safeguard spectators and Sponsor's property. Should any losses occur which Sponsor believes are the result of Chrome's firework display, Sponsor will immediately notify Chrome of the nature of the loss and the date on which the loss occurred. Said notice shall be in writing and provide as much detail as possible regarding the extent of the loss (including clear pictures) as this process will be required by the insurance adjustors.

12. In the event of fire, accident, flood, act of God or other causes beyond the control of Chrome which prevents Chrome from performing under this contract, other than inclement weather, both parties agree to terminate this contract and all performance requirements and damages resulting therefrom.

13. The Sponsor will pay to Chrome pay all costs (including but not limited to court costs, attorney fees, litigation expenses, witness fees/expenses, travel expenses and similar costs), prejudgment interest, post judgment interest, fees, expenses, and all damages incurred by the Chrome through enforcing this contract.

14. The Sponsor agrees to indemnify, hold harmless and defend Display Operator and employees from any and all claims brought against the Display Operator for any and all accidents, incidents or allegations not directly related to the Display Operator's agreed upon contractual duties and obligations, aka: any other liabilities arising from sponsor's event.

Chrome will provide the General Liability insurance certificate to Sponsor for the purpose of insuring Chrome's risk in performing contracted duties involving the fireworks display. However, Chrome will be indemnified and held harmless for the remainder of the Sponsor's event or issues arising as result of the event. This includes but is not limited to the event's activities, other contractors, vendors, traffic issues, and members of general public, audience and/or any other matters beyond the direct control, scope, and duty of Chrome's contract.

15. This Contract will be construed by laws of the state of Wisconsin. If any provision of this agreement is deemed unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect.

16. This Contract constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous agreements, understanding, negotiations and discussions, either oral or executed in writing by the parties to be bound thereby. Chrome reserves the right to transfer the contract at which time the duties and liability would also be transferred in entirety, indemnifying and holding harmless Chrome. The waiver of any provisions of this Contract will not constitute a waiver of any other provision of this contract.

17. The party signing this document on behalf of Sponsor warrants and represents that (s)he is solely authorized to enter into this agreement on behalf of the Sponsor.

ADDITIONAL PROVISIONS:

X _____
Sponsor – signature

X _____
Print name and title

CHROME FIREWORKS AND DISPLAYS, LLC:



James Krueger - owner



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/16/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ryder Rosacker McCue & Huston (MGD by Hull & Company) 509 W Koenig St Grand Island NE 68801	CONTACT NAME: Kristy Wolfe PHONE (A/C, No, Ext): 308-382-2330 E-MAIL ADDRESS: kwolfe@ryderinsurance.com FAX (A/C, No): 308-382-7109														
INSURED James M Krueger II & Kate P Krueger Revocable Trust Dated October 22, 2022 & Any Amendments Thereto; SEE DESCRIPTION BOX FOR FULL NAMED INSURED PO Box 44186 Madison WI 53744	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : SCOTTSDALE INS CO</td><td>41297</td></tr><tr><td>INSURER B :</td><td></td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : SCOTTSDALE INS CO	41297	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES**CERTIFICATE NUMBER:** 231003865**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC			CPS4078565	10/25/2024	10/25/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED ☐ RETENTION \$ ☐						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☒ Y ☐ N	N/A				WC STATUTORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Regarding the General Liability coverage, Waiver of Subrogation applies to the entities listed below per attached form CG 24 04 when required by written agreement.
Regarding the General Liability coverage, Blanket Additional Insured applies to the entities listed below per attached form GLS-150s when required by written agreement.
Regarding the General Liability coverage, Primary and Non-Contributory coverage applies to the entities listed below per attached form CG 20 01 when required by written agreement.
Full Named Insured:
James M Krueger II & Kate P Krueger Revocable Trust Dated October 22, 2022 & Any Amendments Thereto; Chrome Fireworks and Displays LLC dba See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City of New Berlin- 4th 3805 S Casper Dr. New Berlin WI 53151 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

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AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Ryder Rosacker McCue & Huston (MGD by Hull & Company)		NAMED INSURED James M Krueger II & Kate P Krueger Revocable Trust Dated October 22, 22 & Any Amendments Thereto; SEE DESCRIPTION BOX FOR FULL NAMED INSURED PO Box 44186 Madison WI 53744	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Chrome Fireworks

Display Location: in space within city recycling center, NW of the New Berlin City Hall, 3711 S Casper Dr, New Berlin, WI 53151

Display Date: Fri July 4, 2025

Rain Date: Sat July 5, 2025

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Any person or organization with whom the insured has agreed to waive rights of recovery, provided such agreement is made in writing and prior to the loss.

Additional Premium is Included

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV - Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1)** The additional insured is a Named Insured under such other insurance; and
- (2)** You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to this endorsement, **SECTION II—WHO IS AN INSURED** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract, written agreement or written permit which must be:

- a. Currently in effect or becoming effective during the term of the policy; and
- b. Executed prior to the “bodily injury,” “property damage,” or “personal and advertising injury.”

The insurance provided to these additional insureds is limited as follows:

- 1. That person or organization is an additional insured only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” caused, in whole or in part, by:
 - a. Your acts or omissions; or
 - b. The acts or omissions of those acting on your behalf.

A person’s or organization’s status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

- 2. With respect to the insurance afforded to these additional insureds, the following exclusions are added to item **2. Exclusions** of **SECTION I—COVERAGES**:

This insurance does not apply to “bodily injury,” “property damage” or “personal and advertising injury” occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- 3. The limits of insurance applicable to the additional insured are those specified in the written contract, written agreement or written permit or in the Declarations for this policy, whichever is less. These limits of insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations for this policy.
 - 4. Coverage is not provided for “bodily injury,” “property damage,” or “personal and advertising injury” arising out of the sole negligence of the additional insured.
 - 5. The insurance provided to the additional insured does not apply to “bodily injury,” “property damage,” or “personal and advertising injury” arising out of an architect’s, engineer’s or surveyor’s rendering of or failure to render any professional services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - b. Supervisory, inspection, architectural or engineering activities.
6. Any coverage provided hereunder will be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a

written contract specifically requires that this insurance be primary.

When this insurance is excess, we will have no duty under **SECTION I—COVERAGES** to defend the additional insured against any “suit” if any other insurer has a duty to defend the additional insured against that “suit.” If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured’s rights against all those other insurers.

AUTHORIZED REPRESENTATIVE

DATE

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REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Katie Roth, Recreation Manager
Polly Oldenburg, 4th of July Coordinator

DATE: 3-3-25

REQUESTED ACTION: Recommend to the Common Council approval of a contract with BCI Entertainment LLC in the amount of \$30,000 for 4th of July Festival Drone show on July 5th 2025.

FISCAL IMPACT: \$30,000 will be fundraised by the 4th of July commission in an effort to offset the expense of this year's Done Show.

RATIONALE/BACKGROUND: Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with BCI Entertainment LLC in the amount of \$30,000. This agreement has been reviewed and approved as to its form by the City Attorney.

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE
5th OF JULY DRONE SHOW

1. Introduction. This document (hereinafter referred to as “Terms and Conditions”) is hereby incorporated and part of the contract between the City of New Berlin a Wisconsin Municipal corporation with its principal office and place of business located at 3805 S. Casper Rd. New Berlin, WI 53151 (hereinafter referred to as “City”) and Bear Country Inc or Bear Country Holdings LLC with its principal office and place of business located at 10508 7 Mile Road, Caledonia, WI 53108 hereinafter referred to as the Service Provider identified below. These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other Services, collectively referred as to the “Services” between the City and the Service Provider. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Service Provider and are not intended for the benefit of any other party.

Proposal. The Service Provider is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary. If no Scope of Services is attached to this agreement, the parties agree that the following description of the services to be provided, as well as the compensation to be provided for those services shall apply: Service Provider will perform a drone show on July 5th 2025 for the City of New Berlin 4th of July Family Festival using 300 drones. The drone show will be a display a multitude of visual effects in a patriotic theme. The drone show will last approximately 15 minutes and will be launched and flown solely within the lateral confines of Diamonds #7,8, 9 at Malone Park, 16400 W. Al Stigler Pkwy, New Berlin WI 53151 and will not extend beyond the area of said Diamonds 7, 8, and 9.

Dates on which services are to be provided: July 5th 2025, rain date July 6th 2025.

The Services being provided hereunder shall be completed on or before: July 5th, 2025

The cost of the Services being provided are as follows: \$30,000

2. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Service Provider agrees to provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with the professional practices of the profession.

3. Access to the Site. The City shall provide access to the Service Provider to work in and on City property.

4. Storage of Materials. The storage of materials and storage of Contractor’s equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting

work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.

5. Insurance and Permits. Service Provider shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and which have an A.M. Best A rating or better with such limits as the City may establish and require from time to time. Specifically the Service Provider shall carry general liability coverage with limits of not less than \$2,000,000.00. Service Provider shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Service Provider agrees to require that the insurer list the City as an Additional Insured on a primary and noncontributory basis and to provide adequate evidence of said status through a liability insurance endorsement. Service Provider shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected. In addition, the contractor will obtain all necessary permits from all governmental entities with jurisdiction, including but not limited to the FAA.

6. Independent Service Provider. The parties warrant that no employer/employee relationship is established between the Service Provider and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Service Provider is an independent Service Provider and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

7. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved. Notwithstanding any other clause written herein, Service Provider understands and agrees that the City is a municipal entity and therefore, is subject to the Open Records Law of the State of Wisconsin. Wisconsin Statute §19.36(3) requires governmental entities to make available for inspection a copy of any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any other documentation pertaining to this agreement, Service Provider shall provide the information as requested and charge no more than the cost to copy said information. The parties agree that upon completion or termination of this contract, all project contract documents or instruments of service, including electronic files of computer-aided record drawings and field inspection reports shall be delivered to and shall become the property of the City. These records, drawings, reports, etc. may be used without restriction by the City for any public purpose and to implement construction and use of the project. Any such use or reuse of these documents outside the scope of the project shall be without compensation or liability to the Service Provider, excepting for errors and omissions associated with the completed project, services and documents performed under this agreement.

8. Advertisements. Service Provider shall not identify the City as a client or customer of the Service Provider, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

9. Changes. In the event that the parties determine that a modification to the terms of the providing of these Services or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

10. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract. Adverse weather delays or cancellations may also be ordered at the direction of the Police Department, Fire Department, or Emergency Management.

11. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

12. Limitation on Liability. The City's liability to the Service Provider shall not exceed the sums paid by the City to the Service Provider under this contract. In addition, to the extent that the Service Provider seeks indemnification from the City and the City consents to provide such indemnity, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Service Provider for its own negligence or intentional conduct.

13. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Service Provider may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

14. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the

continuation of the project is not in the best interests of the City. Service Provider shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Service Provider be entitled to any penalty for the termination nor shall the Service Provider be entitled to any payment for lost profits.

- B. *Termination for Cause.* If the City determines that the Service Provider has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Service Provider of any such deficiency and in the event that the Service Provider fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Service Provider will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Service Provider's failure to comply with the terms of the contract. Under no circumstances shall the Service Provider be entitled to any lost profits arising from the contract.

15. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

16. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply and will control.

17. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with applicable FAA requirements, OSHA and applicable City of New Berlin ordinances and Wisconsin State statutes and Administrative code and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

Additionally, the City agrees to assist in the protection of the site from which the drones will be launched and flown as depicted on the attached map, Exhibit A so as to prevent unauthorized persons from entering that area. The Drone show will be conducted only within the area identified in the attached map, Exhibit A. The Service Provider further agrees to inspect the launch area as well as the display areas where drones may fall to ensure that the drones will not fall in any viewing area. The Service Provider further agrees to inspect the display area and to account for all drones and drone parts at the end of the show to ensure that the display area is in the same condition that existed prior to the commencement of the show. The contractor will ensure that the area will remain secured during the performance.

18. Hold Harmless. The Service Provider will defend, indemnify and hold harmless the City its elected officials, employees officers and assigns as and against any claims, actions, demands or causes of action brought or personal injuries, property damage, expenses or other damages or losses arising out of Service Provider's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees incurred in the defense or management of such claims. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

19. Indemnity. The City shall not be liable for failure on the part of the Service Provider or any other party performing under this contract in accordance with all applicable laws and regulations. Service Provider waives any and all claims and recourse against the City including the right of contribution for loss or damage to persons or property arising out of or growing out of or in any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees. Notwithstanding the foregoing Bear Country Inc or Bear Country Holdings LLC agrees to waive its rights of indemnification as described in paragraph 6 of their scope of services in their entirety. The City of New Berlin does not waive its statutory immunities and the statutory limits on the claims that could be made against it under Wis Stat Sec 893.80. The City of New Berlin does not consent to indemnify Bear Country Inc or Bear Country Holdings LLC under any circumstances.

20. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City. Since this event will occur during the 4th of July holiday the total compensation being provided for herein is inclusive of any holiday expense or compensation to the Service Provider's employees. No additional compensation shall be due the Service Provide as a result of the timing of the performance of the event.

21. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin and represents the complete understanding of the parties with respect to the subject matter set forth herein, and may only be amended in a subsequent agreement executed by all parties.

22. COVID-19 Pandemic. The Service Provider acknowledges that in December of 2019 a novel strain of the Coronavirus (now referenced as COVID-19) was detected and has now spread throughout many countries, including the United States. Based upon this, the World Health Organization has declared a Public Health Emergency of international concern; and the United States Department of Health and Human Services has declared a Public Health Emergency. The Service Provider further acknowledges that it is aware of the COVID-19 pandemic and that the existence of said pandemic will not constitute a force majeure or otherwise preclude the Service Provider's ability to perform the terms of this agreement absent the issuance of any Order by a governmental entity with jurisdiction that would preclude such performance.

CITY:

City of New Berlin

By: _____

[Print Name & Title]

SERVICE PROVIDER:

Bear Country Inc or Bear Country Holdings LLC

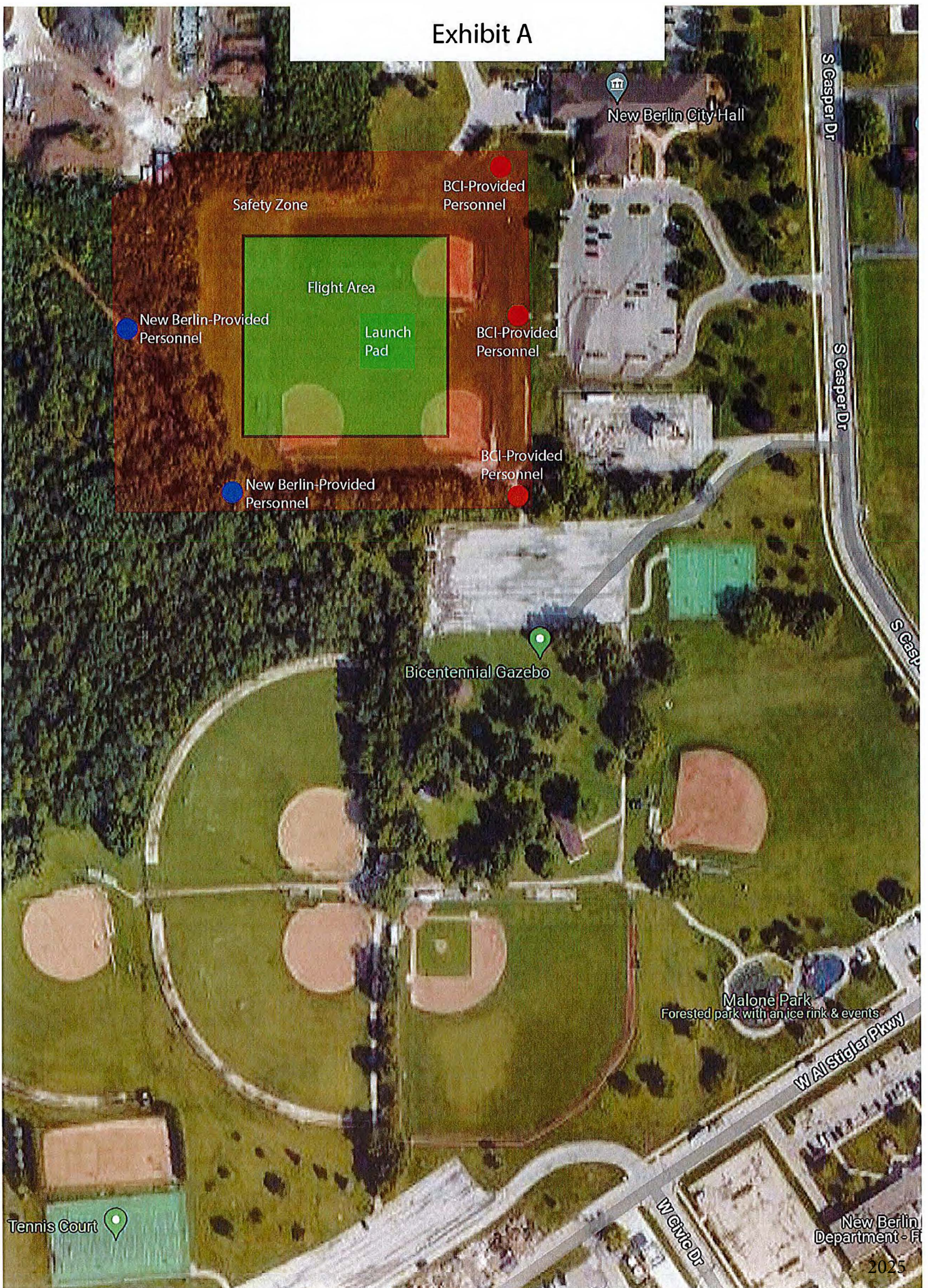
By: _____

[Print Name & Title]

Exhibit A



Exhibit A

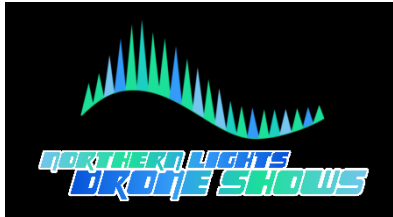


ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.



8425 WI 38, Caledonia, WI 53108

DRONE LIGHT SHOW CONTRACT

This contract shall be effective the later of the dates signed below, by and between BCI Entertainments, LLC (dba Northern Lights Drone Shows and herein referred to as, "BCI") and

Individual/Organization (herein, "Client"): _____

Contact Name (if different from above): _____

Mailing Address: _____

Email Address: _____ Phone: _____

Billing Contact Name: _____

Billing Address: _____

Billing Email Address: _____ Billing Phone: _____

This contract engages the services of BCI under the following terms:

1. PAYMENT TERMS:

Payment(s) shall be made by EFT, ACH, or credit card. Within 7 days of signing this Contract, Client shall pay a deposit of 25%, to be applied to the total contract price. The deposit must be received to guarantee the event date. The remaining balance shall be paid as follows: The remaining 75% balance is to be paid no less than seven (7) calendar days after the event date.

2. CREDIT CARD AUTHORIZATION AND CHARGES:

All invoices are based on a cash discount, credit cards are subject to convenience fees. BCI accepts all major credit cards for payments of events, a 3% convenience fee will be applied. By signing this contract (when providing a credit card for payment) you authorize BCI to process payments on the credit card for Retainer Fee and/or any unpaid balance owed as per the terms of this contract, unless arrangements have been made and noted on the contract.

3. FEES & COSTS:

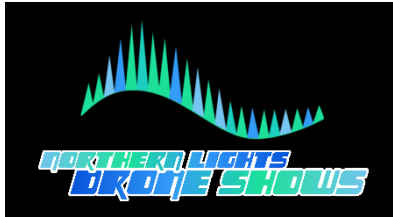
BCI is responsible for the acquisition of any state and local permits. Client shall waive any fees or costs associated with local permits to the extent it has the authority to do so. Client is responsible for police, fire, or other appropriate protection necessary for proper crowd control, safety, and security during the event as well as all fees and costs associated.

4. INSURANCE:

BCI shall provide aviation liability insurance in the amount of \$5,000,000 (five million). BCI shall also provide a \$10M general liability umbrella policy. Client shall be listed as the certificate holder on the certificate of insurance.

Client Initials: _____

BCI Initials: _____



8425 WI 38, Caledonia, WI 53108

5. MUSIC & MARKETING:

In the event music is played during the event, the Client, pursuant to ASCAP, BMI, and SESAC policy, is responsible for obtaining all music performance licenses, and all associated fees and costs thereto. Except when explicitly forbidden by Client, BCI reserves the right to use the production for promotional use, including but not limited to the capturing of video and photographs at any time or place during the event.

6. HOLD HARMLESS:

The Client agrees to hold harmless and indemnify BCI for any and all costs and liabilities, which may be incurred as a result of the failure of the Client to comply with its obligations and responsibilities under this contract, or the actions of individuals other than the pilots, crew or employees of BCI. The Client shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special and/or punitive damages from BCI, including, without limitation, loss of income, business or profits.

7. FORCE MAJEURE:

Neither party will be responsible to the other party for any failure to fulfill obligations under the contract due to causes beyond its reasonable control, including fire, hurricane, tornado, snowstorm, flood, war, riots, earthquakes, shortages, natural disasters or any other acts of God, or any act or regulation of any federal, state, or local government or regulatory body ("Force Majeure Occurrence") resulting in or causing the cancellation of the planned show. Provided the party affected by the Force Majeure Occurrence notifies the other party in writing. The affected party shall resume performance of its obligation as soon as reasonably practicable after the removal of the cause. In the event of force majeure, BCI will apply all monies towards the agreed upon rain date referenced below in this contract (the "Rain Date"). If it is determined the Rain Date suffers a Force Majeure Occurrence, BCI will apply all monies towards a new date within this same calendar year, pending availability. If said new date cannot be agreed upon by both parties, BCI will refund 50% of monies already paid by Client under this contract.

8. TERMS AND CONDITIONS:

This Contract shall be governed by laws of the State of _____. A court of competent jurisdiction within _____ county shall be the venue for any dispute. If any provision of this agreement is deemed unenforceable, the remaining provisions hereof shall remain in full force and effect. In the event of any legal dispute, the losing party shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred in enforcing the terms of this Contract.

9. ENTIRE AGREEMENT:

This Contract constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, either oral or written. The waiver of any provisions of this Contract shall not constitute a waiver of any other provision of this contract; any and all modifications to these terms shall be made in writing and become part of the agreement in its entirety.

10. POSTPONEMENT:

BCI will strive to execute the show as planned. At the discretion of BCI, the show may be postponed due to inclement weather or other circumstances deemed to cause unnecessary risk to person or property. In the event of postponement, BCI shall instead perform the obligations for the event on the "Rain Date". In the event of further postponement, the Client may reschedule the show to a mutually agreed upon alternate date within the same calendar year of the original date. If the show is not rescheduled it shall be subject to cancellation. The Client shall be responsible for the reasonably incurred, direct costs of executing the show on the alternate date. Direct costs may include transportation, labor, and fees, and will begin at 10% of contract amount plus applicable government fees. Subsequent postponements, if necessary, shall be subject to the same conditions.

Client Initials: _____

BCI Initials: _____



8425 WI 38, Caledonia, WI 53108

11. CANCELLATION:

If the Client elects to cancel the display ninety (90) or more days prior to the show date, the Client will forfeit the 25% retainer to BCI. If the Client cancels the display less than ninety (90) prior to the show date, the Client shall pay BCI 50% of the total contract amount plus incurred governmental fees. If the client cancels less than thirty (30) days prior to show date the client is responsible for 100% of total contract. If the Client elects not to reschedule a postponed display to within the same calendar year of the originally scheduled date, the Client shall pay BCI 100% of the total contract amount plus incurred governmental fees.

12. WORKFLOW:

BCI shall provide licensed pilots, which in addition hold a current Part 107, (Small Unmanned Aircraft Certificate) who will adhere to all local, state, and federal regulations when operating the UAVs. In addition, said pilot will deliver, set-up, execute, and dismantle the drone shows in adherence with Federal Aviation Administration (FAA) regulations as adopted by the Federal Government. The Client shall allow sufficient time for BCI to access and safely set up the show. Upon request by BCI, Client shall provide a means of transporting equipment to the launch site if the terrain is not suitable for passage by vehicle. The Client shall be responsible for working with the property owner to ensure that all sprinkler irrigation systems are disarmed to prevent damage to the fleet and equipment. Following the show, BCI shall remove all equipment.

13. SAFETY & SECURITY:

The Client agrees to cooperate with requests of BCI regarding the safety and security of the shows. In the event such requests are not resolved, BCI reserves the right to withdraw all equipment, the fleet, employees, and personnel without refund. The client shall be responsible for preventing unauthorized access to the launch site and flight perimeter during the set-up, flight, and tear out of equipment. BCI reserves the right to stop the show if unauthorized persons enter the secured perimeter.

14. SHOW DATE & BUDGET:

This addendum can be used for up to five (5) drone light shows:

Show Date(s):	_____	_____	_____	_____	_____
Rain Date(s):	_____	_____	_____	_____	_____
Show Cost(s):	_____	_____	_____	_____	_____
Travel Cost(s):	_____	_____	_____	_____	_____
Total Cost(s):	_____	_____	_____	_____	_____

Deposit Amount(s):	_____	_____	_____	_____	_____
Deposit Due Date(s):	_____	_____	_____	_____	_____
Final Payment Amount(s):	_____	_____	_____	_____	_____
Final Payment Due Date(s):	_____	_____	_____	_____	_____

Client Initials: _____

BCI Initials: _____



8425 WI 38, Caledonia, WI 53108

15. SHOW SPECIFICATIONS:

Show Description:

Show Location: _____

Show Length: _____

Approximate Start Time: _____

Name of Person Cueing Start of Show: _____

16. SHOW CONTACT(S):

Primary On-Site Contact Person:

Name: _____

Cell Phone: _____

Email Address: _____

Secondary On-Site Contact Person (if applicable):

Name: _____

Cell Phone: _____

Email Address: _____

By signing below, I accept all terms and conditions of this agreement and I certify that I am authorized to enter into this agreement on behalf of the Client.

On behalf of **Client:**

Signature: _____

Print Name: _____

Title: _____

Date: _____

On behalf of **BCI Entertainment, LLC**

Signature: _____

Print Name: _____

Title: _____

Date: _____



8425 WI 38, Caledonia, WI 53108

Payment Number	Payment Date	Amount Due



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Katie Roth, Recreation Manager
Polly Oldenburg, 4th of July Coordinator

DATE: 3-3-25

REQUESTED ACTION: Recommend to the Common Council approval of a contract with Pat's Services, INC. in the amount of \$10,645 for 4th of July Festival forportable sanitation services for July 1st-July 6th 2025.

RATIONALE/BACKGROUND: Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Pat's Services, INC. in the amount of \$10,645. This agreement has been reviewed and approved as to its form by the City Attorney.

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE

1. Introduction. This document (hereinafter referred to as “Terms and Conditions”) is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as “City”) and the Service Provider identified below (hereinafter referred to as “Service Provider”). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other Services, collectively referred to as the “Services” between the City and the Service Provider. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Service Provider and are not intended for the benefit of any other party.

2. Proposal. The Service Provider is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary. If no Scope of Services is attached to this agreement, the parties agree that the following description of the services to be provided, as well as the compensation to be provided for those services shall apply: *portable sanitation services for City of New Berlin 4th of July Family Festival: July 1st-July 6th 2025.*

Dates on which services are to be provided: July 1st-July 6th 2025.

The Services being provided hereunder shall be completed on or before: July 6th 2025.

The cost of the Services being provided are as follows: \$10,645

3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Service Provider agrees to provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with the professional practices of the profession.

4. Access to the Site. The City shall provide access to the Service Provider to work in and on City property.

5. Storage of Materials. The storage of materials and storage of Contractor’s equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.

6. Insurance. Service Provider shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Service Provider shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general

liability coverage shall be for this project and not the policy as a whole. Service Provider agrees to require that the insurer list the City as an Additional Insured on a primary and noncontributory basis and to provide adequate evidence of said status through a liability insurance endorsement. Service Provider shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Service Provider. The parties warrant that no employer/employee relationship is established between the Service Provider and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Service Provider is an independent Service Provider and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved. Notwithstanding any other clause written herein, Service Provider understands and agrees that the City is a municipal entity and therefore, is subject to the Open Records Law of the State of Wisconsin. Wisconsin Statute §19.36(3) requires governmental entities to make available for inspection a copy of any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any other documentation pertaining to this agreement, Service Provider shall provide the information as requested and charge no more than the cost to copy said information. The parties agree that upon completion or termination of this contract, all project contract documents or instruments of service, including electronic files of computer-aided record drawings and field inspection reports shall be delivered to and shall become the property of the City. These records, drawings, reports, etc. may be used without restriction by the City for any public purpose and to implement construction and use of the project. Any such use or reuse of these documents outside the scope of the project shall be without compensation or liability to the Service Provider, excepting for errors and omissions associated with the completed project, services and documents performed under this agreement.

9. Advertisements. Service Provider shall not identify the City as a client or customer of the Service Provider, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these Services or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work

stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Service Provider shall not exceed the sums paid by the City to the Service Provider under this contract. In addition, to the extent that the Service Provider seeks indemnification from the City and the City consents to provide such indemnity, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Service Provider for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Service Provider may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Service Provider shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Service Provider be entitled to any penalty for the termination nor shall the Service Provider be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Service Provider has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Service Provider of any such deficiency and in the event that the Service Provider fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice,

declare this contract to be terminated. Service Provider will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Service Provider's failure to comply with the terms of the contract. Under no circumstances shall the Service Provider be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply and will control.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The Service Provider will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Service Provider's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Service Provider or any other party performing under this contract in accordance with all applicable laws and regulations. Service Provider waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of or in any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

22. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin and represents the complete understanding of the parties with respect to the subject matter set forth herein, and may only be amended in a subsequent agreement executed by all parties.

23. Ongoing Services. If this is a contract for ongoing services, the parties shall indicate that fact by initially this paragraph in the margin, indicating this paragraph applies. The parties agree that these Terms and Conditions shall be applicable to an ongoing series of Services, which may be entered into and arranged between the parties from time to time during the period of time commencing _____ and concluding on _____, inclusive. A separate proposal and/or description of Scope of Services shall be provided for in each instance where the Service Provider is providing services to the City; however, in all instances of any work being provided by the Service Provider during the aforementioned time period, this set of Terms and Conditions shall apply.

24. COVID-19 Pandemic. The Service Provider acknowledges that in December of 2019 a novel strain of the Coronavirus (now referenced as COVID-19) was detected and has now spread throughout many countries, including the United States. Based upon this, the World Health Organization has declared a Public Health Emergency of international concern; and the United States Department of Health and Human Services has declared a Public Health Emergency. The Service Provider further acknowledges that it is aware of the COVID-19 pandemic and that the existence of said pandemic will not constitute a force majeure or otherwise preclude the Service Provider's ability to perform the terms of this agreement absent the issuance of any Order by a governmental entity with jurisdiction that would preclude such performance.

CITY:
City of New Berlin

SERVICE PROVIDER:

Pat's Services Inc.

By: _____

By: _____

Gregory Kessler
Director of Community Development

[Print Name & Title]

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.

PATS SERVICES, INC.

38331 60TH STREET
BURLINGTON, WI 53105

Ph: 262-537-4988 Fax: 262-537-4945

Service & Rental

Invoice

Phone: (262) 787-8157 ED

Fax: (262) 754-1805 POLLY

Billing Address

CITY OF NEW BERLIN RECREATION DEPT.
ATTN: PARKS DEPARTMENT
3805 S. CASPER DRIVE
NEW BERLIN, WI 53151

Cust #	Date	Clerk	Terms	Invoice P.O.#	Invoice #	Page
CITYOFNEWB	7/1/2025	TS			A-277863	Page 1 / 1

DESCRIPTION	RATE	QTY	TAX%	TAX	AMOUNT
Svc Site: 29823 , FOURTH OF JULY MALONE PARK & PARADE ROUTE, NEW BERLIN Site PO#					
7/1/2025- 7/6/2025 PORTABLE TOILET RENTAL-SPECIAL	105.00	76			7,980.00
7/1/2025- 7/6/2025 HANDICAPPED TOILET RENTAL-SPECIAL	105.00	4			420.00
7/1/2025- 7/6/2025 PORTABLE SINK RENTAL-SPECIAL	105.00	5			525.00
7/1/2025- 7/6/2025 55 GALLON WASTE BARRELS	75.00/EACH	4			300.00
7/4/2025 SERVICE/FRIDAY A.M.	10.00/EACH	71			710.00
7/5/2025 SERVICE/SATURDAY A.M.	10.00/EACH	71			710.00
Service Site 29823 Total:					10,645.00
Total					10,645.00

**See attached sheet for placement and on-site contacts.

FOR YOUR CONVENIENCE WE NOW ACCEPT PAYMENTS ONLINE, VISIT PATSSERVICES.COM AND SELECT ONLINE PAYMENTS.

Statement as of 1/16/2025	Future: 10,645.00	Current: 0.00	30 Day: 0.00	60 Day: 0.00	90 Day: 0.00	Total Due: 10,645.00
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Please detach here and return the bottom portion with your payment.

Div: A Cust #: CITYOFNEWB Site #: 29823 Invoice #: A-277863

From CITY OF NEW BERLIN RECREATION
DEPT.
ATTN: PARKS DEPARTMENT
3805 S. CASPER DRIVE
NEW BERLIN, WI 53151

Invoice #	A-277863
Total Pre-Tax	10,645.00
Total Tax	0.00
Invoice Total	10,645.00
Paid Amt	0.00
Adjustment Amt	0.00
Balance	10,645.00

To PATS SERVICES, INC.
38331 60TH STREET
BURLINGTON, WI 53105



Committee of the Whole MEETING MINUTES

February 25, 2025 - 6:00 PM
Council Chambers
3805 S. Casper Drive

MINUTES

1. CALL MEETING TO ORDER

Mayor Ament called the Committee of the Whole meeting to order at 6:00 PM.

2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

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

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

Staff Present on the Dais: Mayor Dave Ament, City Attorney Thomas Schmitzer, City Clerk Rubina R. Medina

Other Staff Present: Human Resources Director, Melissa Beck, Public Works Director, Lucas Pichler, Police Chief Jeff Hinigiss, Library Director, Natalie Beacom

The City Clerk confirmed that a quorum was present and that the meeting was properly posted in compliance with open meetings law.

3. APPROVAL OF MINUTES

A. February 11th, 2025 Committee of the Whole Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Horbinski
Motion 7-0

4. UTILITY & FINANCE

A. Discussion and possible action to recommend to Common Council approval of February 26th, 2025, Water Utility claims in the amount of \$236,561.94, Sewer Utility claims in the amount of \$6,776.58, and General City claims in the amount of \$1,799,427.61. WE Energies EFT of \$78,697.37

MOTION: Motion to approve

VOTE: Motion by: Harenda
Second by: Stribl
Motion 7-0

5. MISCELLANEOUS

- A.** Discussion and possible action to recommend to the Common Council approval of the Salary Study and proposed 2025 Employee Compensation Adjustments

Human Resources Director, Melissa Beck, provided an overview of the salary study included in the agenda packet.

MOTION: Motion to approve

ROLL CALL Motion by: Stribl

VOTE: Second by: Hopkins
Motion 7-0

6. ADJOURN

MOTION: Motion to adjourn at 6:22 PM

VOTE: Motion by: Stribl
Second by: La Fever
Motion 7-0

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

Form
AB-101Alcohol Beverage
Appointment of AgentDate
1-31-25

Agent Type (check one)

- ☐ Original (no fee) ☒ Successor (\$10 fee for municipal licensees only)

Part A: Business Information

1. Legal Business Name (individual name if sole proprietor)

Cool Golf LLC

2. Business Trade Name or DBA

Sunny Slope Golf Course

3. Entity Type (check one)

- ☒ Limited Liability Company ☐ Corporation ☐ Nonprofit Organization

4. Alcohol Beverage Business Authorization (check one)

- ☒ Municipal Retail License ☐ State Permit

5. If successor agent, provide State Permit or Municipal Retail License Number

2024 27

6. Describe the reason for appointing a successor agent, if successor is checked above.

Stu is the new manager

Part B: Agent Information

1. Last Name

Bloom

2. First Name

Stu

3. M.I.

4. Email

Sbloom1@wi.rr.com

5. Phone

6. Home Address

301 Glacier Ct

7. City

Waukesha

8. State

WI

9. Zip Code

53188

10. Age

59

11. Drivers License

12. Drivers License/State ID State of Issuance

Wisconsin

Part C: Agent Questions

1. Have you satisfied the responsible beverage server training requirement? ☒ Yes ☐ No
Submit proof of completion.
2. Have you completed Form AB-100, Alcohol Beverage Individual Questionnaire (licensee) or
Form AB-300, Alcohol Beverage Personal Questionnaire (permittee)? ☒ Yes ☐ No
3. Have you been a Wisconsin resident for at least 90 continuous days? ☒ Yes ☐ No
See instructions for exceptions.

Continued →

Part D: Business Attestation

READ CAREFULLY BEFORE SIGNING: I, the **Undersigned**, authorize the above-named individual to act for the above-named corporation, nonprofit organization, or limited liability company with full authority and control of the premises and of all alcohol beverage activities on such premises. I certify that I am authorized by the above-named entity to authorize this individual to act on behalf of the entity. If I am appointing a successor agent, I rescind all previous agent appointments for this premises. Further, I understand that I may be prosecuted for submitting false statements and affidavits in connection with this application, and that any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000 if convicted.

Last Name	Bloom	First Name	Stu	M.I.	
Title	General Manager	Email	Sbloom1@wi.rr.com	Phone	762-443-0141
Signature	Stu Bloom			Date	1/29/25

Part E: Agent Attestation

READ CAREFULLY BEFORE SIGNING: I, the **Agent**, hereby accept this appointment as agent for the above-named corporation, nonprofit organization, or limited liability company and assume full responsibility for the conduct of all alcohol beverage activities on the premises for the above-named business. I further understand that I may be prosecuted for submitting false statements and affidavits in connection with this application, and that any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000 if convicted.

Last Name	Bloom	First Name	Stu	M.I.	
Signature	Stu Bloom			Date	Jan 07, 2025

Alcohol Beverage
Individual QuestionnaireDate
2/24/25

All individuals involved in the alcohol beverage business must complete this form, including:

- sole proprietor
- all officers, directors, and agent of a corporation or nonprofit organization
- all partners of a partnership
- members and agent of a limited liability company

Your alcohol beverage application or renewal is not complete until all required Individual Questionnaires are submitted.

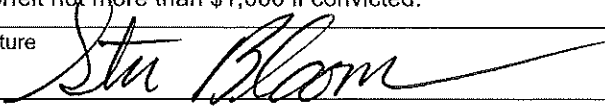
Part A: Business Information	
1. Legal Business Name (individual name if sole proprietor) <i>Sunnyslope Golf Course</i>	
2. Business Trade Name or DBA <i>Cool Golf LLC</i>	
3. Entity Type (check one) ☐ Sole Proprietor ☐ Partnership ☒ Limited Liability Company ☐ Corporation ☐ Nonprofit Organization	

Part B: Individual Information					
1. Last Name <i>Bloom</i>		2. First Name <i>Stu</i>		3. M.I.	
4. Relationship to Business (Title) <i>General Manager</i>		5. Email <i>Sbloom1@wi.rr.com</i>		6. Phone <i>262-993-0141</i>	
7. Home Address <i>301 Glacier Ct</i>					
8. City <i>Waukesha</i>		9. State <i>WI</i>	10. Zip Code <i>53188</i>		11. Date of Birth [REDACTED]
12. Drivers License/State ID Number [REDACTED]			13. Drivers License/State ID State of Issuance <i>Wisconsin</i>		

Part C: Address History							
1. Do you currently reside in Wisconsin? ☒ Yes ☐ No							
If yes to 1 above, how long have you continuously lived in Wisconsin prior to the date of application?						Years <i>59</i>	Months <i>10</i>
2. List in chronological order all of your addresses within the last 5 years. Attach additional sheets if necessary.							
Previous Address 1				City	State	Zip Code	
Previous Address 2				City	State	Zip Code	
Previous Address 3				City	State	Zip Code	
Previous Address 4				City	State	Zip Code	
Previous Address 5				City	State	Zip Code	
3. List all states and counties you have lived in as an adult. Attach additional sheets if necessary.							
State <i>WI</i>	County <i>Waukesha</i>	State <i>WI</i>	County <i>Waukesha</i>	State <i>WI</i>	County <i>Waukesha</i>	State <i>WI</i>	County <i>Waukesha</i>
State	County	State	County	State	County	State	County

- Continued ->

Part D: Criminal History		
1. Have you ever been convicted of any offenses (excluding traffic offenses unless related to alcohol beverages) for violation of any federal, Wisconsin, or another state's laws or of any county or municipal ordinances? ☐ Yes ☒ No If yes to question 1, please list details of each conviction below. Attach additional sheets as needed.		
Law/Ordinance Violated	Location	Conviction Date
Penalty Imposed		Was sentence completed? ☐ Yes ☐ No
Law/Ordinance Violated	Location	Conviction Date
Penalty Imposed		Was sentence completed? ☐ Yes ☐ No
Law/Ordinance Violated	Location	Conviction Date
Penalty Imposed		Was sentence completed? ☐ Yes ☐ No
2. Are charges for any offenses currently pending against you (excluding traffic offenses unless related to alcohol beverages) for violation of any federal, Wisconsin, or another state's laws or any county or municipal ordinances? ☐ Yes ☒ No If yes to question 2, describe nature and status of pending charges using the space below. Attach additional sheets as needed.		

Part E: Attestation	
READ CAREFULLY BEFORE SIGNING: Under penalty of law, I have answered each of the above questions completely and truthfully. I certify that I am not prohibited from participating in this business due to any involvement in another tier of the alcohol beverage industry as a restricted investor. I understand that any license issued contrary to Wis. Stat. Chapter 125 shall be void under penalty of state law. I further understand that I may be prosecuted for submitting false statements and affidavits in connection with this application, and that any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000 if convicted.	
Signature 	Date <u>2/24/25</u>



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development *AKG*

RE: Requested Action Statement for the approval of a Scope of Services to hire raSmith to conduct the bi-annual citywide roadway PASER evaluation in an amount not to exceed \$35,700.

DATE: February 24, 2025

REQUESTED ACTION: Requested Action Statement for the approval of a Scope of Services for the approval of a Scope of Services to hire raSmith to conduct the bi-annual citywide roadway PASER evaluation in an amount not to exceed \$35,700.

FISCAL IMPACT: The funds to be used are from the department's 2025 Roadway Maintenance operating budget account.

SOURCE OF FUNDS: Account. #: 15110029 59040 – Roadway Maintenance

RATIONALE / BACKGROUND: The Department of Community Development conducts, every two years, a Pavement Surface Evaluation and Rating (PASER) survey of all the city's roadways. All city-owned roadway segments are given a general condition ranking from 10 (Failed) to 100 (Excellent) – in increments of ten (10). The State of Wisconsin requires municipalities to perform this visual inspection on locally owned roadways bi-annually.

This information serves as the foundation for the preparation of the City's overall 5-Year Roadway Construction Plan. This plan incorporates, visually, the anticipated roadway resurfacing and reconstruction projects based upon their PASER rankings. In addition, these projects are then aligned and coordinated with other projects that the Utility & Public Works Departments and

DCD - Water Resources Management Division - will be performing during that same time frame. This alignment then primes all departments to conduct the appropriate inspections and/or repairs in anticipation of the larger projects at least one year out.

Historically, this field survey and data entry into Cartegraph work was performed at the DCD staff level. The city has approximately 231 lane miles to survey with this survey and data entry tasks themselves taking several months to complete.

A flowchart is included in this packet that shows the entire PASER and workflow surrounding all the coordination efforts that flow from this work. This has been in practice for many years and works very well.

CONTRACT BETWEEN
THE
CITY OF NEW BERLIN
AND
RA SMITH, INC.
FOR
PAVEMENT SURFACE EVALUATION AND RATING (PASER) FIELD SURVEY
SERVICES

This agreement, entered into this _____ day of March_____, 2025, by and between the CITY of New Berlin (CITY) and raSmith hereinafter known as the CONSULTANT;

WITNESS THAT:

WHEREAS, the CITY proposes to conducts its bi-annual (every two years) PASER roadway evaluation described as follows. raSmith, Inc. will provide a complete windshield survey of the city’s approximately 235 miles of roadways and generate a number ranking of these roadways, descriptions of any defects and will enter all of this data into Cartegraph; and

WHEREAS, the CITY wishes to engage the services of a professional construction management consultant to provide Pre-Construction Services as hereinafter set forth; and

WHEREAS, the CONSULTANT represents itself as being capable, experienced and qualified to undertake and perform those certain services, hereinafter set forth, as are required in accomplishing fulfillment of the obligations under the terms and conditions of the contract as an independent entrepreneur and not as an employee of the CITY, and agrees to furnish such services as hereinafter described.

NOW, THEREFORE, the CITY AND CONSULTANT, in consideration of the premises and the mutual promises and understandings hereinafter contained, agree as follows:

SECTION I - RETENTION OF SERVICES

CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to personally perform, as an independent consultant and not as an employee of the CITY, the services hereinafter set forth, all in accordance with the terms and conditions of this CONTRACT. The CONSULTANT agrees time is of the essence and will meet all deadlines and any schedules as herein set forth.

The DEPARTMENT OF COMMUNITY DEVELOPMENT shall administer this CONTRACT specifically as related to work performed by the consultant. The DEPARTMENT OF COMMUNITY DEVELOPMENT will transmit all instructions, comments, and approvals to the CONSULTANT, and be the recipient of all submittals by the CONSULTANT. The word “CONSULTANT” means a person, or entity, including all employees, sub-consultants and other assigns, whether public or private, that enters into contract with the CITY.

SECTION II - REQUIREMENTS

The CONSULTANT is required to:

- A. perform, do and carry out in a satisfactory, timely, and proper manner, the services delineated in this CONTRACT and Exhibit(s) "A".
- B. comply with requirements listed with respect to reporting on progress of the services, additional approvals required, and other matters relating to the performance of the services.
- C. endeavor to comply with time schedules and payment terms.

SECTION III - SCOPE OF SERVICES

A. GENERAL

- (1) The work under this CONTRACT shall consist of performing those phases or portions of field survey and data entry services for the Project necessary or incidental to accomplish the Project objectives and responsibilities that are specified in the attached CONSULTANT's proposal (Exhibit A).
- (2) The CONSULTANT shall furnish all services and labor necessary to conduct and complete the work, and shall furnish all materials, equipment, supplies, and incidentals other than those which are hereinafter designated to be furnished by others.
- (3) The work under this CONTRACT shall at all times be subject to the approval of the DEPARTMENT OF COMMUNITY DEVELOPMENT.
- (4) The services under this CONTRACT shall be performed in accordance with generally accepted standards of the profession in the same location under similar circumstances.
- (5) The CONSULTANT shall from time to time during the progress of the work confer with the DEPARTMENT OF COMMUNITY DEVELOPMENT and shall prepare and present such information as may be pertinent and necessary or as may be requested by the DEPARTMENT OF COMMUNITY DEVELOPMENT to enable him to pass judgment on the features of the work. The CONSULTANT shall make such changes, amendments, or revisions in the detail of the work as may be required by the DEPARTMENT OF COMMUNITY DEVELOPMENT as provided for in the CONSULTANT's Proposals. The DEPARTMENT OF COMMUNITY DEVELOPMENT reserves the right to select the alternative(s) to be pursued and may request additional alternatives be studied, subject to Section XIII - Change, if applicable.
- (6) The CONSULTANT shall do, perform, and carry out all of the tasks and obligations outlined in the CONSULTANT's Proposal, dated February 25, 2025, hereby referenced and incorporated into this CONTRACT as Exhibit A. In the event of a conflict between the provisions of this CONTRACT and Exhibit A, the provisions

of the CONTRACT shall govern. The CONSULTANT shall complete all the work under this CONTRACT without substantial change to the Project Team or the Project Approach as specified in the CONSULTANT's Proposal.

B. WORK TASKS

It is understood by the parties to the CONTRACT that the CONSULTANT's scope of services covered under this CONTRACT shall include those field survey and data entry services and related services contained in the attached Exhibit A, prepared by CONSULTANT.

SECTION IV - SPECIFIC CONDITIONS OF PAYMENT

A. The CONSULTANT shall be compensated for the services described in the CONSULTANT's Proposals (Exhibit A), for a total fee not to exceed \$35,700. It is expressly understood by the parties hereto that under no circumstances shall the total CONTRACT Price, including contingencies, exceed the Contract amount in the CONSULTANT's Proposals except as provided herein.

B. PROGRESS PAYMENTS. The CONSULTANT shall submit invoices to the DEPARTMENT OF COMMUNITY DEVELOPMENT for partial payment of fees, from time to time during the progress of the work, but not more frequently than on a monthly basis. Such invoices shall cover payment to the CONSULTANT for work performed by the CONSULTANT on each individual work activity. Invoices shall show percentage of work on each activity and the amount of work completed. A brief progress report shall accompany each invoice. The DEPARTMENT OF COMMUNITY DEVELOPMENT will examine each such invoice, and if found to be acceptable according to the CONTRACT, payment shall be made. Final payment of the balance due the CONSULTANT for the completed project shall be made upon completion and acceptance of the work performed. The CITY shall pay the CONSULTANT's approved invoices within sixty (60) days after invoice receipt. Where CITY reasonably disputes some portion of the charges contained in the CONSULTANT's bill for services, the CITY shall make prompt payment of that portion of the bill which is undisputed and shall notify the CONSULTANT in writing of the reason for its dispute.

SECTION V - TIME OF PERFORMANCE

A. The services to be performed under the terms and conditions of the CONTRACT shall be in force and shall commence upon execution of the CONTRACT by the CONSULTANT and upon written notice from the DEPARTMENT OF COMMUNITY DEVELOPMENT to proceed. The work under this contract shall be undertaken and completed in such a sequence as to assure its expeditious completion in light of the purposes of this CONTRACT.

B. It is the intent of the CITY and the CONSULTANT that all of the services required to be performed hereunder by the CONSULTANT shall be finished by June 30, 2025. The following schedule shall be adhered to in order to meet said completion date:

The Contract for consultant services is expected to be signed by March 14, 2025. CONSULTANT shall commence work upon full execution of the Contract by the CITY. CONSULTANT is required to fully familiarize its Project Staff with the project. The

consultant shall be available as a contact throughout the duration of the project, which is expected to be substantially completed June 30, 2025.

- C. In addition to all other remedies incurring to the CITY should the CONTRACT not be completed by the time frame specified in accordance with all of its terms, requirements and conditions therein set forth, the CONSULTANT shall continue to be obligated thereafter to fulfill CONSULTANT's responsibility to complete the scope of services and to execute any necessary amendments to this CONTRACT. Delays in completing the work within the time provided for completion as specified elsewhere in the CONTRACT, for reasons attributable to the CITY, may constitute justification for additional compensation to the extent of documentable increases in costs of labor, services or materials as a result thereof. Failure of the CONSULTANT to submit a formal written request for an extension of time prior to the expiration of the CONTRACT shall constitute a basis for denying any cost adjustments for reasons of such delay.
- D. **DELAYS**
CONSULTANT shall not be liable for delays or failure to perform its Services caused directly or indirectly by circumstances beyond CONSULTANT's control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of CITY or third parties not under control of CONSULTANT, site inaccessibility or inability of others to obtain materials, labor, equipment, or transportation. Should any of the above occur, then the date for completion of the services shall be adjusted for such delay, provided the CONSULTANT reports the delay to the CITY within a reasonable time of its discovery. The CITY shall determine whether or not the cause of delaying or not completing a duty or obligation is within the control of the CONSULTANT.

SECTION VI - CONDITIONS OF PERFORMANCE AND COMPENSATION

- A. **PERFORMANCE.**
The CONSULTANT agrees that the performance of CONSULTANT's work, services and the results therefrom, pursuant to the terms, conditions and agreements of this CONTRACT, shall conform to such recognized professional standards as are prevalent in this field of endeavor and like services in the same location under similar circumstances.
- B. **PLACE OF PERFORMANCE.**
The CONSULTANT shall conduct CONSULTANT's services as required under the terms and conditions of this CONTRACT at such place or places as is necessary which will enable the CONSULTANT to fulfill CONSULTANT's obligation under this CONTRACT.
- C. **COMPENSATION.**
CITY agrees to pay, subject to the contingencies herein, and the CONSULTANT agrees to accept for the satisfactory performance of the services under this CONTRACT the maximum fees as indicated in Section IV, inclusive of all expenses unless CONSULTANT notifies the CITY and CITY approves of additional expenses in advance. All expenses for travel, meals and lodging and other reimbursable items are estimated in the CONSULTANT's proposals and will not be exceeded without advance notice and approval

by the CITY.

D. **ADDITIONAL FRINGE OR EMPLOYEE BENEFITS.**

The CONSULTANT shall not receive nor be eligible for any fringe benefits or any other benefits to which CITY salaried employees are entitled to or are receiving.

E. **TAXES, SOCIAL SECURITY, INSURANCE & GOVERNMENT REPORTING.**

Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the CONSULTANT receiving payment under this CONTRACT shall be the sole responsibility of the CONSULTANT. The CONSULTANT shall be required to carry insurance coverage of the type and with the minimum limits set forth below. The CONSULTANT shall be solely responsible to meet CONSULTANT insurance needs as specified below during the terms of this CONTRACT or any extension thereof.

General Liability:

General Aggregate	\$4,000,000
Personal/Advertising Injury	\$2,000,000
Each occurrence	\$2,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

Automobile Liability:

CSL	\$1,000,000
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Workers' Compensation and Employers' Liability

Each Accident	\$ 500,000
Disease Policy Limit	\$ 500,000
Disease Each Employee	\$ 500,000

Professional liability:

Aggregate/Occurrence	\$2,000,000
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A Policy Endorsement shall be signed by an authorized Principal of the Insurer and provided to the DEPARTMENT OF COMMUNITY DEVELOPMENT as evidence thereof naming the CITY as an additional insured (City is listed and identified as being insured in a "primary and noncontributory" basis) and showing the CONSULTANT is covered by the above required types and amount of insurance, providing for a thirty (30) day written notice to the CITY prior to change, termination or cancellation. Such notice provisions shall be stated in the unconditional affirmative. Phrases such as "shall endeavor to notify" are unacceptable and shall be rejected.

F. **SUBCONTRACTING.**

The CONSULTANT shall not subcontract for the performance of any of the services herein set forth without prior written approval obtained from the DEPARTMENT OF COMMUNITY DEVELOPMENT.

SECTION VII - METHOD OF PAYMENT

The CITY agrees that subsequent to the full and complete performance of this CONTRACT, and satisfactory performance of the services as specified in Section II and Section III, to pay the amount or amounts as herein set forth. The conditions of payment are as follows: Compensation for services required under this CONTRACT shall be paid as partial payment of fees, from time to time during the progress of the work, but not more frequently than on a monthly basis, contingent upon each activity being reviewed for approval, and being approved for payment by the DEPARTMENT OF COMMUNITY DEVELOPMENT, as stipulated in Section IV.

SECTION VIII - INDEMNIFICATION

The CONSULTANT shall indemnify and hold harmless the CITY and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the construction work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the CONSULTANT, a Sub-CONSULTANT and anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be constructed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

SECTION IX - REGULATIONS

- A. The CONSULTANT agrees to endeavor to comply with all the requirements of all federal, state and local laws as well as codes, specifications and requirements related to the performance of the work under this CONTRACT.
- B. Notwithstanding any other clause written herein, CONSULTANT understands and agrees that the CITY is a municipal entity and is therefore subject to the open records law of the State of Wisconsin. Wis. Stat. sec. 19.36(3) requires governmental entities to make available for inspection and copying any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any of the documentation pertaining to this agreement, then CONSULTANT shall provide the information as requested and charge no more than the reasonable cost to prepare and copy said information.

SECTION X - FINAL SETTLEMENT

The CONSULTANT shall notify the City in writing when the CONSULTANT has determined that the Services under this CONTRACT have been completed. Upon the CITY's subsequent determination that the Services have been satisfactorily completed, the CITY will provide written notification to the CONSULTANT acknowledging formal acceptance of the completed Services. Unless the CONTRACT has been terminated prior to the completion of the Services, the CONTRACT shall not be considered terminated upon completion and acceptance of the Services, or upon final payment therefore, but shall be considered to be in full force and effect for the purposes of requiring the CONSULTANT to make revisions or corrections in the Services as are necessary to correct errors or omissions made by the CONSULTANT in the Services performed

under Section III-A-5, or for the purposes of having the CONSULTANT make revisions in the Services at the request of the CITY as “Extra Services”. The CONTRACT shall be considered terminated when the CITY’s CONSULTANT can complete their pre-construction budget pricing without further revisions in the services, or the CONSULTANT is released prior to such time by written notice from the CITY, or if more than one (1) year has elapsed following formal written notification of final acceptance of the services by the CITY.

SECTION XI - TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the CONSULTANT shall fail to fulfill in timely and proper manner his obligations under this CONTRACT, or if the CONSULTANT shall violate any of the covenants, agreements or stipulations of the CONTRACT, the CITY shall thereupon have the right to terminate this CONTRACT by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, upon payment of any amounts properly due the CONSULTANT, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services prepared by the CONSULTANT under this CONTRACT shall, at the option of CITY, become the property of the CITY. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY, and CITY may withhold any payments to the CONSULTANT for the purpose of set off until such time as the exact amount of damages due to the CITY from the CONSULTANT is determined. If through no fault of the CONSULTANT, the CITY shall fail to fulfill in a timely and proper manner, its obligations under this CONTRACT, or if the CITY shall violate any of the covenants, agreements or stipulations of the CONTRACT, the CONSULTANT shall thereupon have the right to terminate this CONTRACT by giving written notice to the CITY of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

SECTION XII - TERMINATION FOR CONVENIENCE OF THE CITY

The CITY may terminate this CONTRACT at any time for any reason by giving at least ten (10) days notice in writing from the CITY to the CONSULTANT. If the Contract is terminated by the CITY as provided herein, the CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the CONSULTANT covered by this CONTRACT, less payments for such services as were previously made plus all reimbursed expenses payable under this CONTRACT. CONSULTANT shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. If this CONTRACT is terminated due to the fault of the CONSULTANT, Section X thereof, relative to termination, shall apply.

SECTION XIII - CHANGES

The CITY may, from time to time, request changes in the scope of services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of CONSULTANT’s compensation which are mutually agreed upon by and between the CITY and the CONSULTANT, shall be incorporated in written amendments to the CONTRACT. Further, if in the CONSULTANT’s opinion, said changes involve work not included in the terms or scope of services of this CONTRACT, the CONSULTANT must notify the CITY in writing if it is believed that extra compensation or additional time allowance is warranted. Such notification shall include the justification for extra compensation and the estimated amount of additional fee

requested. The CITY shall review the CONSULTANT's submittal and, if acceptable, will approve a change order as an amendment to this CONTRACT. Work under a change order shall not proceed until so authorized by the CITY. Such change orders shall include appropriate time extensions when warranted.

SECTION XIV - PERSONNEL

- A. The CONSULTANT represents that he has or will secure at his own expense all personnel required in performing the services under this CONTRACT. Such personnel shall not be employees of or have any contractual relationship with the CITY.
- B. All the services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- C. None of the work or services covered by this CONTRACT shall be subcontracted, except as provided by Section VI-F, without the prior written approval of the CITY. All additional work or services that are subcontracted shall be specified by written contract or agreement and shall be subject to each provision of this CONTRACT. The CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

SECTION XV - ASSIGNABILITY

The CONSULTANT shall not assign any interest in this CONTRACT and shall not transfer any interest in same (whether by assignment, notation or any other manner), without the prior written consent of the CITY. Provided, however, that claims for money due or to become due the CONSULTANT from the CITY under the CONTRACT may be assigned to a bank, trust company or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION XVI - RECORDS

- A. ESTABLISHMENT AND MAINTENANCE OF RECORDS.
Records shall be maintained in accordance with reasonable requirements prescribed by the CITY with respect to all matters covered by this CONTRACT. Except as otherwise authorized, such records shall be maintained for a period of seven (7) years after receipt of the final payment under this CONTRACT.
- B. DOCUMENTATION OF COSTS.
Record of all costs shall be maintained by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this CONTRACT and shall be clearly identified and readily accessible.

SECTION XVII - REPORT AND INFORMATION

At such times and in such forms as CITY may reasonably require, there shall be furnished to CITY, at the CITY's expense, copies of such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this CONTRACT.

SECTION XVIII - AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the CITY, or if federal or state grants or aids are involved, as the appropriate federal or state agency, may deem necessary, there shall be made available to the CITY at the CITY's expense, or such agency for examination, all of the CONSULTANT's records with respect to all matters covered by this CONTRACT and will permit the CITY or such agency and/or representative of the Comptroller General of the United States or State of Wisconsin to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payroll, records of personnel, condition of employment and other data relating to all matters covered by this CONTRACT.

SECTION XIX - CONFLICT OF INTEREST

- A. Interest in CONTRACT. No officer, employee or agent of the CITY who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this CONTRACT pertains, shall have any personal interest, direct or indirect, in this CONTRACT.
- B. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this CONTRACT, shall have any personal interest, direct or indirect, in this CONTRACT.
- C. Interest of CONSULTANT and Employees. The CONSULTANT covenants that no person described in Sections XIX. A. and B. above who presently exercises any functions or responsibilities in connection with the CONTRACT has any personal financial interest, direct or indirect, in this CONTRACT. The CONSULTANT further covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this CONTRACT no person having any conflicting interest shall be employed.

SECTION XX - DISCRIMINATION PROHIBITED

- A. In all hiring or employment made possible by or resulting from this CONTRACT there will not be any discrimination against any employee or applicant for employment because of race, color, sexual orientation, religion, sex or national origin, and affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sexual orientation, gender or national origin. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or

state agencies involved, setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard of race, color, religion, sexual orientation, sex or national origin.

- B. No person in the United States shall, on the grounds of race, color, religion, sexual orientation, gender or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this CONTRACT. The CITY and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
- C. The CONSULTANT will cause the foregoing provisions of this section to be inserted in all subcontracts, if any, for any work covered by this CONTRACT so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw material.

SECTION XXI - OWNERSHIP OF DOCUMENTS

Upon completion or termination of this CONTRACT, all PROJECT CONTRACT documents including an electronic file of computer aided record drawings, survey data, and field inspection reports, shall be delivered to and become the property of the CITY. These record drawings and reports, etc., may be used without restriction by the CITY for any public purpose and to implement construction and use of the project. Any such use or reuse of these documents outside the scope of the PROJECT shall be without compensation or liability to the CONSULTANT, excepting for errors and omissions associated with the completed project services and documents performed under this CONTRACT.

SECTION XXII ESTIMATES

The estimates of cost and material quantities for each project provided herein are to be prepared by the CONSULTANT through the exercise of their experience and judgement in applying presently available information. It is recognized that the CONSULTANT has no control over cost of construction, Contractor's labor, equipment and materials, or over competitive bidding procedures and market conditions of material quantities.

SECTION XXIII DATA

The CITY shall make available to the CONSULTANT all applicable existing technical data in the CITY's possession at the CITY HALL including maps, surveys, borings, and other information required by the CONSULTANT and relating to their work. CONSULTANT shall be entitled to rely upon data received from the CITY.

SECTION XXIV ACCURACY OF INFORMATION

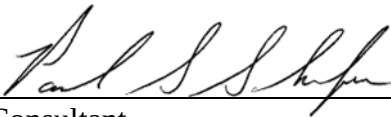
The CONSULTANT shall indicate to the CITY the information needed for rendering services hereunder, as well as likely sources of this information, with such sources to include but not be limited to the CITY. The CONSULTANT and the CITY recognizes that it is impossible to assure the sufficiency or accuracy of information provided by responsible parties such as Diggers Hotline.

SECTION XXIV OPEN RECORDS REQUIREMENTS

Notwithstanding any other clause written herein, CONSULTANT understands and agrees that the CITY is a municipal entity and is therefore subject to the open records law of the State of Wisconsin. Wis. Stat. sec. 19.36(3) requires governmental entities to make available for inspection and copying any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any of the documentation pertaining to this agreement, then CONSULTANT shall provide the information as requested and charge no more than the cost to copy said information.

IN WITNESS WHEREOF, The parties hereto have had these presents duly executed in their respective names by their respective officers as of the date and year first above written.

In the Presence of



Consultant

President
Title

2025
Date

CITY OF NEW BERLIN

Mayor

Date

This is to certify that provisions have been made to pay the expenses that will accrue under the Contract.

Treasurer/Comptroller

Date

Clerk

Date

Approved as to form this ____ day of

_____, 2025

City Attorney

Date

EXHIBIT A

CONSULTANT'S PROPOSAL

February 25, 2025

Mr. Greg Kessler
Director of Community Development
City of New Berlin
3805 South Casper Drive
New Berlin, WI 53151

Re: Proposal for Professional Services
2025 New Berlin Road Ratings

Dear Ms. Kessler:

Thank you for this opportunity to provide a proposal for professional services. The contents of this proposal letter spell out the Scope of Services to be provided, the proposed Completion Schedule, the Professional Fees, and the Assumptions and Conditions under which this proposal is being made.

PROJECT NAME:
2025 New Berlin Road Ratings

DESCRIPTION OF SERVICES TO BE PERFORMED:
raSmith, Inc. will provide road ratings in the City of New Berlin. This consists of approximately 231 lane miles owned by the city.

The proposed services include:

- 1) Driving all lane miles owned by the city.
- 2) Cartegraph One gis application will be used to document the rating of each segment including specific defects that may be found in each segment.
- 3) raSmith staff will utilize an Ipad loaded with the Cartegraph application to complete the inspections.
- 4) The inspection crew will consist of two staff and company vehicle with strobe lights.
- 5) The segments of road sections will be set in advance by the city staff.
- 6) The deliverable will be complete documentation of each segment.
- 7) We plan to start as early as possible and plan to have it completed by June.

COMPLETION SCHEDULE:

Work is anticipated to start and be completed during 2025.

PROFESSIONAL FEES:

The above-described services will be provided for on a time and expense basis. This work is estimated to take 4 weeks to complete with an estimate of fee's of \$35,700. Fees will be invoiced monthly as the project proceeds. The primary representative on site will be a Construction Technician III supplied at a rate of \$120/hr and secondary representative will be a Construction Technician I supplied at a rate of \$100/hr.

Usual and customary expenses such as mileage, postage, delivery, and applicable taxes will be billed monthly. Mileage will be invoiced at the federal rate per mile.

ASSUMPTIONS AND CONDITIONS:

Our estimated fees are based on the following set of assumptions and conditions. Deviations from these may result in additional fees:

The terms and conditions set forth herein are valid for 30 days from the date of this proposal and are conditioned upon our completion of all services within 300 days of this date.

The hourly rates are subject to change on an annual basis.

No additional Geotechnical work is included in this proposal.

Our professional fees are based on full days of uninterrupted work to the extent that can reasonably be expected for this type of project. Any unanticipated mobilization resulting from requests for partial days will result in additional fees which are not included in the estimate.

We look forward to a very successful project!

Sincerely,

raSmith, Inc.



Paul S. Schafer, P.E.

Director of Construction Services

Cc: Tammy Simonson, New Berlin

February 25, 2025

Mr. Greg Kessler
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City of New Berlin
3805 South Casper Drive
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Sincerely,

raSmith, Inc.



Paul S. Schafer, P.E.

Director of Construction Services

Cc: Tammy Simonson, New Berlin

Key:
Responsible Department or Party Colored Coded

All Items in Red are DCD Responsibilities

All Items in Purple are Utility Department Responsibilities

All Items in Green are Streets Department Responsibilites

All Items in Black are Contracted to Contractors and/or Consultants

FIVE (5) YEAR COORDINATED PASER / ROADWAY PROJECT INSPECTION AND REPAIR PROCEDURES

