



**BERLIN MAYOR AND COUNCIL  
Meeting Agenda**

**Berlin Town Hall  
10 William Street  
Tuesday, November 13, 2018**

**6:30 PM EXECUTIVE SESSION – Conference Room**

- a. Pursuant to Section §3-305(b)(7) – To consult with counsel to obtain legal advice on a legal matter

**7:00 PM REGULAR SESSION – Council Chambers**

1. Approval of the Minutes for:
  - a. Executive Session of 10/22/18
  - b. Statement of Closure for Executive Session of 10/22/18
  - c. Regular Session of 10/22/18
2. Proclamation 2017-12: Proclaiming November to be Municipal Government Works Month – Town Administrator Laura Allen
3. Local Government Insurance Trust (LGIT) Law Enforcement Body Camera grant award presentation – Executive Director Tim Ailsworth
4. Motion 2018-31: Motion accepting the Non-profit Grant Awards as recommended in the staff report – Town Administrator Laura Allen
5. Public Hearing: Ordinance 2018-01: Ordinance repealing in its entirety Chapter 2, Article II entitled Ethics Provisions, and enacting Chapter 2, Administrative Article II, Ethics Provisions in its place – Town Administrator Laura Allen
6. First Reading: Ordinance 2018-05: Ordinance amending Chapter 108, Article I, Section 108-5, entitled “Definitions,” by adding a definition of “Group Home.” – Planning and Zoning Director David Engelhart
7. First Reading: Ordinance 2018-06: Ordinance permitting a Group Home to be allowed as a conditional use subject to approval by the Board of Zoning Appeals in the B-1 Zoning District subject to area limitations – Planning and Zoning Director David Engelhart
8. Resolution 2018-03: Resolution affirming master services agreement for wholesale electric purchases and authorizing the Mayor and Town Administrator to execute schedules and confirmations thereunder within certain parameters – Town Administrator Laura Allen

9. Departmental Reports:
  - a. Finance Director – Natalie Saleh
  - b. Administrative Services Director – Mary Bohlen
  - c. Water Resources/Public Works – Jane Kreiter
  - d. Electric – Tim Lawrence
  - e. Chief – Arnold Downing
  - f. Planning – Dave Engelhart
  - g. Managing Director – Jeff Fleetwood
10. Town Administrator's Report
11. Comments from the Mayor
12. Comments from the Council
13. Comments from the Public
14. Comments from the Press
15. Adjournment

Anyone having questions about the meetings mentioned above or needing special accommodations should contact Laura Allen, Town Administrator at (410) 641-4144. Written materials in alternate formats for persons with disabilities are made available upon request.

*TTY users dial 7-1-1 in the State of Maryland.  
TTY users outside Maryland dial 1-800-735-2258*



**BERLIN MAYOR AND COUNCIL**  
**Meeting Minutes**  
**Monday, October 22, 2018**

**7:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers**

**Present:** Mayor Gee Williams, Vice-President Elroy Brittingham, Councilmembers Thom Gulyas, Zackery Tyndall, and Dean Burrell.

**Absent:** Councilmember Troy Purnell.

**Staff Present:** Town Administrator Laura Allen, Managing Director Jeff Fleetwood, Finance Director Natalie Saleh, Water Resources/Public Works Director Jane Kreiter, Police Chief Arnold Downing, Electric Utility Director Tim Lawrence, Planning Director Dave Engelhart, Economic and Community Development Director Ivy Wells, Town Attorney David Gaskill, and Town Clerk Kelsey Jensen.

Following the Lord’s Prayer and Pledge of Allegiance, Mayor Williams called the meeting to order at approximately 7:10 PM.

1. Approval of the Minutes for:

a. Executive Session of 10/09/18:

On the motion of Councilmember Gulyas, the Executive Session minutes of October 9, 2018 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	4				1

b. Statement of Closure for Executive Session of 10/09/18:

Mayor Williams read the Statement of Closure.

c. Executive Session of 10/15/18:

On the motion of Councilmember Gulyas, the Executive Session minutes of October 15, 2018 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	4				1

d. Statement of Closure for Executive Session of 10/15/18:

Mayor Williams read the Statement of Closure.

e. Regular Session of 10/09/18:

Councilmember Tyndall made an amendment to the minutes on page two section four. He would like "Councilmember Tyndall expressed concerns regarding the potential effect on the total number of EDUs the Town has". To be amended to "Mr. Moore cited previous concerns from Councilmember Tyndall regarding the number of EDUs the Town has available".

On the motion of Councilmember Gulyas, the amended Regular Session Minutes of October 9, 2018 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	4				1

2. Berlin Fire Company presentation of quarterly financial report

a. Motion 2018-28: Motion approving an agreement for services between the Town of Berlin and the Berlin Fire Company

Berlin Fire Company President David Fitzgerald and Fire Chief Jimmy Corron presented the quarterly reports for Fire and EMS. Mayor Williams thanked them for their presentation and the easy to follow format; he said they will be back to present information in January after the December quarter. Mayor Williams explained that the purpose of the agreement with Fire and EMS is for transparency and accountability. Mayor Williams discussed the annual amount will be broken down into quarterly payments for both Fire and EMS and if the agreement is approved a payment will be dispersed as soon as possible.

On the motion of Councilmember Tyndall, Motion 2018-28 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas		X			
Zackery Tyndall	X				
<i>Voting Tally</i>	3	1			1

3. Public Hearing: Ordinance 2018-07: Ordinance granting Sandpiper Energy, Inc., a Delaware Corporation, a Franchise for the right to lay pipes, conduit, conductors and other appurtenances, extend, maintain, repair, and operate facilities in the public ways to distribute and sell natural gas to the public in The Town of Berlin, and limiting the time within which, and specifying certain conditions under which, said franchise may be exercised

Mayor Williams and Town Administrator Laura Allen explained the proposed Ordinance. Mayor Williams opened the public hearing at 7:38 PM, with no public comment, he closed the public hearing at 7:40 PM. Councilmember Tyndall asked if the agreement is exclusive. Ms. Allen said it was.

On the motion of Councilmember Gulyas, Ordinance 2018-07 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				
Zackery Tyndall		X			
<i>Voting Tally</i>	3	1			1

4. First Reading: Ordinance 2018-01: Ordinance repealing in its entirety Chapter 2, Article II entitled Ethics Provisions, and enacting Chapter 2, Administrative Article II, Ethics Provisions in its place

Town Administrator Laura Allen asked Town Attorney David Gaskill to explain the ordinance. He said it needed to be changed to meet the State requirements. Ms. Allen sent it to the Town's Ethics Commission and they did not express any concerns. Councilmember Tyndall asked if they would need to update their current forms and Ms. Allen said no, but next time around they may be changed. The Public Hearing will take place at the November 13<sup>th</sup> meeting.

5. Motion 2018-29: Motion approving the Mayor and Council Meetings and Town Holidays for calendar year 2019

Mayor Williams asked that we remove the second December 23<sup>rd</sup> meeting. He said the meetings in that timeframe should be removed.

On the motion of Vice-president Brittingham, Motion 2018-29 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	4				1

6. Motion 2018-30: Motion approving an agreement with Republic Services for single stream recycling services

Water Resources/Public Works Director Jane Kreiter asked Public Works Superintendent Dave Wheaton to explain the single stream service and said the 30ft collection dumpster will be located behind Croppers near Berlin Falls Park. Councilmember Burrell asked if the main purpose is to save on overtime, man power, and be more efficient; Mr. Wheaton said it was. Ms. Allen said Ms. Kreiter is hopeful that the process will begin on November 5<sup>th</sup> and indicated that we will include information about it in our November Berlin Bulletin.

On the motion of Councilmember Burrell, Motion 2018-30 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				

Zackery Tyndall	X				
Voting Tally	4				1

Councilmember Burrell asked Mr. Wheaton to come back to a meeting in February and update the Council as to how the service is working for the Town. Councilmember Tyndall asked Mr. Wheaton to look into doing a single stream service for households as well. Mayor Williams thanked Mr. Wheaton for his hard work with Berlin Falls Park.

7. Departmental Reports:

a. Finance Director – Natalie Saleh

Ms. Saleh reported that the FY2018 audit is completed and PKS will present information to the Town at the end of November. She reported that the holiday season is among us and they will be sending the energy assistance letters to residents soon, Shore Up will then distribute those funds to those in need; Mayor Williams said he would like to see the letter before it goes out. Lastly, on Friday the Finance Department will be in attendance at the GFOA conference.

b. Water Resources/Public Works Director – Jane Kreiter

Ms. Kreiter reported that the ribbon cutting for the new interpretive signs at Berlin Falls Park will be on October 23<sup>rd</sup> at 5:30 PM. She also mentioned that they will be reading meters on Monday and Tuesday.

c. Electric Utility Director – Tim Lawrence

Mr. Lawrence said they have begun fall tree trimming. They installed underground service and temporary service at two properties. They have replaced the #4 engine at the Power Plant. The lighting company will be remotely programming the lights at Stephen Decatur Tennis Courts. They are getting ready to move forward with Christmas decorations. Lastly, they will perform meter readings on Tuesday and Wednesday.

d. Police Chief – Arnold Downing

Chief Downing said their records management system has been down for a week and they hope it will be back up on Wednesday and their staff will back log the information. SHA night construction will be taking place on Rt. 113 beginning tonight. Trick-or-treating will take place from 5:00 PM–7:00 PM on Wednesday, October 31<sup>st</sup>, candy scanning will also take place in Town Hall during that time. Main Street from West to Tripoli will be closed for Halloween; if you do not wish to participate in trick-or-treating he asked that you turn your porch lights off.

e. Planning and Zoning Director – David Engelhart

Mr. Engelhart explained that the Ocean's East building with the elevator has been waiting on elevator inspections which should be completed this week. The other properties there have been issued a temporary certificate of occupancy which will become permanent once the project has been completed.

f. Economic and Community Development Director – Ivy Wells

Ms. Wells thanked the Mayor and the Chief for helping with the Comcast commercial. Sunday will be the last farmers market of this season and it will be Halloween themed. On Halloween there will be a surprise in front of the Atlantic Hotel at 6:00 PM. She has been working with various businesses to help them open. Christmas planning has begun. Lastly, she will be on vacation from Saturday until Tuesday.

8. Town Administrator's Report – Laura Allen

Ms. Allen thanked the Berlin Lionesses for offering to help with candy scanning.

9. Comments from the Mayor:

Mayor Williams thanked Councilmember Tyndall and Managing Director Jeff Fleetwood for receiving the Sustainable Maryland Award. Councilmember Tyndall stated that the Town has been certified for the longest length of time in the State.

10. Comments from the Council – none.

11. Comments from the Audience – none.


12. Comments from the Press – none.

13. Adjournment:

On the motion of Councilmember Burrell, the Mayor and Council meeting was adjourned at approximately 8:15PM.

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell					X
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	4				1

Respectfully Submitted,

  
 Kelsey Jensen  
 Town Clerk



# Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811  
Phone 410-641-2770 Fax 410-641-2316  
www.berlinmd.gov



*'America's Coolest Small Town'*

**Mayor**  
Wm. Gee Williams, III

**Vice President**  
Elroy Brittingham, Sr.

**Council Members**  
Dean Burrell, Sr.  
Troy Purnell  
Thomas L. Gulyas  
Zackery Tyndall

**Town Attorney**  
David Gaskill

**Town Administrator**  
Laura Allen



## PROCLAMATION 2018-12

### A PROCLAMATION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND PROCLAIMING NOVEMBER TO BE MUNICIPAL GOVERNMENT WORKS MONTH.

The Mayor and Council of the Town of Berlin does hereby proclaim November to be Municipal Government Works Month.

**WHEREAS**, the Town of Berlin was incorporated in 1868; and

**WHEREAS**, Maryland is home to 156 other municipalities; and

**WHEREAS**, municipal government represents the most responsive level of government, allowing citizens to have direct access to elected officials; and

**WHEREAS**, in an effort to educate citizens about municipal government and the importance of their participation, the Town of Berlin is proud to promote municipal government awareness; and

**WHEREAS**, during 2018 the Town of Berlin promoted Municipal Government Awareness by:

- Hosting or supporting 49 community events
- Partnering with local businesses to provide free shuttles to several Town events
- Collecting 141 tons of recycling so far this year
- Installing new wayfinding signs
- Receiving a safety award from American Municipal Power
- Issuing 46 Certificates of Occupancy
- Repairing paving and adding sidewalks on Gay St.
- Publishing the Berlin Bulletin monthly
- Welcoming 13 new businesses

**WHEREAS**, municipalities have enhanced the quality of life for their respective residents maintaining natural and historic sites and structures and helping to make Maryland a great place to live, work, play and explore.

**NOW, THEREFORE, BE IT PROCLAIMED** that the Mayor and Council of the Town of Berlin, Maryland hereby joins the Maryland Municipal League in declaring November to be Municipal Government Works Month in the Town of Berlin.



WITNESS MY HAND AND SEAL, THIS 13<sup>TH</sup> DAY OF NOVEMBER 2018.

\_\_\_\_\_  
Wm. Gee Williams, III, Mayor

\_\_\_\_\_  
Elroy Brittingham, Sr.  
Vice President

ATTEST: \_\_\_\_\_  
Laura Allen  
Town Administrator



## Award Presentation:

Local Government Insurance Trust Law Enforcement  
Body Camera Grant

– Executive Director Tim Ailsworth



MOTION OF THE MAYOR AND COUNCIL 2018-31

A MOTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN ACCEPTING THE NON-PROFIT GRANT AWARDS AS RECOMMENDED IN THE STAFF REPORT.

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF \_\_\_\_ TO \_\_\_\_ OPPOSED, WITH \_\_\_\_ ABSTAINING AND \_\_\_\_ ABSENT.

\_\_\_\_\_  
ELROY BRITTINGHAM, SR. VICE PRESIDENT


APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018 BY THE MAYOR OF THE TOWN OF BERLIN.

\_\_\_\_\_  
WM. GEE WILLIAMS, III, MAYOR

ATTEST: \_\_\_\_\_  
LAURA ALLEN  
TOWN ADMINISTRATOR



# STAFF REPORT

**To:** Mayor and Members of the Town Council  
**From:** Town Administrator Laura Allen   
**Meeting Date:** November 13, 2018  
**Subject:** Nonprofit Grant Awards

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## RECOMMENDATION

Staff recommends the Mayor and Council authorize the Town Administrator to enter into five Nonprofit Grant Funding Agreements totaling \$30,000 as follows:

Organization	Amount	Purpose
Berlin Arts and Entertainment	\$6,000	Mural
Shirley Grace Pregnancy Center	\$5,000	Ongoing bi-weekly support group meetings for women with addiction.
Worcester County Commission on Aging	\$5,000	Berlin Senior Center; same amount as FY 18
Worcester County Developmental Center	\$7,500	Staff to supervise clients while in the community; same amount as last year.
Worcester County G.O.L.D	\$6,500	Assistance to Berlin residents in need.

## EXECUTIVE SUMMARY

At its February 26, 2018 meeting the Mayor and Council approved a Nonprofit Grant Process which established an application procedure for nonprofit organizations seeking funding from the Town. In the FY 2019 Budget, the Mayor and Council allocated \$30,000 from the General Fund to fund this activity.

The Town received ten applications totaling \$99,510. Five organizations did not meet the criteria required in the approved process to receive funding. Of the six remaining, the Mayor and Council determined in Executive Session on October 22, 2018 to fund Berlin Arts and Entertainment, Shirley Grace Pregnancy Center, Worcester County Commission on Aging, Worcester County Developmental Center, and Worcester County G.O.L.D.

**FISCAL IMPACT**

The cost of these agreements is \$30,000 which is in the FY 2019 Budget.

**ANALYSIS**

The Mayor and Council approved the Nonprofit Grant Process at its February 26, 2018 meeting. After the FY 2019 Budget was approved, the Town Administrator and Administrative Services Director held an orientation with local nonprofits to explain the process and requirements. A sample agreement was provided to the attendees. The application process was promoted via direct email to nonprofit organizations funded by the Town and local newspapers. The Town received requests from ten nonprofit organizations totaling \$99,500.

**List of applicants**

The table below lists the organizations, the amount of funding they requested and provides a brief description of how the funding would be used.

**Nonprofit Grant Requests FY 19**

	<b>Requested Amount</b>	<b>Funding Purpose</b>
Berlin Arts and Entertainment	\$9,585	Mural panel, outdoor movies, bike rack and sponsorship for December Artists' Open House.
Shirley Grace Pregnancy Center	\$5,000	Ongoing bi-weekly support group meetings for women with addiction.
Stevenson United Methodist Church	\$5,000	Spirit Kitchen
Worcester County Commission on Aging	\$30,000	Berlin Senior Center
Worcester County Developmental Center	\$7,500	Staff to supervise clients while in the community
Worcester County G.O.L.D	\$6,500	Assistance to Berlin residents in need.

Berlin Community Improvement Association	\$10,000	Building repairs
Delmarva Discovery Center & Museum	\$10,000	Berlin-based outreach animal education program. One hour a week for eight weeks during the summer.
The Cricket Center, Inc.	\$7,500	Family advocate salary
Worcester County Humane Society	\$8,425	"Prevent a litter, fix your critter campaign" designed to reduce the number of unwanted animals.
<b>Total requested</b>	<b>\$99,510</b>	

**Eligibility determination**

The Nonprofit Grant Process contains specific requirements organizations must meet to be eligible for funding. Some organizations did not meet the requirements and were, therefore, ineligible to receive funding. Those groups were notified during the application review period. Staff will follow up with a letter from the Mayor and Council after the November 13, 2018 meeting.

**Limited funding**

Staff recognizes each of these organizations serve an important role. The Town's funding is limited to \$30,000, therefore not all organizations were able to receive funding this year.

**Sample agreement**

The attached sample agreement is attached for your review. Since the orientation meeting, the highlighted sections were added. The sample agreement has been reviewed by the Town Attorney. Each agreement will be customized in terms of the purpose of the funding and the amount based on the Mayor and Council's action.

**CONCLUSION**

Staff recommends the Mayor and Council authorize the Town Administrator to enter into five Nonprofit Grant Funding Agreements totaling \$30,000 as described in this report.

Attachment: Sample agreement

# SAMPLE

## GRANT FUNDING AGREEMENT

The Town of Berlin ("Town") will pay \$\_\_\_\_\_ ("Grant") to \_\_\_\_\_ ("Grantee"), and Grantee accepts the Grant, on the terms and conditions set forth herein.

### 1. Purpose of Grant

(a) Grantee shall use the grant for the purpose(s) set forth herein, and for no other purpose. Specifically, the Grantee shall use the funds to provide \_\_\_\_\_.

(b) This is an ongoing program that will continue beyond \_\_\_\_\_.

### 2. Report

(a) By \_\_\_\_\_ or within 90 days after completion of the program or project, whichever is earlier, Grantee will present a final written report to the Town Administrator that:

- (i) Describes the results of the program or project funded by the grant;
- (ii) Evaluates the results of the program or project funded by the grant; and
- (iii) Provides an accounting of the use of the grant funds.

(b) Grantees may be requested to present the report at a regular Mayor and Council meeting.

(c) If the program or project is not completed by \_\_\_\_\_, Grantee shall present an interim report by then describing the status of the program or project and its expected completion date.

### 3. Representations

Grantee represents as follows and acknowledges that the Town is relying on the truthfulness of each of these representations to make the Grant.

(a) Grantee's mission is to provide \_\_\_\_\_;

(b) Grantee's mission provides a public benefit to the communities of a defined geographic area that encompasses the Town of Berlin;

(c) Grantee is recognized by the Internal Revenue Service (IRS) as tax-exempt under Internal Revenue Code Section 501 (c) (3) (a corporation organized and operated exclusively for religious, charitable, literary, scientific, or educational purposes) or Section 501(c)(6) (a chamber of commerce), or is a governmental entity;

(d) Grantee's governing board has adopted policies and procedures to assure that the terms and conditions of all grants are satisfied.

# SAMPLE

## 4. Restrictions

Grantee acknowledges and agrees to each of the following:

- (a) The grant cannot be used to fund existing obligations, debts or liabilities;
- (b) Town has no obligation or commitment to provide any additional support to the grantee;
- (c) The grant may not be used for any political campaign or to support attempts to influence the legislature or any governmental body other than through making available the results of nonpartisan analysis, study and research;
- (d) The grant may not be used to promote the teachings of any religion or church denomination; and
- (e) Grantee will not use the grant on any program or project that discriminates on the basis of race, color, religion, gender, age, weight, height, sexual orientation, marital status, national origin, disability or other characteristic protected by law.
- (f) Grantee will not unlawfully discriminate against qualified employees with respect to any terms or conditions of employment based on any characteristic of a person that is protected by federal or state law prohibiting discrimination in employment, whether actual or perceived, including but not limited to race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

## 5. Promotional Material

Grantee agrees to include the Town's logo in promotional material regarding the agency.

## 6. Non-disparagement

Grantee agrees good communication is essential to ensuring an effective partnership and will raise issues or concerns directly with the Town. Grantee agrees not to disparage the Town.

## 7. Release of Liability

The Town of Berlin shall be released from any and all liability stemming from the activities of the organization, whether such activities are funded under this agreement, or otherwise undertaken by the organization.

## 8. Notices

Manner of Giving Notice: All notices to be given under this Agreement shall be in writing and either delivered personally or sent by first class mail through the U.S. Postal Service, postage prepaid, to:



# SAMPLE

<i>To Town:</i> Town of Berlin Attn: Town Administrator 10 William Street Berlin, MD 21811	<i>To Grantee:</i>
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## 9. Entire Agreement

This document constitutes the entire agreement between the parties, and supersedes all prior statements, negotiations and promises. Any modification of this agreement shall not become binding unless and until it is signed by the parties to this agreement.

IN WITNESS WHEREOF, the parties hereto have made this Agreement as of the date last signed below.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

Dated: \_\_\_\_\_

TOWN OF BERLIN

By: \_\_\_\_\_  
Mayor Gee Williams

ORDINANCE 2018-01

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE II ENTITLED ETHICS PROVISIONS, AND ENACTING CHAPTER 2, ADMINISTRATIVE ARTICLE II, ETHICS PROVISIONS IN ITS PLACE.

BE IT RESOLVED, BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, that Chapter 2, Administrative Article II of the Town code is hereby REPEALED in its entirety; and

BE IT FURTHER RESOLVED BY THE MAYOR AND COUNCIL that Chapter 2, Administrative Article II, entitled Ethics Provisions, is hereby ENACTED as follows:

**CHAPTER 2, ARTICLE II — ETHICS PROVISIONS**

**Section 1. Short title.**

This chapter may be cited as the Town of Berlin Public Ethics Ordinance.

**Section 2. Statement of purpose and policy.**

(a) The Town of Berlin, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

(b) It is evident that this confidence and trust is eroded when the conduct of the Town of Berlin's business is subject to improper influence and even the appearance of improper influence.

(c) For the purpose of guarding against improper influence, the Mayor and Council enacts this Public Ethics Ordinance to require Town elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.

(d) It is the intention of the Mayor and Council that this chapter, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

**Section 3. Definitions.**

In this chapter, the following terms have the meanings indicated.

(a) (1) "Business entity" means a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit.

(2) Business entity does not include a governmental entity.

(b) "Commission" means the Town of Berlin Ethics Commission established under §4(a) of this chapter.

(c) (1) "Compensation" means any money or thing of value, regardless of form, received or to be received by any individual covered by this chapter from an employer for service rendered.

(2) For the purposes of §8 of this chapter, if lobbying is only a portion of a person's employment, "compensation" means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties.

(c-1) "Designated second home" means:

(1) If an individual owns one second home, the individual's second home; or

(2) If an individual owns more than one second home, any one second home the individual identifies to the Commission as the individual's designated second home.

(d) "Doing business with" means:

(1) Having or negotiating a contract that involves the commitment, either in a single or combination of transactions, of \$5,000 or more of Town controlled funds;

(2) Being regulated by or otherwise subject to the authority of the Town of Berlin; or

(3) Being registered as a lobbyist under §8 of this chapter.

(e) (1) "Elected official" means any individual who holds an elective office of the Town of Berlin.

(2) "Elected official" does not include the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court.

(f) (1) "Employee" means an individual who is employed by the Town of Berlin.

(2) "Employee" does not include an elected local official.

(3) "Employee" does not include an employee of:

(i) The offices of the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court;

(ii) The County Health Department; or

(iii) The County Department of Social Services.

(g) "Financial interest" means:

(1) Ownership of any interest as the result of which the owner has received, within the past 3 years, or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year; or

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than 3 percent of a business entity by a Town official or employee, or the spouse of an official or employee.

(h) (1) "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.

(2) "Gift" does not include a contribution as defined in Election Law Article, Annotated Code of Maryland.

(h-1) "Home address" means the address of an individual's:

(1) Principal home; and

(2) Designated second home, if any.

(i) "Immediate family" means a spouse and dependent children.

(j) (1) "Interest" means a legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.

(2) For purposes of §6 of this chapter, "interest" includes any interest held at any time during the reporting period.

(3) "Interest" does not include:

(i) An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

(ii) An interest in a time or demand deposit in a financial institution;

(iii) An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

(iv) A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code;

(v) A college savings plan under the Internal Revenue Code; or

(vi) A mutual fund or exchange-traded fund that is publicly traded on a national scale unless the mutual fund or exchange-traded fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit.

(k) "Lobbyist" means a person required to register and report expenses related to lobbying under §8 of this chapter.

(l) "Lobbying" means:

(1) Communicating in the presence of a Town official or employee with the intent to influence any official action of that official or employee; or

(2) Engaging in activities with the express purpose of soliciting others to communicate with a Town official or employee with the intent to influence that official or employee.

(m) "Official" means an elected official, an employee of the Town, or a person appointed to or employed by the Town or any Town agency, board, commission, or similar entity:

(1) Whether or not paid in whole or in part with Town funds; and

(2) Whether or not compensated.

(n) "Person" includes an individual or business entity.

(n-1) "Principal home" means the sole residential property that an individual occupies as the individual's primary residence, whether owned or rented by the individual.

(o) "Qualified relative" means a spouse, parent, child, brother, or sister.

(p) "Second home" means a residential property that:

(1) An individual occupies for some portion of the filing year; and

(2) Is not a rental property or a time share.

#### **Section 4. Administration.**

(a) (1) There is a Town Ethics Commission that consists of 3 members, appointed by the Mayor with the concurrence of the Council.

(2) The Commission members shall serve 3 year overlapping terms.

(3) A Commission member may serve until a successor is appointed and qualifies.

(b) (1) The Commission shall elect a chairman from among its members.

(2) The term of the chairman is one year.

(3) The chairman may be reelected.

(c) (1) The Town Attorney shall assist the Commission in carrying out the Commission's duties.

(2) If a conflict of interest under §5 of this chapter or other conflict prohibits the Town Attorney from assisting the Commission in a matter, the Town shall provide sufficient funds for the Commission to hire independent counsel for the duration of the conflict.

(d) The Commission is the advisory body responsible for interpreting this chapter and advising persons subject to this chapter regarding its application.

(e) The Commission shall hear and decide, with the advice of the Town Attorney or other legal counsel if appropriate, all complaints filed regarding alleged violations of this chapter by any person.

(f) The Commission or an office designated by the Commission shall retain as a public record all forms submitted by any person under this chapter for at least four years after receipt by the Commission.

(g) The Commission shall conduct a public information and education program regarding the purpose and implementation of this chapter.

(h) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the Town is in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland, for elected local officials.

(i) The Commission shall:

(1) Determine if changes to this chapter are required to be in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland; and

(2) Shall forward any recommended changes and amendments to the Town Council for enactment.

(j) (1) Any person subject to this chapter may request an advisory opinion from the Commission concerning the application of this chapter.

(2) The Commission shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission within 60 days of the request.

(3) In accordance with all applicable State and Town laws regarding public records, the Commission shall publish or otherwise make available to the public copies of the advisory opinions, with the identities of the subjects deleted.

(4) The Commission may adopt additional policies and procedures related to the advisory opinion request process.

(k) (1) Any person may file a complaint with the Commission alleging a violation of any of the provisions of this chapter.

(2) A complaint shall be in writing and under oath.

(3) The Commission may refer a complaint to the Town Attorney, or other legal counsel if appropriate, for investigation and review.

(4) The Commission may dismiss a complaint if, after receiving an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation.

(5) If there is a reasonable basis for believing a violation has occurred, the subject of the complaint shall be given an opportunity for a hearing conducted in accordance with the applicable Town rules of procedure.

(6) A final determination of a violation resulting from the hearing shall include findings of fact and conclusions of law.

(7) Upon finding of a violation, the Commission may take any enforcement action provided for in §9 of this chapter.

(8)(i) After a complaint is filed and until a final finding of a violation by the Commission, all actions regarding a complaint are confidential.

(ii) A finding of a violation is public information.

(9) The Commission may adopt additional policies and procedures related to complaints, complaint hearings, the use of independent investigators and staff, the use of witness and document subpoenas, and cure and settlement agreements.

(l) The Commission may grant exemptions to or modifications of the conflict of interest and financial disclosure provisions of this chapter to officials or employees serving as members of Town boards and commissions, when the Commission finds that the exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(1) Constitute an unreasonable invasion of privacy; and

(2) Significantly reduce the availability of qualified persons for public service.

(m) The Commission may:

(1) Assess a late fee of \$5 per day up to a maximum of \$500 for a failure to timely file a financial disclosure statement required under §6 or 7 of this chapter; and

(2) Assess a late fee of \$10 per day up to a maximum of \$1,000 for a failure to file a timely lobbyist registration or lobbyist report required under §8 of this chapter.

#### **Section 5. Prohibited conduct and interests.**

(a) Participation prohibitions.

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(A) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(D) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(E) An entity, doing business with the Town, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph (1) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(4) A former regulated lobbyist who is or becomes subject to this chapter as an employee or official, other than an elected official or an appointed official, may not participate in a case, contract, or other specific matter as an employee or official, other than an elected official or appointed official, for one calendar year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter.

(b) Employment and financial interest restrictions.



(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the Town agency, board, or commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-employment limitations and restrictions.

(1) A former official or employee may not assist or represent any party other than the Town for compensation in a case, contract, or other specific matter involving the Town if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) A former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year after the elected official leaves office.

(d) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the Town.

(e) Use of prestige of office.

(1) (i) An official or employee may not intentionally use the prestige of office or public position:

(a) For the private gain of that official or employee or the private gain of another; or

(b) To influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a state or local contract to a specific person.

(ii) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(3) (i) An official, other than an elected official, or employee may not use public resources or the title of the official or employee to solicit a contribution as that term is defined in the Election Law Article.

(ii) An elected official may not use public resources to solicit a contribution as that term is defined in the Election Law Article.

(f) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:

(i) Is doing business with or seeking to do business with the Town office, agency, board, or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) (i) This paragraph does not apply to a gift:

(A) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(B) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(C) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

(A) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(B) Ceremonial gifts or awards that have insignificant monetary value;

(C) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(F) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the Town and that the gift is purely personal and private in nature;

(G) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

(H) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in no way related to the official's or employee's official position.

(g) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

#### **Section 6. Financial disclosure — elected officials, officials, and employees.**

(a) This section applies to all elected officials, and all candidates to be elected officials.

(b) Except as provided in subsection (d) of this section, an elected official, or candidate to be an elected official shall file the financial disclosure statement required under this subsection:

(1) On a form provided by the Commission;

(2) Under oath or affirmation; and

(3) With the Commission.

(c) Deadlines for filing statements.

(1) An incumbent official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(2) An official who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(3) (i) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

(d) Candidates to be elected officials.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected official shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(i) May file the statement required under §6(d)(2)(i) of this chapter with the Town Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §6(d)(2)(ii) and (iii) of this chapter with the Commission.

(4) If a statement required by a candidate is overdue and not filed within 8 days after written notice of the failure to file is provided by the Town Clerk or Board of Election Supervisors, the candidate is deemed to have withdrawn the candidacy.

(5) The Town Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this section has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the Town, clerk or Board of Election Supervisors shall forward the statement to the Commission, or an office designated by the Commission.

(e) Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) The Commission or office designated by the Commission shall make financial disclosure statements available during normal office hours for examination and copying by the public, subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the individual whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official or employee with a copy of the name and home address of the person who reviewed the official's or employee's financial disclosure statement.

(5) For statements filed after January 1, 2019, the Commission or the office designated by the Commission may not provide public access to an individual's home address that the individual has designated as the individual's home address.

(f) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(g) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the Town.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with the Town.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the Town, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the Town.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with the Town.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the Town.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each Town agency with which the entity is involved as indicated by identifying one or more of the three categories of "doing business", as defined in §3(d) of this chapter.

(6) Indebtedness to entities doing business with or regulated by the individual's Town unit or department.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with or regulated by the individual's Town unit or department owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) Employment with the Town. A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the Town in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.



(iii) For a statement filed on or after January 1, 2019, if the individual's spouse is a lobbyist regulated by the Town, the individual shall disclose the entity that has engaged the spouse for lobbying purposes.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(h) For the purposes of §6(g)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(i) (1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The Town Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

#### **Section 7. Financial disclosure — appointed members of boards and commissions.**

(a) (1) The Town appointed officials listed in paragraph (b) of this section shall file the statement required by §6 of this chapter.

(2) The appointed officials shall be required to disclose the information specified in §6(g) of this chapter only with respect to those interests, gifts, compensated positions, and liabilities that may create a conflict, as provided in §5 of this chapter, between the member's personal interests and the member's official local duties.

(3) An official shall file a statement required under this section annually, not later than April 30 of each calendar year during which the official holds office.

(b) Appointed officials required to file:

All members of Boards created by Town of Berlin Ordinances.

(c) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §6(e) of this chapter.

## **Section 8. Lobbying.**

(a) Except as provided in subsections (b) and (c) of this section, a person or entity who engages in lobbying as defined in §3(l) shall file a lobbying registration with the Commission if the person or entity, during the calendar year:

(1) Expends, exclusive of personal travel and subsistence expenses, in excess of \$1,000.00 in furtherance of this activity; or

(2) Is compensated in excess of \$5,000.00 in connection with this activity.

(b) The following activities are exempt from regulation under this section:

(1) Professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending Council actions when these services do not otherwise constitute lobbying activities;

(2) Appearances before the Council upon its specific invitation or request if the person or entity engages in no further or other activities in connection with the passage or defeat of Council actions;

(3) Appearances before a Town agency upon the specific invitation or request of the agency if the person or entity engages in no further or other activities in connection with the passage or defeat of any agency executive action;

(4) Appearance as part of the official duties of a duly elected or appointed official or employee of the State or a political subdivision of the State, or of the United States, and not on behalf of any other entity;

(5) Actions of a publisher or working member of the press, radio, or television in the ordinary course of the business of disseminating news or making editorial comment to the general public who does not engage in further or other lobbying that would directly and specifically benefit the economic, business, or professional interests of the person or entity or the employer of the person or entity;

(6) Appearances by an individual before the Council at the specific invitation or request of a registered lobbyist if the person performs no other lobbying act and notifies the Council that the person or entity is testifying at the request of the lobbyist;

(7) Appearances by an individual before a government agency at the specific invitation or request of a registered lobbyist if the person or entity performs no other lobbying act and notifies agency that the person or entity is testifying at the request of the lobbyist;

(8) The representation of a bona fide religious organization solely for the purpose of protecting the right of its own members to practice the doctrine of the organization; and

(9) Appearance as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in lobbying for counties and municipalities and not on behalf of any other entity.

(c) Limited exemption — employer of a lobbyist.

(1) A person or entity who compensates one or more lobbyists and who would otherwise be required to register as a lobbyist is not required to file a registration and submit lobbying reports if the person or entity reasonably believes that all expenses incurred in connection with the lobbying activities will be reported by a properly registered person or entity acting on behalf of the person or entity.

(2) A person or entity exempted under this subsection becomes subject to this section immediately upon failure of the lobbyist to report any information required under this section.

(d) (1) The registration filed under this section shall be filed on or before the later of the beginning of the calendar year in which the person or entity expects to lobby and within five days of first engaging in lobbying activities in the calendar year.

(2) The registration filed under this section:

(i) Shall be dated and on a form developed by the Commission;

(ii) Shall include:

(A) The lobbyist's full and legal name and permanent address;

(B) The name, address, and nature of business of any person or entity on whose behalf the lobbyist acts; and

(C) The written authorization of any person or entity on whose behalf the lobbyist acts or an authorized officer or agent, who is not the lobbyist, of the person or entity on whose behalf the lobbyist acts;

(iii) A statement of whether the person or entity on whose behalf the lobbyist acts is exempt from registration under subsection (c) of this section;

(iv) The identification, by formal designation, if known, of matters on which the lobbyist expects to act;

(v) Identification of the period of time within a single calendar year during which the lobbyist is authorized to engage in these activities, unless terminated sooner; and

(vi) The full legal signature of the lobbyist and, when appropriate, the person or entity on whose behalf the lobbyist acts or an agent or authorized officer of the person or entity on whose behalf the lobbyist acts.

(e) A lobbyist shall file a separate registration for each person or entity that has engaged or employed the lobbyist for lobbying purposes.

(f) A lobbyist may terminate the lobbyist's registration by providing written notice to the Commission and submitting all outstanding reports and registrations.

(g) A person or entity may not engage in lobbying activities on behalf of another person or entity for compensation that is contingent upon the passage or defeat of any action by the Council or the outcome of any executive action.

(h) Activity report.

(1) A lobbyist shall file with the Commission or the office designated by the Commission:

(i) By July 31, one report concerning the lobbyist's lobbying activities covering the period beginning January 1 through June 30; and

(ii) By January 31, one report covering the period beginning July 1 through December 31.

(2) A lobbyist shall file a separate activity report for each person or entity on whose behalf the lobbyist acts.

(3) If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form.

(4) The report shall include:

(i) A complete and current statement of the information required to be supplied with the lobbyist's registration form.

(ii) Total expenditures on lobbying activities in each of the following categories:

(A) Total compensation paid to the lobbyist not including expenses reported under items (B)—(I) of this subparagraph;

(B) Office expenses of the lobbyist;

(C) Professional and technical research and assistance not reported in item (i) of this subparagraph;

(D) Publications which expressly encourage persons to communicate with Town officials or employees;

(E) Names of witnesses, and the fees and expenses paid to each witness;

(F) Meals and beverages for Town officials and employees;

(G) Reasonable expenses for food, lodging, and scheduled entertainment of Town officials or employees for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

(H) Other gifts to or for officials or employees or their spouses or dependent children; and

(I) Other expenses.

(i) Special gift report.

(1) (i) With the six-month activity report required under subsection (h) of this section, a lobbyist shall report, except for gifts reported in item (h)(4)(ii)(G) of this section, gifts from the lobbyist with a cumulative value of \$75 or more during the reporting period to an official, employee, or member of the immediate family of an official or employee.

(ii) The lobbyist shall report gifts under this paragraph regardless of whether the gift was given in connection with lobbying activities.

(2) The report shall include the date, beneficiary, amount or value, and nature of the gift.

(j) Notification to official and confidentiality.

(1) If any report filed under this section contains the name of an official or employee or a member of the immediate family of an official or employee, the Commission shall notify the official or employee within 30 days.

(2) The Commission shall keep the report confidential for 60 days following receipt by the Commission.

(3) Within 30 days of the notice required under paragraph (1) of this subsection, the official or employee may file a written exception to the inclusion in the report of the name of the official, employee, or member of the immediate family of the official or employee.

(k) The Commission may require a lobbyist to submit other reports the Commission determines to be necessary.

(l) The Commission or office designated by the Commission shall maintain all registrations and reports filed under this section.

(m) (1) The Commission shall review the registrations and reports filed under this section for compliance with this section and shall notify persons engaging in lobbying activities of any omissions or deficiencies.

(2) The Commission may take appropriate enforcement action to ensure compliance with this section.

(n) Annual report.

(1) The Commission shall compute and make available a subtotal under each of the ten required categories in subparagraph (h)(4)(ii) of this section.

(2) The Commission shall compute and make available the total amount reported by all lobbyists for their lobbying activities during the reporting period.

(o) The Commission shall make lobbying registrations and reports available during normal business hours for examination and copying subject to reasonable fees and procedures established by the Commission.

## **Section 9. Enforcement.**

(a) (1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated §8 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under §8 of this chapter;

(ii) Impose a fine not exceeding \$5,000 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §8 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(b) (1) Upon request of the Commission, the Town Attorney may file a petition for injunctive or other relief in the circuit court of Worcester County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2) (i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

(c) (1) Any person who knowingly and willfully violates the provisions of §8 of this chapter is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

(2) If the person is a business entity and not a natural person, each officer and partner of the business entity who knowingly authorized or participated in the violation is guilty of a misdemeanor and, upon conviction, is subject to the same penalties as the business entity.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) (1) A person who is subject to the provisions of this chapter shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to complete and substantiate a report, statement, or record required under this chapter for three years from the date of filing the report, statement, or record.

(2) These papers and documents shall be available for inspection upon request by the Commission or the Council after reasonable notice.

**Section 10. Severability.**

If any section, sentence, clause, or phrase of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, the ruling shall not affect the validity of the remaining portions of this chapter.

**THIS ORDINANCE** was introduced and read at a meeting of the Town Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, and thereafter a statement of the substance of the Ordinance having been published as required by law was finally passed by the Town Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Adopted and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Mayor and Council of the Town of Berlin, Maryland, by affirmative vote of \_\_\_\_\_ to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Vice-President

Approved and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Mayor of the Town of Berlin.

\_\_\_\_\_  
Wm. Gee Williams, Mayor

\_\_\_\_\_  
ATTEST: Laura Allen, Town Administrator

**ORDINANCE 2018-05**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, AMENDING CHAPTER 108, ARTICLE I, SECTION 108-5, ENTITLED "DEFINITIONS," BY ADDING A DEFINITION OF "GROUP HOME."

NOW THEREFORE, BE IT ENACTED by the Mayor and Council of the Town of Berlin that Chapter 108, Article I, Section 108-5 be amended as follows:

Section 108-5 - Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory building* means a structure subordinate to an existing principal building on the same lot and serving a purpose customarily incidental to the use of the principal building or land use.

*Accessory living quarters* means an accessory building used solely as the temporary dwelling of guests of the occupants of an existing principal use; such dwelling having no kitchen facilities and not rented or otherwise used as a separate dwelling unit.

*Accessory use* means a use conducted on the same lot as the primary use of the structure to which it is related; a use which is clearly incidental to, and customarily found in connection with such primary use.

*Agriculture* means the use of land for agricultural purposes, including field cropping, pasturing, aquaculture, horticulture, floriculture, viticulture, forestry, tree farming and the necessary accessory uses for packing, treatment or storing the produce thereof; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agriculture activities and provided further that the above uses shall not include the business of keeping poultry or garbage feeding of hogs or other animals, or fur farms, or the raising of such animals as rats, mice, monkeys, reptiles and the like.

*Alley* means a public or private way affording secondary means of access to abutting property, having a width more than ten feet, but less than 16 feet in width, which has been dedicated or deeded to the public for public use.

*Basement* means a story where the floor is more than 12 inches, but not more than one-half of its story height, below the average level of the adjoining ground.



*Bed-and-breakfast* means a dwelling or part thereof, where meals and/or lodging is provided for compensation for transient persons and designed for or used exclusively as the primary residence of one family.

*Billboards and signs.*

- (1) *Billboard* means any off-premises structure or portion thereof, situated on private premises, on which lettered, figured or pictorial matter is displayed for commercial advertising purposes other than the name and occupation of the user of such premises or the nature of the business conducted thereon or the principal products sold or manufactured thereon.
- (2) *Combination sign* means a sign incorporating any combination of the features of pole, projecting, wall and roof signs.
- (3) *Display surface* means the area made available by the sign structure for the purpose of displaying the advertising message.
- (4) *Electric sign* means any sign containing electrical wiring, but not including signs illuminated by an exterior light source.
- (5) *Ground sign* means a billboard or similar type of sign which is supported by one or more uprights, poles or braces in or upon the ground other than a combination sign or pole sign, as defined by this chapter.
- (6) *Marquee* means a permanent roofed structure attached to and supported by the building and projecting over public or private property.
- (7) *Pole sign* means a sign wholly supported by a sign structure in the ground.
- (8) *Portable display surface* means a display surface, temporarily fixed to a standardized advertising structure, which is regularly moved from structure to structure.
- (9) *Projecting sign* means a sign other than a wall sign which projects from and is supported by a wall of a building or structure.
- (10) *Real estate sign* means a sign advertising for sale or rent the premises on which it is located.
- (11) *Roof sign* means a sign erected upon or above a roof or parapet of a building or structure.
- (12) *Sidewalk sign* means an accordion-type sign which may be placed on the sidewalk, displaying only the name and nature of the business.
- (13) *Sign* means any sign, including its structure and component parts, which is used or intended to be used to attract attention to the subject matter for advertising purposes other than paint on the surface of a building.
- (14) *Sign structure* means any structure, which supports or is capable of supporting a sign as defined by this chapter.

- (15) *Temporary sign* means any sign, banner, pendant valance or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, wood or other light materials, with or without frames, intended to be displayed for a limited period of time.
- (16) *Wall sign* means any sign attached to or erected against the wall of a building or structure, with the exposed face of the sign in a plane parallel to the plane of said wall.

*Board* means the board of appeals established hereunder.

*Boardinghouse* means a dwelling containing not more than six guest rooms or suites of rooms, where lodging is provided with or without meals, for compensation for persons not transients.

*Building* means any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or chattels, and any tent, cabin or mobile house. When such a structure in single ownership is divided by one or more unpierced walls extending from the ground up, it shall be considered one building for the purpose of applying the provisions of this chapter.

*Building, height of,* means the vertical distance from the average finished grade at the building line to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.

*Cellar* means a story having more than one-half of its height below average finished grade. A cellar is counted as a story for the purpose of height regulations only if used as a separate dwelling.

*Comprehensive plan* means the long-range plan for desirable use of land, as approved by the planning and zoning commission and officially adopted by the Mayor and Council and as amended from time to time, the purpose of such plan being, among other purposes, to serve as a guide in zoning and progressive changes in the zoning of land to meet changing community needs, in the subdividing and use of undeveloped land and in the acquisition of rights-of-way or sites for such public facilities as streets, parks, schools and public buildings.

*Conditional use* means a use which may be permitted in a district through the granting by the board of appeals of a special exception as defined in Md. Ann. Code art. 66B, § 1.00, as amended upon a finding by the board that it meets specified conditions.

*Construction, start of*, means the combining of labor and material into any portion of the structure on the site thereof.

*Court* means an open, unoccupied and unobstructed space, other than a yard, on the same lot with a building or group of buildings.

*Day-care center* means a nursery school or child-care facility providing adult supervision and care for not fewer than five persons not members of the caregiver's family in the caregiver's home or in a building outside of the home.

*Day-care, residential*, means a dwelling unit in which daytime adult supervision is provided for up to eight children not members of caregiver's family under the age of 21 and in which the dwelling is the primary residence of the caregiver.

*District* means a designated geographical area of the town within which certain uniform regulations and requirements, or various combinations thereof, apply under the provisions of this chapter. The term "R District" shall mean any R-1, R-2, R-3 and R-4 District; the term "B District" shall mean any B-1, B-2, and B-3 District; the term "M District" shall mean any M-1 and M1-A District; the term "H District" shall mean any H-1 District.

*Domiciliary care unit* means any institution, which admits four or more non-related aged or disabled persons, maintains the necessary facilities and provides a protective institutional or home-type environment to persons of advanced age or mental or physical disability. This shall not include "limited dwellings."

*Dwelling* means any building or portion thereof occupied or intended to be occupied exclusively for the residence purposes, but not including a tent, cabin, recreational vehicle or mobile home or a room in a hotel or motel.

- (1) *Dwelling, single-family*, means a detached building designed for or used exclusively for residence purposes by one family or housekeeping unit.
- (2) *Dwelling, two-family*, means a detached building designed for or used exclusively for residential purposes by not more than two families or housekeeping units.
- (3) *Dwelling, multifamily*, means a detached building designed for or used exclusively for residence purposes by more than two families or housekeeping units.
- (4) *Dwelling, townhouse* , means a single-family attached dwelling unit with one dwelling unit from ground to roof, two points of independent outside access, at least two other dwellings built in conjunction therewith and any portion of one or two unpierced party walls in common with an adjoining dwelling and having yards on at least two sides.

- (5) *Dwelling, limited*, means a dwelling unit consisting of no more than two rooms, exclusive of bath facilities, designed or intended for retirement living or temporary assisted living, including nursing homes, assisted living facilities and retirement housing having shared dining and recreational facilities.

*Essential services* means facilities owned or maintained by public utility companies or public agencies, located in public ways or in easements provided for the purpose or on a customer's premises and not requiring a private right-of-way, and reasonably necessary for the furnishing of adequate water, sewer, gas, electric, communication or similar services to adjacent customers, but not including any building or any yard, station or facility requiring a site in excess of 400 square feet and not including any cross-country pipeline or transmission line on towers or any line requiring a private right-of-way.

*Family* means a person living alone or two or more persons living together as a single housekeeping unit, but not including a group of persons occupying a boardinghouse, lodginghouse, hotel, dormitory or institution.

*Farm* means a parcel of land not less than five acres in size used for agricultural purposes as defined in this chapter.

*Fence* means a fixed structure designed to define a designated area or property.

*Flag lot* means a polygonal-shaped lot that has the appearance of a flag with staff or panhandle in which the handle or staff is used as the point to a street or road. The term "flag lot" and "panhandle" are synonymous.

*Garage, private*, means a garage intended for and used for the storage of the private motor vehicles of the families resident upon the premises.

*Garage, public*, means a space or structure other than a private garage for the storage, sale, hire, care, repair or refinishing of self-propelled vehicles or recreational vehicles.

GROUP HOME MEANS A STATE LICENSED COMMUNITY RESIDENTIAL FACILITY HOUSING AND PROVIDING HABILITATIVE SERVICES TO EIGHT OR FEWER PERSONS, NOT INCLUDING STAFF, WHO ARE DEVELOPMENTALLY DISABLED OR ARE RECOVERING FROM DRUG OR ALCOHOL ADDICTION.

*Home occupation* means a business conducted in a dwelling or a single accessory building and in accordance with the provisions of section 108-867.

*Junkyard* means any area where waste, discarded or salvaged materials are bought, sold, exchanged, baled, parked, stored, disassembled or handled, including auto wrecking yards, house wrecking yards, used lumber yards and places or yards for storage of salvaged house wrecking and structural steel materials and equipment, but not including areas where such uses are conducted entirely within a completely enclosed building and not including pawnshops and establishments for sale, purchase or storage of used furniture and household equipment, used cars in operable condition, or salvaged materials as a part of manufacturing operations.

*Lot* means any plot or parcel of land occupied or intended to be occupied by a principal building or use, or a group of buildings conforming to the regulations of this chapter and its accessory buildings and uses, including all open spaces required by this chapter, and having frontage on a street as defined herein. In the case of a farm or estate, five acres or more in size, the lot shall be deemed to be that part of the property on which the principal building and its accessory buildings and uses are located, together with the yards and other open spaces required by this chapter, and such lot need not front directly on a public road if connected therewith by a private lane or road which serves no other lot.

- (1) Lot, corner, means a lot abutting upon two or more streets at their intersection or upon two parts of the same street and, in either case, forming an interior angle of less than 135;deg;.
- (2) Lot, through, means a lot having frontage on two non-intersecting streets as distinguished from a corner lot.

*Lot depth* means the mean horizontal distance between the front and rear lot lines.

*Lot line, front*, means the line separating the lot from the street right-of-way upon which it fronts.

*Lot line, rear*, means the lot line opposite and most distant from the front lot line.

*Lot line, side*, means any lot line other than the front or rear lot line.

*Lot line, street or alley*, means any lot line separating the lot from a street or alley.

*Lot width* means the width of the lot measured at right angles to its center line at the front setback line.

*Manufactured home* means a structure that is transportable in one or more sections, built on a permanent chassis, designed for use with or without a permanent foundation when attached to

the required utilities, and constructed to the Federal Mobile Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. This term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

**State Law reference**— Similar definition, Md. Real Property Code Ann. § 8A-101.

*Motel or hotel* means any establishment consisting of two or more guest rooms or suites, with separate outside entrances and adjacent parking spaces, designed and maintained for the accommodation of transients; or any establishment for the accommodation of transients which proclaims itself a "motel."

*Noncombustible* means, as applied to building construction material, a material which, in the form in which it is used, is either one of the following:

- (1) Material of which no part will ignite and burn when subjected to fire. Any material conforming to specifications in the building code in effect in the town and other applicable codes shall be considered noncombustible.
- (2) Material having a structural base of noncombustible material as defined in subsection (1) of this definition, with a surfacing material not over one-eighth-inch thick, which has a flame-spread rating of 50 or less.

*Nonconforming use* means an existing building, structure or premises legally devoted to or occupied by or for a use that does not conform to the use provisions of this chapter, or amendments thereto, for the district in which it is located.

*Nursing or hospice facility* means a facility, licensed by the state, to provide basic or skilled nursing care for physical, emotional, or mental diseases or disabilities to three or more individuals who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves. The term "nursing or hospice facility" shall not include hospitals or facilities for the primary treatment of sickness or injuries or for surgical care.

*Open space* means the area of a lot or parcel unoccupied by principal or accessory structures, streets, driveways or parking areas, but including areas occupied by walkways, patios, porches without roofs, playgrounds, outdoor recreation or play apparatus, gardens or trees.

*Parking lot, commercial*, means a surfaced area of one or more parking spaces designed or used for the parking of vehicles and available to the public whether for a fee or as an accommodation to clients or customers.

*Parking space* means a surfaced area either within a structure or in the open, exclusive of driveways or access drives, for the parking of one vehicle.

*Planned unit development (PUD)* means a residential and/or commercial development guided by a total design plan in which one or more of the zoning or subdivision regulations, other than use regulations, may be waived or varied by the planning and zoning commission to allow flexibility and creativity in site and building design and location in accordance with general guidelines.

*Planning and zoning commission* means the town planning and zoning commission.

*Planning director* means the planning director or an authorized representative, appointed in accordance with the provisions of division 2 of article II of this chapter.

*Recreational vehicle* means any vehicle or structure constructed in such a manner as to provide sleeping and cooking facilities or the conduct of any business, trade or occupation, or use as a selling or advertising device, and so designed that it is or may be mounted on wheels and transported over highways and streets, propelled, or drawn by its own or other power.

*Recreational vehicle park* means any park, tourist park, camp court, site, lot, parcel or tract of land which is designed, maintained or intended for the purpose of supplying a location or accommodation for two or more recreational vehicles for living purposes or upon which two or more recreational vehicles are parked or mounted for living purposes.

*Roadside stand* means a structure designed or used for the display or sale of neighborhood agricultural products or goods produced on the premises upon which a stand is located.

*Self-service storage facility* means a building or group of buildings with controlled access, containing varying sizes of individual, compartmentalized and controlled access stalls, lockers or rooms to be leased or rented for the storage of goods, wares, merchandise, substances or articles.

*Setback line* means the minimum building line along the front or rear of a lot, or along the side of a corner lot adjoining the side street, as determined by the yard requirements of this chapter or of any superior regulation.

*Sewage disposal plant* means a plant or lagoon for the treatment of sewage, which serves the town or any group of properties, as distinguished from a private septic tank or package treatment plant which is accessory to and located on the same premises with a principal use.

*Stable, private*, means a stable with a capacity of not more than two animals.

*Story* means that portion of a building, other than a cellar as defined herein, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the ceiling next above it.

- (1) *Story, ground*, means the lowest story, or ground story, or first story of any building, the floor of which is not more than 3½ feet below the average contact ground level at the exterior walls of the building, except that any basement used as a separate dwelling by other than a janitor or caretaker or his family shall be deemed a ground or first story.
- (2) *Story, half*, means a partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story; provided, however, that any partial story used as a separate dwelling, other than for a janitor or caretaker and his family, shall be deemed a full story.

*Street* means a public right-of-way 50 feet or more in width which provides a means of public access to abutting property, or any such public or private right-of-way not less than 30 feet in width which existed prior to the enactment of the ordinance from which this chapter is derived. The term "street" shall include road, avenue, drive, lane, circle, square, court, highway, beach, way or similar term.

*Street line* means the right-of-way or property line.

*Street, major*, means a street or highway designated as a major street or expressway on the official major street plan of the town.

*Structural alteration* means any change in the structural members of a building, such as bearing walls columns, beams or girders or as may be defined by the building code in effect in the town.

*Structure* means anything constructed, the use of which requires a fixed location on the ground or is attached to something having such location, but not including sidewalks, driveways, curbs or essential services defined in this chapter.

*Use first permitted* means a use, which in the sequence of successively listed zoning districts, occurs as a permitted use for the first time in a special zoning district.

*Warehouse* means a building or part of a building that is used for the storage and distribution of goods, wares, merchandise, substances or articles.



*Yard, front*, means an open space extending the full width of the lot between any part of a building and the front lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified in article VII of this chapter.

- (1) *Front yard, least width*, means the shortest distance, measured horizontally, between any part of a building, other than such parts as excepted in section 108-245, and the front lot line.

*Yard, rear*, means an open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified in article VII of this chapter.

- (1) *Rear yard, least depth*, means the shortest distance, measured horizontally, between any part of a building, other than such parts as excepted in section 108-245, and the rear lot line.

*Yard sale* means the temporary display and sale of personal property along any public or approved private road.

*Yard, side*, means an open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward except as herein specified in article VII of this chapter.

- (1) *Side yard, least width*, means the shortest distance, measured horizontally, between any part of a building, other than such parts as excepted in section 108-245, and the nearest side lot line.

*Zoning certificate* means a written statement issued by the planning director authorizing the use and occupancy of buildings, structures, or premises consistent with the terms of this chapter and for the purpose of carrying out and enforcing its provisions.

*Zoning map* means the zoning map of the town, dated April 5, 1966, together with all amendments thereto subsequently adopted.

(Code 1977, § 107-5; Ord. No. 2000-10, 9-25-2000; Ord. No. 2005-5, 7-25-2005; Ord. No. 2009-08, 11-24-2008; Ord. No. 2010-05, 7-12-2010; Ord. No. 2010-12, 11-22-2010)

**THIS ORDINANCE** was introduced and read at a meeting of the Town Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, and thereafter a statement of the substance of the Ordinance having been published as required by law.

A PUBLIC HEARING was held and this Ordinance was adopted this \_\_\_ day of \_\_\_\_\_, 2018, by the Mayor and Council of the Town of Berlin, Maryland by affirmative vote of \_\_\_\_\_ in favor, to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Vice-President

Approved on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Mayor of the Town of Berlin and was therefore effective twenty (20) calendar days later on the \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Wm. Gee Williams, Mayor

\_\_\_\_\_  
ATTEST: Laura Allen, Town Administrator

**ORDINANCE 2018-06**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, ENACTING AN ORDINANCE PERMITTING A GROUP HOME TO BE ALLOWED AS A CONDITIONAL USE SUBJECT TO APPROVAL BY THE BOARD OF ZONING APPEALS IN THE B-1 ZONING DISTRICT SUBJECT TO AREA LIMITATIONS.

BE IT RESOLVED by the Mayor and Council of the Town of Berlin, Maryland that Article VI, entitled "District and District Regulations," Division 6, entitled "B-1 Town Center District," Section 108-441 be ENACTED as follows:

Section 108-441 - Group Homes

A Group Home as defined in Section 108-5 may be permitted as a conditional use in the B-1 Town Center District subject to the approval of such conditional use in that district by the Board of Zoning Appeals. The area in which a group home may be permitted as a conditional use shall be restricted to the area of Old Ocean City Boulevard east of U.S. Route 113 in the B-1 Town Center District.

**THIS ORDINANCE** was introduced and read at a meeting of the Town Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, and thereafter a statement of the substance of the Ordinance having been published as required by law.

A PUBLIC HEARING was held and this Ordinance was adopted this \_\_\_ day of \_\_\_\_\_, 2018, by the Mayor and Council of the Town of Berlin, Maryland by affirmative vote of \_\_\_\_\_ in favor, to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Vice-President

Approved on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Mayor of the Town of Berlin and was therefore effective twenty (20) calendar days later on the \_\_\_ day of \_\_\_\_\_, 2018.


\_\_\_\_\_  
Wm. Gee Williams, Mayor

\_\_\_\_\_  
ATTEST: Laura Allen, Town Administrator



# STAFF REPORT

**To:** Mayor and Members of the Town Council

**From:** Town Administrator Laura Allen 

**Meeting Date:** November 13, 2018

**Subject:** Annual Trading Resolution

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## RECOMMENDATION

Staff recommends the Mayor and Council adopt a motion approving the Annual Trading Resolution (Attachment 1) which authorizes the Mayor and Town Administrator to negotiate and execute new electric power supply purchases for delivery periods commencing January 1, 2021, as long as:

- The purchase(s) are be consistent with state and federal requirements;
- The per megawatt hour (MWh) cost is no higher than \$42 MWh at the DPL Zone or closer to Berlin;
- The Town Administrator has documented evidence that competitive practices were followed;
- The term of the purchase is no longer than 6 years;
- The last date of delivery is no later than December 31, 2026.

## EXECUTIVE SUMMARY

The Town entered into an umbrella Master Services Agreement with American Municipal Power, Inc. (AMP) in February of 2015. On March 15, 2016, Berlin executed an Electric Power Purchase Supply Schedule (Supply Schedule) which ends on December 31, 2020. It's prudent to start planning for the next power purchase. The Town has reduced its purchased power cost by approximately 8% over the past five years. The energy market can change quickly. The Town needs to make the most of energy cost reduction opportunities to keep electric rates low while exercising diligence and oversight over power purchase decisions.

## FISCAL IMPACT

The Resolution has no direct cost.

## **ANALYSIS**

Staff recommends adopting the Annual Trading Resolution to put the Town in the best position to take advantage of price reductions in the energy market. The market can change quickly. Granting negotiation and transaction authority to the Mayor and Town Administrator will enable the Town to make the most of opportunities to keep electric rates low while exercising diligence and oversight over power purchase decisions.

### **Reporting Requirement**

The Resolution requires the Town Administrator to submit a report to the Mayor and Council at the next regular public meeting after an electric power purchase agreement has been executed.

### **Annual Review and Approval**

Each spring the Mayor and Council are asked to take several administrative actions regarding the electric utility:

1. Review and affirm the PJM Interconnection<sup>1</sup> Risk Management Policy,
2. Restate the contract with Betts & Holt, LLP for legal services, and
3. Reauthorize the Town Administrator to represent the Mayor and Council before the Maryland Public Service Commission.

If the Mayor and Council adopt the attached Resolution, staff would add the review and approval of the Annual Trading Resolution to the list of administrative actions.

### **Rates**

The Town reduced its purchased power cost by approximately 8% over the past five years. A rate comparison study completed in August 2018 indicates Berlin Electric has some of the lowest rates in the area (Attachment 2).

## **CONCLUSION**

Staff recommends the Mayor and Council adopt a motion approving the Annual Trading Resolution which authorizes the Mayor and Town Administrator to negotiate and execute new electric power supply purchases for delivery periods commencing January 1, 2021 under certain conditions.

### **Attachments:**

1. Resolution
2. Rate Comparison

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<sup>1</sup> PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.



## RESOLUTION NO. 2018-03

### A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, A MUNICIPAL CORPORATION OF THE STATE OF MARYLAND, AFFIRMING MASTER SERVICES AGREEMENT FOR WHOLESALE ELECTRIC PURCHASES AND AUTHORIZING EXECUTION OF SCHEDULES AND CONFIRMATIONS THEREUNDER WITHIN CERTAIN PARAMETERS

WHEREAS, pursuant to prior Council resolution(s) the Town of Berlin entered into an umbrella **Master Services Agreement** with American Municipal Power, Inc. ("AMP") dated February 9, 2015 governing Berlin's purchase of wholesale electricity; and

WHEREAS, pursuant to this **Master Services Agreement** the Town entered into a **Supply Schedule**, Town of Berlin, MD 2018-2020 Remaining Requirements Energy **Supply Schedule**, AMP Contract Number 2016-002828-SCHED dated March 15, 2016 that governs the terms of AMP's solicitation of electricity service providers to provide bids to Berlin, and is effective for deliveries through December 31, 2020; and

WHEREAS, pursuant to this **Master Services Agreement** and **Supply Schedule** the Town entered into a **Transaction Confirmation** on March 17, 2016 that provides for a specified supplier to deliver electricity to Berlin at a fixed price for the period from January 1, 2018 through December 31, 2020; and

WHEREAS, the Mayor and Council of the Town of Berlin have reduced wholesale purchased energy costs by approximately 8% over the past five years; and

WHEREAS, Berlin Electric has some of the lowest rates in the region; and

WHEREAS, the Mayor and Council recognize that the energy market changes quickly and the Town needs to be able to make the most of energy cost reduction opportunities to keep electric rates low while exercising diligence and oversight over power purchase decisions;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Berlin as follows:

The above referenced **Master Services Agreement**, **Supply Schedule** and **Transaction Confirmation** are hereby affirmed by the Town Council; and

In recognition that the electricity delivery period of the existing **Supply Schedule** and **Transaction Confirmation** ends December 31, 2020 and that planning for electricity deliveries commencing January 1, 2021 is now expedient, the Town Council hereby authorizes the Mayor and the Town Administrator to negotiate and enter into new **Supply Schedule(s)** and **Transaction Confirmation(s)** for delivery periods commencing January 1, 2021 under the following conditions:

- The purchase(s) must be consistent with state and federal requirements;
- The per megawatt hour (MWh) cost can be no higher than \$42 MWh at the DPL Zone or closer to Berlin;
- The Town Administrator has documented evidence that competitive practices were followed;
- The term of the purchase can be no longer than 6 years;

- The last date of delivery can be no later than December 31, 2026.

Once a Supply Schedule and/or Transaction Confirmation has been executed, the Town Administrator must submit a report to the Mayor and Council at the next regular public meeting.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Mayor and the Town of Berlin, Maryland, by affirmative vote of \_\_\_\_\_ to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Vice President

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Mayor and Town of Berlin.

ATTEST:

\_\_\_\_\_  
Wm. Gee Williams, III, Mayor

\_\_\_\_\_  
Laura Allen, Town Administrator



**Town of Berlin  
Comparison of Town, DP&L, and Choptank  
Residential Electric Rates**

**Average Monthly Bill Assuming 1,000 kWh**

**Town of Berlin (Aug 2018)**

**\$ 125.79**

includes: Customer Charge, Energy Charges, and Power Cost Adjustment (PCA) (average weather year)

<http://www.berlinmd.gov>

**Delmarva Power & Light (Aug 2018)**

**\$ 139.42**

includes: Customer Charge, Distribution Rates, AC Rider BSA Rider, E-MD Rider, DRS Rider, GRC Rider Supply Service Charges, and Standard Offer Service Charges

<http://www.delmarva.com>

**Town of Berlin (2008)**

**\$ 179.67**

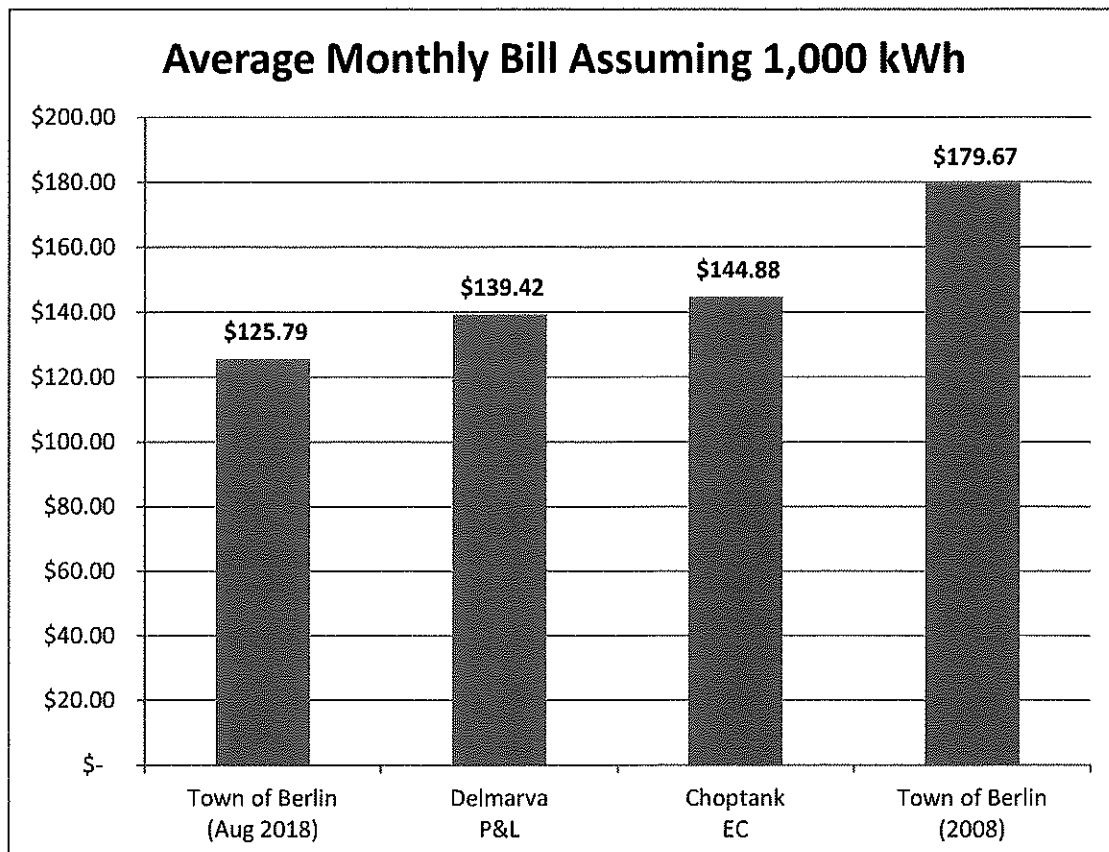
includes: Customer Charge, Energy Charges, and 2008 Power Cost Adjustment (PCA)

**Choptank Electric Cooperative (Aug 2018)**

**\$ 144.88**

includes: Consumer Charge, Energy Delivery Charges, Standard Offer Service (SOS) Charges, and Purchased Power Cost Adjustment

<http://www.choptankelectric.com>



Averages were used in rates that fluctuate monthly or by season (PCA, BSA Rider, Distribution Rates, SOS Charges)