



# ORDINANCE CITY OF BERLIN

2021-01

In the year of our Lord Two Thousand Twenty-One

**AN ORDINANCE** amending Chapter 2 of the City Ordinances for the City of Berlin, New Hampshire as follows:

**Be it ordained by the City Council of the City of Berlin, as follows:**

The CODE OF ORDINANCES, Chapter 2, Article I, Sec. 2-3, Conflict of interest, is hereby amended by deleting Sec. 2-3 in its entirety and replacing it with the following:

Sec. 2-3. Conflict of Interest and Incompatibility of Office.

(a) Definitions.

(i) A “conflict of interest” exists when a person takes an action or makes a decision that would affect his or her financial interest, the financial interests of the person’s immediate family member, or the interests of any entity or organization in which the person is a member.

(ii) An “immediate family member” is a person who is related to a City Official or Employee in one of the following ways: spouse, mother, father, stepmother, stepfather, foster mother, foster father, father-in-law, mother-in-law, grandmother, grandfather, grandchild, sister, brother, child, stepchild, foster child, or any other person living in the same household as the City Official or Employee.

(iii) “Board” shall mean the Board of Assessors, City Council, Planning Board, Zoning Board of Adjustment or any other board or commission of the City of Berlin.

(iv) “Official” shall mean any elected or appointed member of a Board.

(v) “Employee” shall mean any employee of a Department of the City of Berlin at the level of Assistant (reporting directly to a Director/Department Head or Assistant Director) or higher.

(b) Conflict. No Official of a Board shall vote, participate in deciding, or sit upon the hearing of any question which the Board is to decide if that Official has a direct personal and pecuniary interest in the outcome which differs from the interest of other citizens.

(c) Process for Uncertainty of Conflict. When uncertainty arises as to the application of subsection (a) of this section to an Official in particular circumstances, the Board shall, upon request of that Official or another member of the Board, vote on the question of whether that Official should be disqualified. Doubt concerning the existence of a conflict of interest shall be resolved in a determination that a conflict exists. Such a vote the Board shall be binding upon the Official, who shall recuse themselves in the event of a vote finding that a conflict exists.

(d) Duty to Disclose and Recusal. No Official or Employee shall participate in the decision-making process of any matter in which the Official or Employee or a member of the Official or Employee’s immediate family has a direct personal or financial interest, aside from his/her salary or benefits as such Official or Employee. Any Official or Employee who believes such an interest exists shall disclose such

interest and shall not participate in the matter further, meaning they should immediately remove themselves from discussion and voting, physically vacate his/her seat, and physically leave the room until consideration of the matter is completed. Whenever a matter comes before any Board, no Official or Employee shall introduce, ask questions, speak on or vote on any motion, ordinance, resolution or issue in which he/she has a conflict of interest; and the Official or Employee shall disclose the reason for the conflict of interest prior to the Board's discussion on the matter, or if discussion has occurred, then as soon as the conflict becomes known to the Official or Employee. Notwithstanding anything to the contrary stated herein, an Official or Employee who is the Applicant before a Board may present such Application to the Board as any other citizen.

(e) Conflict of Interest: Board of Assessors. In the event any Official of the Board of Assessors is the applicant for a tax abatement, the Abatement Application of that Official shall be decided by the City Council as a whole at a duly called and noticed public hearing; and the City Council, in making its determination on that Abatement Application shall rely upon the advice and analysis of the City's Contract Assessor.

(f) Incompatibility of Offices. In addition to the provisions of RSA 669:7 and 669:8, which are hereby incorporated herein, no Official shall at the same time hold any two of the following offices: Board of Assessors, City Council, Planning Board, Zoning Board of Adjustment, Police Commission and School Board. Also, no immediate family member of a standing Official shall hold any of the following offices: Board of Assessors, City Council, Planning Board, Zoning Board of Adjustment, Police Commission and School Board. However, a City Council member may serve on the City's Planning Board, Zoning Board of Adjustment, Berlin Airport Authority, BIDPA and/or Berlin Water Commission as an Ex Officio member, and a City Councilor may serve on BIDPA as a Regular Member and a BIDPA member may serve on the Berlin Water Commission as a Regular Member; and it is not a violation of this Ordinance for the City Council as a whole to act as the Board of Assessors. Furthermore and notwithstanding the prior provisions of this paragraph, two immediate family members can be elected by the Voters of the City to serve on the City Council and/or the School Board without violating this provision.

(g) Gifts and Favors. No Official, Employee, or Agent of the City shall solicit or accept any gratuity, favor, or anything of monetary value from any contractor or potential contractor with the City relative to the procurement of any supplies, equipment, construction, and/or other services with municipal, state and/or federal grant funds; and the offering and/or giving of any such matter of monetary value by such a contractor or their agents to any Official, Employee, or Agent of the City is hereby prohibited. In addition to any penalties which may be provided by law, any municipal Official, Employee, or agent who violates any provision of this section shall be subject to appropriate disciplinary action; including, in the case of an Official, removal from office; in the case of an Employee, suspension or discharge from employment; and, in the case of an Agent, termination of such agency.

All other terms and conditions of Berlin, New Hampshire's City Ordinance shall remain the same.

This Ordinance shall be in full force and effect from and after passage.

PASSED: \_\_\_\_\_  
October 4, 2021

APPROVED: \_\_\_\_\_  
Paul Grenier, Mayor

ATTEST: \_\_\_\_\_  
Shelli Fortin, City Clerk