

**The City Charter is being provided here for information purposes only. It should not be relied upon for legal use.**

## **SUBPART A. CHARTER\***

### **Section 1. [Body politic; name.]**

The inhabitants of the Town of Berlin in the County of Coos shall continue to be a body corporate and politic, under the name of the City of Berlin.

### **Section 2. [Census Review.]**

At least as often as each recurring federal census, the Mayor and City Council shall review any ward boundaries and, if necessary to comply with the Constitutional requirement to equalize populations, re-divide the city into equal wards (including increasing or decreasing the total number of wards) or no wards in order to establish equal ward populations if there are wards, and, therefore, equal representation.

The current proposed ward changes are to reduce the number of wards from four to zero such that all elected officials shall run at large within the city. (Ch. 300, Laws of 1913; Ch. 330, Laws of 1951; referendum vote, March 9, 1982; referendum vote, February 18, 1992 effective April 1, 1992); Referendum vote, January 10, 2012)

### **Section 3. [Governing body; composition.]**

The government of the fiscal, prudential and municipal affairs of said city shall be vested in a body called the city council to consist of eight (8) members and one mayor elected at large. The mayor and council shall sit and act together and compose one (1) body. (Ch. 300, Laws of 1913; referendum vote, March 10, 1970; referendum vote, March 12, 1974); Referendum vote, January 10, 2012)

### **Section 4. [General authority of council.]**

The city council created by this act shall have all powers, and shall do and perform all the duties which boards of aldermen and common councils of cities are by law authorized or required to do or perform, except insofar as said powers and duties are superseded or abolished under the provisions of sections 14a through 14j herein, or unless a contrary intention otherwise appears. (Referendum vote, March 10, 1970)

### **Section 5. [School district.]**

Said city shall constitute one (1) school district, and the administration of all fiscal, prudential, and district affairs of said district shall be vested in the city council, except such as shall herein after be vested in the school board.

### **Section 6. [Property, debts of city generally.]**

All property of said City of Berlin, or of the school district of said town, shall be vested in said city, and all debts of said town and said school district shall be considered for all purposes as the debts of said city.

### **Section 7. [Representatives to general court.]**

Until a new census shall be taken by authority of this state or the United States, the City of Berlin and the Town of Milan shall be entitled to six (6) representatives to the general court; all of the representatives shall be elected at large from Wards 1, 2, 3, 4 and the Town of Milan under District 8. (Ch. 300, Laws of 1913; /amended by: Changes in population and re-apportionment as per the Constitution of New Hampshire, Part 2, Article 9. Enacted in accordance with Article 44, Part II of the N.H. Constitution, without signature of governor, June 30, 1982; effective June 30, 1982)

### **Section 8. [Election of ward officers; terms.]**

At each biennial election a moderator, assistant moderator and ward clerk and assistant ward clerk who shall each hold office for two(2) years shall be elected at large. Twelve (12) supervisors of the checklists shall be elected at large for a two (2) year term. (Referendum vote, March 11, 1947 adopting the provisions of Ch. 340, Laws of 1947; referendum vote, February 26, 1980, effective on January 1, 1981; Referendum vote, January 10, 2012)

### **Section 9. [Supervisors subject to law.]**

Said supervisors in regulating and posting check lists shall be governed by the law applying to the supervisors of towns, their respective wards being considered as a town for such purposes.

### **Section 10. [Biennial meeting date; check-lists; modification of terms pursuant to amendment.]**

The biennial meeting of each ward, hereinafter known as the regular municipal election, shall be held on the first Tuesday following the first Monday in November of every odd-numbered year, at such place in said city as may be fixed by said city council. The supervisors of the checklists shall prepare a checklist for each ward for use at such meetings. All elected officials whose term of office shall be affected by this amendment shall have their term adjusted appropriately so as to comply with the new municipal election date. The citizens of the City of Berlin hereby ratify, confirm, and approve all actions of the city council and city manager with respect to the terms of the proposed charter amendment and the manner in which it was adopted. This charter amendment shall take effect on January 1, 1987. (Ch. 340, Laws of 1947; referendum vote March 14, 1972; referendum vote, November 6, 1984, effective July 1, 1985; referendum vote, December 9, 1986, effective January 1, 1987)

### **Section 10a. [changes in party affiliation; acceptance by city clerk.]**

In accordance with the provisions of RSA 654:34-a, the city clerk is authorized to accept changes in party affiliation. (Referendum vote, February 26, 1980, effective on January 1, 1981)

### **Section 11. [Election of councilors.]**

At the 2013 biennial municipal election four (4) councilors shall be elected at large for a two (2) year term and four (4) councilors shall be elected at large for a four (4) year term. Thereafter, at each biennial municipal election, four (4) councilors shall be elected at large for a four (4) year term of office. Election of councilors shall be a non-partisan ballot. Vacancies occurring in the office of councilor from any cause shall be filled until the next municipal election of some qualified person by the recorded votes of at least a majority of all members of the council at the next regular meeting or at a special meeting called for the express purpose of filling the vacancy within thirty days following the creation of the vacancy. (Amended by CH.340.Laws of 1947; referendum votes, March 12, 1974 and November 26, 1984, effective July 1, 1985; Referendum vote, January 10, 2012)

Notwithstanding the provisions of this amendment, all City Councilors and moderators, ward clerks and supervisors of the checklists duly elected and serving still in office on the effective date of this amendment shall continue to hold said offices and serve out the balance of their terms to which they were elected, so long as they shall reside in the City, regardless of where they may reside in relation to the new or old ward boundaries or ward numbers. Those additional officers shall serve out the balance of their terms with the more senior moderator, ward clerk or supervisor of the checklist as the case may be for each office acting as the senior officer in each post, and the more junior officer, as measured by number of elected terms in office shall serve as the assistant officer in that post, to serve as the officer in the absence of the senior officer. Nothing in this amendment shall change the district representatives to the General Court of the United States Congress, nor shall it change the district representatives for Coos County. (Referendum vote, January 10, 2012)

### **Section 12. [Election of mayor; compensation.]**

The mayor of said city shall be chosen by non-partisan ballot biennially at the regular municipal election. The mayor shall receive a monthly salary of two hundred fifty dollars (\$250.00). Such salary shall be in full for services of every kind rendered and shall be paid monthly. (Amended by: Ch. 225, Laws of 1903; Ch. 327, Laws of 1911; Ch. 268, Laws of 1943; Ch. 340 Laws of 1947; Ch. 327, Laws of 1953; Ch. 371 Laws of 1959, referendum vote, March 10, 1970; referendum vote, March 12, 1974)

### **Section 12a. [Vacancy in office of mayor.]**

In case of the temporary absence of the mayor or in the event of a vacancy in the office of mayor due to death, resignation or removal from the city occurring within six (6) months of the next city biennial election, the council may elect one (1) of their number chairman, who shall have all the powers and perform all the duties of mayor during his temporary absence or disability, or during such vacancy. If a vacancy in the office of mayor shall occur at a time more than six (6) months prior to the next city biennial election, the council may order a special election to fill such vacancy for the unexpired term. (Ch. 371, Laws of 1959)

### **Section 13. [Meetings of council; terms of members.]**

The mayor and council shall biennially on the third Monday in January meet for the purpose of taking their respective oaths. Council shall meet in regular session on the first and third Mondays of each month. The mayor or a majority of council may call for special meetings in addition to the regular meetings when needed.

The term of each incumbent councilperson and mayor shall be extended as necessary to accomplish this revision and all acts of said council and mayor shall otherwise be deemed lawful and duly authorized actions. (Referendum vote, March 12, 1974; amended by: Ch. 225, Laws of 1903; Ch. 300, Laws of 1913; Ch. 340, Laws of 1947; referendum vote, March 10, 1970; referendum vote, November 6, 1984, effective July 1, 1985)

### **Section 14. [Salary of council members.]**

Members of council shall receive a maximum annual salary of seven hundred dollars (\$700.00) based upon their attendance at the regular and duly called special meetings of council. (Referendum vote, March 12, 1974)

### **Section 14a. [Powers, duties of mayor generally.]**

The mayor shall be the official head of the city for all ceremonial purposes. He shall preside at all meetings of the council and may speak and vote at such meetings. The mayor shall appoint all members of all boards and commissions subject to the approval of council. All other duties of mayors prescribed by law shall be exercised by the manager provided for herein. (Referendum vote, March 10, 1970; referendum vote, November 26, 1984, effective July 1, 1985)

### **Section 14b. [Manager-Generally.]**

The chief administrative officer of the city shall be called the manager. The council shall appoint as manager for an indefinite term, and fix the salary of, a qualified person who receives the votes of at least a majority of the council. (Referendum vote, March 10, 1970)

### **Section 14c. [Same-Qualifications.]**

The manager shall be chosen solely on the basis of his executive and administrative qualifications, but he need not be a resident of the city or the state at the time of his appointment. (Referendum vote, March 10, 1970)

**Section 14d. [Same-Removal; suspension.]**

The manager may be removed by a majority vote of the members of the council as herein provided. At least thirty (30) days before the proposed removal of the manager, the council shall adopt a resolution stating its intention to remove him and the reasons therefor, a copy of which shall be served forthwith on the manager, who may, within ten (10) days, demand a public hearing, in which event the manager shall not be removed until such public hearing has been held. Upon or after passage of such a resolution the council may suspend him from duty, but his pay shall continue until his removal. In case of such a suspension the council may appoint an acting manager to serve at the pleasure of the council for not more than ninety (90) days. The action of the council in removing the manager shall be final. (Referendum vote, March 10, 1970)

**Section 14e. [Same-Powers, duties generally.]**

The manager shall supervise the administrative affairs of the city and shall carry out the policies enacted by the council. He shall be charged with the health and safety of persons and property, and shall see to the enforcement of the ordinances of the city, this charter, and the laws of the state. He shall keep the council informed of the condition and needs of the city and shall make such reports and recommendations as he may deem advisable, and perform such other duties as may be prescribed by this charter, or required of him by ordinance or resolution of the council, not inconsistent with this charter. He shall have and perform such other powers and duties not inconsistent with the provisions of this charter as now are or hereafter may be conferred or imposed upon him by municipal ordinance or upon mayors of cities by general law. He shall have the right to take part in the discussion of all matters coming before the council, but not the right to vote. (Referendum vote March 10, 1970)

**Section 14f. [Appointment of personnel.]**

The manager shall have the power to appoint and remove, subject to the provisions of this charter, all officers and employees in the administrative service of the city; but the manager may authorize the head of a department or office responsible to him to appoint and remove subordinates in such department or office. All such appointments shall be without definite term. (Referendum vote, March 10, 1970.)

**Section 14g. [Interference with appointments by council members.]**

Neither the council nor any of its members shall direct or request, except in writing, the appointment of any person to office or employment, or his removal therefrom, by the manager or any of the administrative officers. Neither the council nor any member

thereof shall give orders to any of the administrative officers either publicly or privately, but they may make suggestions and recommendations. Any violation of the provisions of this section by a councilman shall be a misdemeanor, a conviction of which shall constitute immediate forfeiture of his office. (Referendum vote, March 10, 1970)

#### **Section 14h. [Appointment of officers.]**

There shall be appointed by the manager, [~~three (3) assessors,~~] a city clerk, treasurer, finance officer, fire chief, ~~overseer~~—administrator of public welfare, health officer, director of public works, city auditor, city attorney, city collector, [chief assessor, city engineer, development director, librarian] and such officers as are needed to administer to departments which the council shall establish, which departments shall replace all existing departments, boards and commissions, except police and water commissions shall be appointed by the mayor with the approval of council annually for three-year terms. The powers and duties of these officers and heads of departments so appointed shall be those prescribed by state law, by this charter or by ordinance. (Referendum vote, March 10, 1970; referendum vote, November 6, 1984; see section 14a)

#### **Section 14i. [Administrative code.]**

The first manager under this charter shall draft and submit to the council within nine (9) months after assuming office an ordinance dividing the administrative service of the city into departments, divisions, and bureaus and defining the functions and duties of each. After the adoption of that ordinance upon recommendation of the manager, the council by ordinance may create, consolidate, or abolish departments, divisions and bureaus of the city and define or alter their functions and duties. Such ordinances shall be known as the administrative code. Each officer shall have supervision and control of his department and the employees therein and shall have power to prescribe rules and regulations not inconsistent with general law, this charter, and the administrative code. Pending passage of such code the manager may establish temporary regulations. (Referendum vote, March 10, 1970.)

#### **Section 14j. [Purchases generally.]**

The administrative code shall establish purchasing and contract procedure including the assignment of all responsibility for purchases to a single person, the combination of purchasing of similar articles by different departments, and purchasing by competitive bids wherever practical. (Referendum vote, March 10, 1970)

#### **Section 15. [Election of school board-Appointment; vacancies, compensation, elections at-large; terms.]**

The general management and control of the public schools and of the buildings and property pertaining thereto shall be vested in a school board, to consist of five members who shall ordinarily be chosen by the city's registered voters in the same regularly scheduled municipal elections in which members of the council are chosen. Except as

provided elsewhere in this section, two of such members shall hold office for four years; and three of such members shall hold office for two years. All members shall serve also until their successors are elected and qualified. Ballots shall identify which candidate seek two and four year terms respectively.

Vacancies on the school board which may occur during unexpired terms of members, or which may occur because of failure to choose a member by election, shall be filled by the council or as directed by the council. In filling a vacancy, the council may choose a qualified citizen for the remainder of the term, or until an election is held, or may schedule a special election., or may direct that the vacancy be filled at a municipal or other election already scheduled during the unexpired term, or may choose more than one of these methods as in its judgment it deems fit.

Members of the board shall receive only such compensation as may be fixed by the council. Members' terms shall begin on the third Monday in January, except as provided in this section. No member shall be a member of the council. All members shall be registered voters of the city.

Elections shall be at-large. Order of candidates' names on ballots shall be by random selection by the city clerk and shall appear without party designation. No candidate's name shall appear on the ballot unless on the date that qualification of candidates' names are made, the candidate is eligible to serve, except that the name of a council member, whose term will expire on or before the date the board term to be filled commences, may appear on the ballot.

At first election for the board, one member shall be elected for a term of four years; and four members shall be elected for a term of two years. The school board appointed by the council as it exists at the time of adoption of this section shall continue to serve until such time as the term of the members elected pursuant to this section commence. If an election for members of the board, contingent upon adoption of this section, is held on the date the voters adopt this section, the school board appointed by the council shall be deemed dissolved, and shall be replaced by a board composed of those members elected by the voters, which members shall serve until the commencement of their regular terms. (Amended by referendum vote, March 14, 1972; referendum vote, November 2, 1993)

#### **Section 16. [Same-Appropriations.]**

The appropriations for schools shall be vested in the city council and the school board shall be accountable to the city council for its expenditures.

#### **Section 17. [Same-Filling vacancies.]**

All vacancies in all ward offices shall be filled by the city council. (Amended by referendum vote, November 2, 1993)

## **Section 18. [Application of election law.]**

The general provisions of the statutes relating to state biennial elections shall apply to all elections for city and ward offices, except as provided otherwise herein, or unless a contrary intention otherwise appears. (Amended by: Implication of special legislative acts and referenda)

## **Section 19. [Budget estimates.]**

At such time as may be requested by the city manager, each officer or director of a department shall submit an itemized estimate of the expenditures and capital projects for the next fiscal year. Thereafter, the city manager shall prepare a budget for submission to the city council. (Referendum vote, March 12, 1968; amended by referendum vote, March 10, 1970; referendum vote, November 6, 1984, effective July 1, 1985)

## **Section 20. [Submission of proposed budget.]**

The city manager shall submit the proposed budget to the city council at least ninety (90) days before the start of the fiscal year of the budget. The council may reduce any item or items in the proposed budget by a vote of the majority, but an increase in or addition of any item or items therein shall become effective only upon affirmative vote of two-thirds of the members of the city council voting at a regular meeting or at an otherwise properly and legally called public meeting of the said council. (Referendum vote, March 12, 1968; referendum vote, November 6, 1984, effective July 1, 1985)

## **Section 21. [Budget hearing; final action.]**

A public hearing of the budget shall be held before its final adoption by the city council at such time and place as the city council shall direct, and notice of the public hearing, together with a summary of the budget as voted by the council, shall be published at least one (1) week in advance by the city clerk. In the event the city council fails to vote on a budget for submission to the public hearing, the budget submitted by the city manager shall be published for the public hearing. The budget shall be finally adopted not later than ten (10) days before the beginning of the fiscal year. Should the city council take no final action on or prior to such day, the budget as submitted at the public hearing shall be deemed to have been adopted by the city council. (Referendum, March 12, 1978; referendum, November 6, 1984, effective July 1, 1985)

## **Sec. 21a. [Accountability of appropriations for capital expenditures.]**

Appropriations for capital expenditures shall be used for the purpose for which the appropriations were made unless otherwise approved by the city council. Accountability (to the city council) for such expenditures shall be required of all city departments, including the police department and the school department. (Referendum vote, November 5, 1991)

## **Section 22. [Application, conflict of laws, ordinances.]**

All general laws relative to the government of cities shall remain in force in the city so far as the same can be applied consistently with the intents and purposes of this charter, but shall be deemed superseded as to this city so far as inconsistent herewith. Existing ordinances and other municipal regulations shall remain in force so far as the same can be applied consistently with the intents and purposes of this charter, but are hereby annulled so far as inconsistent herewith. In all existing laws, ordinances, and regulations hereby saved, references to the city councils, board of mayor and councilmen, board of public works, or other bodies or officers hereby abolished or superseded, or to bodies of officers whose constitution or functions are hereby altered, shall be taken to mean the body or officer upon whom jurisdiction of the matter in question is conferred by this charter or by the administrative code. (Referendum, March 10, 1970)

### **SUBPART B. RELATED LAWS**

#### **DIVISION 1. HOME RULE CHARTER AMENDING PROCESS\***

##### **Section 1. Procedure for adoption.**

A city desiring to adopt a charter under this act may do so by either of the following methods:

The governing body of the city may be [by] a two-thirds vote of its members a commission for the purpose of drafting a charter hereunder . It may also in the alternative authorize the mayor to appoint, subject to the approval of a majority of the governing body, a charter commission of five (5) members.

Upon petition of the registered voters of the city filed with the city clerk a Charter commission may be chosen to draft a charter hereunder. Such petition shall be signed by the following percent of registered voters as appearing on the check lists of the preceding regular election.

10% in cities not over 20,000.00 inhabitants 5% in cities of more than 20,000.00 inhabitants

**\*EDITOR'S NOTE-**Printed herein is the procedure for amending the Home Rule Charter adopted as Laws of 1963, Ch. 275:1 and approved by referendum on March 8, 1966 and amended by Laws of 1973, Ch. 476, Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

Upon the filing of such petition of the voters, the city clerk shall provide for

the submission of the question: "Shall a charter commission be elected to draft a new charter under the Enabling Act for Local Option City Charters" and for the election of a charter commission at the next regular city election occurring not less than seventy-five (75) days after the filing of the petition with said clerk. A charter commission of five (5) members shall be elected by the qualified voters at the same time as public question is submitted. Candidates shall be listed on the ballot in the same manner as is provided for by law for candidates for other office, except that they shall be listed without any party designation or slogan. The ballot shall instruct each voter to vote on the question and regardless of the manner of his vote on the question and regardless of the manner of his vote on the question, to vote for five (5) members of a charter commission who shall serve if the question is voted in the affirmative. Candidates for the charter commission shall be registered voters of the city and may be nominated by filing for the office and paying a filing fee of ten dollars (\$10.00) or by petition signed by at least three (3) Percent of the registered voters of the city and filed with the city clerk not less than sixty (60) days prior to the date of the election. No voter shall sign a petition or petitions for more than five (5) candidates.

## **Section 2. Organization of charter commission.**

Not less than fifteen (15) days after the election of a commission or the adopting of a vote by the governing body choosing such commission, the charter commission shall meet, adopt appropriate rules and elect appropriate officers for the conduct of its business of drafting a charter hereunder. Members shall serve without pay but within the appropriation made for the purpose shall be reimbursed by the city for expenses, including expenses incurred for consultants and clerical and professional assistance. The commission shall hold public hearings and provide for the widest possible public information and discussion of its work. It may also hold private hearings. Within nine (9) months from the date of its selection, the commission shall report its findings and recommendations to the governing body of the city by filing with the city clerk an original signed copy of its report. If the report recommends the adoption of a charter hereunder, the clerk shall cause to be reproduced sufficient copies of said charter to inform the voters not less than thirty (30) days prior to the referendum herein provided for.

## **Section 3. Referendum.**

The city clerk shall cause the question of adoption or rejection of any charter recommended by the commission to be placed upon the ballot at the next general or regular city election occurring not less than sixty (60) days following the filing of the commission's report with the clerk, or at a special election which may be ordered by the governing body of the city not less than sixty (60) days nor more than one hundred twenty (120) days after such filing. The commission shall frame the question to be placed upon the ballot and if it deems appropriate shall add an interpretive statement to accompany the question.

## **Section 4. Adoption.**

Whenever the voters of any city by a majority of those voting on the question vote in favor of adopting a charter proposed hereunder, said charter shall take effect according to its terms. In any event, the election of officers provided for by said charter shall occur not later than the next regular biennial municipal election to be held on the first Tuesday following the first Monday in November of every even numbered year.

### **Section 5. Amendments and later referenda.**

Amendments to any charter adopted hereunder may be made by the same procedure here in above outlined in the preceding four (4) sections at any regular city election held after the adoption of the charter. At any regular city election held not less than five (5) years after the adoption of one optional form of charter herein provided for, a different optional form may be adopted by any city by the procedure herein above established by this chapter. Any city wishing to adopt the amending process here in above provided for without adopting either of the two (2) charters provided for by this chapter may do so under the procedure set forth in section 1 above by submitting the following question to the voters at any regular municipal election: Shall the City of Berlin adopt the home rule amending process provided for in RSA 49-A which will permit the city to adopt amendments to its charter by popular referendum without the necessity of legislative act? If a majority of those voting on the question answer "Yes", the city shall thereafter be empowered to adopt as an amendment to its own charter any provisions which are not specifically prohibited by the provisions of the New Hampshire Revised Statutes Annotated. Upon the adoption of any amendment to an existing corporate charter or upon the adoption of either of the charters provided for by this chapter, the city clerk of the adopting city shall not later than ten (10) days thereafter file with the secretary of state a certified copy of the amendment or of the charter adopted.

## **DIVISION 2. BERLIN AIRPORT AUTHORITY\***

### **Section 1. Incorporation.**

The Berlin Airport Authority, hereinafter referred to as the "Authority", is hereby incorporated as a body politic with the powers and privileges herein provided.

### **Section 2. Membership of the authority.**

The mayor of the City of Berlin, the chairman of the commissioners of Coos County, the chairman of the board of selectmen of the Town of Milan, [~~ex-officio~~] together with a member of the city council of the City of Berlin from each of the four (4) wards shall constitute the authority, and shall be vested with all the powers and charged with all the duties here in after granted to and imposed upon said authority.

### **Section 3. Appointive agency and term.**

The city council shall elect four (4) members of said authority by electing one from each ward of said City of Berlin who shall serve for the balance of their term in said city council.

#### **Section 4. Compensation.**

No member of the authority shall receive from it any compensation for services or reimbursement for expenses.

#### **Section 5. Vacancies.**

Any vacancy which may occur in the membership of the authority which is not made up ex-officio shall be filled by the city council of the City of Berlin.

#### **Section 6. Officers; action by majority.**

The mayor of said Berlin shall be the chairman of the authority. The authority shall elect from its membership a vice chairman, clerk, and treasurer, and prescribe their duties. The treasurer shall be the financial agent of the authority and shall furnish such bond as the authority shall determine. The concurrence of a majority of the membership of the authority shall be necessary to constitute action by the authority.

#### **Section 7. Acquisition and operation of airport.**

The authority is hereby authorized to acquire by eminent domain, purchase, lease, gift or otherwise the Berlin Municipal Airport in the Town of Milan and maintain the said airport and in connection therewith and as a part thereof to establish in the same manner and maintain auxiliary landing places and facilities in the County of Coos.

#### **Section 8. Declaration of purpose.**

The establishment, ownership, operation and maintenance of said airport and all auxiliary facilities are declared to be for public purposes as an aid to national and state defense and for the convenience of the public, and the authority shall be regarded as performing a governmental function in carrying out the provisions of this act. The authority, the County of Coos, the City of Berlin and the Town of Milan shall enjoy immunity from all tort liability in connection with said facilities and activities and the said immunity shall not be affected or lost by reason of the receipt of profit, fees, revenue, income, rentals, or any particular or specific return whatsoever.

**Editor's note-**Printed herein is the Berlin Airport Authority Act adopted as Laws of 1957, Ch. 433. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

## **Section 9. Powers.**

The authority shall have the power:

To sue and be sued.

To select and have a seal.

To adopt by-laws, not inconsistent with this act, for the conduct of its business.

To acquire, hold and dispose of , in any manner, real and personal property deemed necessary of desirable for its purposes.

To construct, maintain, reconstruct, improve, enlarge, operate and manage said airport.

To accept grants and the cooperation of the United States of America, the state of New Hampshire, or any agencies thereof, in the construction, maintenance, reconstruction, improvement and operation of said airport, and to do any and all things necessary in order to avail itself of such aid and cooperation, and the authority is specifically authorized to enter into agreements with the federal government and the State of New Hampshire through its various agencies relative to the acquisition of said airport and its extension, improvement and operation.

To prescribe and publish rules and regulations governing the use of said airport.

To levy and collect reasonable fees, not prohibited by law, for use of said airport and its facilities.

To grant leases of the facilities of the airport for reasonable periods of time.

To employ such assistants, agents and servants, professional, technical, or otherwise as it shall deem necessary of desirable for its purposes, and fix their compensation.

To do all other lawful acts necessary and incidental to the foregoing powers.

## **Section 10. Limitation of powers.**

The authority shall have no power to commit the State of New Hampshire or any of its political subdivisions to any obligation or liability whatsoever, nor shall it have the power to encumber any of its real estate except in pursuance of the authority contained in section 9 (I) without the sanction of the City of Berlin.

## **Section 11. Exemption from taxes, levies and executions.**

All property and rights acquired by the authority in the Town of Milan shall be exempt from all taxation. All property of the authority shall be exempt from attachment, and all of its real property shall be exempt from levy and sale by virtue of any execution.

## **Section 12. Revenue.**

The net revenue of the authority shall be held and invested by it for the purpose of the future maintenance, operation and improvement of said airport.

## **Section 13. Financial aid.**

The County of Coos and the cities and towns of said county are authorized to make conveyances and appropriations for the use of the authority.

#### **Section 14. Audits and reports.**

All financial transactions of the authority shall be audited annually and at such other times and in such manner as the City of Berlin shall determine. The authority shall make an annual report of its financial and other transactions for the preceding calendar year on or before the first day of February. This report and the report of such audits as shall be made as herein provided shall be filed with the clerk of the superior court for said Coos County and city clerk of Berlin after completion, and shall be open for public inspection.

#### **Section 15. Penalties.**

Any violation of the published rules and regulations of the authority relating to said airport, and any refusal or neglect to pay lawfully prescribed fees for use of said airport, and any refusal or neglect to pay lawfully prescribed fees for use of said airport or its facilities, shall be deemed a [misdemeanor violation] and shall be punishable [by a fine of not exceeding ten dollars (\$10.00) subject to a fine as provided], provided, however, that nothing contained herein shall be construed as a limitation upon the civil rights of the authority.

#### **Section 16. Separability clause.**

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and application of such provision to other persons or circumstances shall not be affected thereby.

### **DIVISION 3. POLICE COMMISSION\***

#### **Section 1. [Members generally.]**

The mayor and council of the City of Berlin shall appoint on a non-partisan basis a police commission consisting of three (3) members. The term of office of each such commissioner shall be for three (3) years and until his successor is duly appointed and qualified. Said commissioners shall have been residents of the city where appointed at least five (5) years immediately preceding the date of their appointment. Any vacancy in said board shall be filled for the unexpired term. The mayor and council shall have full power to remove any commissioner at any time.

#### **Section 2. [Powers, duties generally.]**

It shall be the duty of said police commission to appoint such police officers, constables and superior officers as they may in their judgment deem necessary; and to fix their compensation. The police commissioners shall have authority to remove any officer at any time for just cause and after due hearing, which cause shall be specified in the order of removal. Said commissioners shall have authority to make and enforce all

rules and regulations for the government of the police force. The responsibility for fiscal authority will rest with the city council in accordance with the city charter.

### **Section 3. [Compensation.]**

The compensation of the police commissioners shall be fixed by the city council.

**\*Editor's note**-Printed herein is the Act creating the police commission, Laws of 1963, Ch. 275 approved in referendum on March 10, 1964 and amended by referendum of March 9, 1982. The police commission of the City of Berlin was originally established by Ch. 160, Laws of 1905, amended by Ch. 289, Laws of 1907, and Ch. 148, Laws of 1913. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

## **DIVISION 4. BERLIN WATER WORKS\***

### **Section 1. [General authority.]**

The City of Berlin in the County of Coos is hereby authorized to supply itself and its inhabitants and the inhabitants of neighboring territory with water for the extinguishment of fires and for domestic, manufacturing and other purposes, and for such purposes may purchase by the action of the city council the franchises, corporate property, rights and privileges of the Berlin Water Company, Incorporated, or any other water supply systems now supplying water to it and to said inhabitants; may construct, improve, extend and maintain suitable water works, and may lease or take by eminent domain or acquire by purchase or otherwise and hold, any real or personal estate, and any right, therein, and sources of supply, as provided for towns and precincts by section 2, chapter 126, Laws of 1907, within or outside the limits of said city, and also may take by eminent domain by vote of the city council in the manner provided by section 2 of said chapter 126 or acquire by purchase or otherwise and hold all lands, rights of way and easements necessary for collecting, storing, purifying and preserving such water and for conveying the same through and to any part of said city and the surrounding territory; provided, that no source of water supply and no lands necessary for preserving the quality of the water shall be acquired or taken without first obtaining the approval of the state [~~board~~ agency] of health, and that the location of all dams, reservoirs, wells of filter galleries to be used as sources of supply under this act shall be subject to the approval of said board.

**Editor's note**-The correction in brackets has been editorially made at the direction of the city.

**Editor's note**-Printed herein is the act creating the Berlin waterworks, Laws of 1925, Ch. 294. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been

added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

**Section 2. [Contracts authorized; board of water commissioners; use of income; liability for damages; sale of property.]**

Said city is authorized and empowered to contract with individuals and corporations for supplying them with water for any of the purposes herein named or contemplated and to make such contracts and to establish such regulations and tolls for the use of water for said purposes as may from time to time be deemed proper; and for more convenient management of said water works the city shall either before or after the acquisition or construction of the same, place them under the direction of a board of water commissioners of four (4), appointed by the mayor, subject to the confirmation of the council, one (1) from each ward, to be appointed to a four-year term on a non-partisan basis, the mayor to act ex-officio. Said commissioners shall qualify, organize, and receive compensation as provided in section 5 of said chapter 126, shall fix just and equitable prices and rates for the use of water, and shall prescribe the time and manner of payment. Vacancies on the board shall be filled by the mayor and council. Each commissioner shall hold office until his successor is appointed and qualified. The income of the water works shall be applied to defraying all operating expenses, interest charges and payments on the principal as they accrue upon any bonds or notes issued under the authority of this act. If there should be a net surplus remaining after providing for the aforesaid charges it shall be used for such new construction as the water commissioners may determine upon, and in case a surplus should remain after payment for such new construction the water rates shall be reduced proportionately. No money shall be expended in new construction by the water commissioners except from the net surplus aforesaid unless the city appropriates and provides money therefor. Land acquired by the city for its water system shall be managed, improved and controlled by said water commissioners in such manner as they deem for the best interests of the city. All authority granted to the city by this act and not otherwise specially provided for shall be vested in said board of water commissioners, who shall be subject however to such instructions, rules and regulations, not inconsistent with this act, as said city may impose by ordinance.

Any person injured in his property by any action of the city or of said board under this act may recover damages from said city in the method provided in section 2 of said chapter 126; provided that the right to damages for taking any water or water right, or any injury thereto, shall not vest until the water is actually withdrawn or diverted by said city under authority of this act.

Should any portion of the real estate or other property acquired by the city for said water supply purposes be found unnecessary for the maintenance and use of the water works by the city, and it may be desirable to sell the same, the water commissioners, with the approval and consent of the city council, are hereby authorized and empowered to make sale of the same and a deed executed by the mayor under said authority shall pass title to the purchaser of such real estate. The funds derived

from such sale shall be applied to the payment of extensions or improvements or to the bonds hereby authorized first maturing subsequent to such sale.

### **Section 3. [Bonds, notes authorized.]**

Said city may for the purpose of paying the expenses and liabilities already incurred for a water supply system under any provisions of law, or to be incurred under the provisions of this act, levy taxes, or borrow money and issue from time to time bonds or notes to an amount not exceeding in the aggregate eight hundred thousand dollars (\$800,000.00) outside the city's debt limit, bearing on face the words City of Berlin, Water Loan, Act of 1925. Each authorized issue shall constitute a separate loan and shall be payable in not more than thirty-five (35) years from its date, in annual payments, in equal or increasing or decreasing amounts. Said bonds may be issued in coupon form or in coupon form registerable as to principal only. Except as otherwise provided in this act, the provisions of "Municipal Bonds Act, 1895" and of Laws of 1917, chapter 129 and amendments and additions thereto shall apply to said bonds and notes.

If the city council votes to issue bonds or notes under this or any other provision of law for water supply purposes, the city treasurer with the approval of the mayor may make a temporary loan for a period of not more than one (1) year in anticipation of the money to be derived from the sale of such bonds or notes and may issue notes therefor; but the time within which such securities shall be due and payable shall not be extended by reason of the making of such temporary loan beyond the time fixed in the vote authorizing the issue of bonds or notes; and notes issued under this section for a shorter period than one (1) year may be refunded without further vote by the issue of notes maturing within said year.

All notes or bonds purporting to be issued by virtue or in pursuance of this act, and signed and sealed as hereinbefore provided, shall in favor of bona fide holders be conclusively presumed to have been duly and regularly authorized and issued in accordance with the provisions herein contained, and no holder thereof shall be obliged to see to the existence of the purpose of the issue, or to the regularity of any of the proceedings, or to the application of the proceeds. All such notes or bonds shall be negotiable in all respects and to the same extent as securities negotiable by the law merchant.

### **Section 4. [Assessments.]**

A sum which with the income derived from the water rates will be sufficient to pay the annual expenses of operating the water works or the purchasing of water and the maintenance of its pipe lines as the case may be, and the interest as it accrues on the bonds or notes issued as aforesaid, and to make such payments on the principal as may be required under the provision of this act, shall without further vote be assessed by the assessors of the city annually thereafter, in the same manner as other taxes, until the debt incurred by the said loan or loans is extinguished.

## **Section 5. [Acquisition of water company.]**

The authority to acquire a system of water supply under the provisions of this act is granted upon the condition that said city shall first exercise its right to acquire by purchase or otherwise the property and all rights and privileges of the Berlin Water Company, Incorporated, at a price which may be agreed upon between said corporation and said city by its city council, and said corporation is authorized to make such sale to said city. Said city, on acquiring the property of any water company may assume its outstanding bonds and the amount thus assumed shall be deducted from the total amount to be paid by the city to said corporation.

The agreement of November 12, 1924, between said Berlin Water Company, Incorporated, by its treasurer, and said city by its mayor, for the purchase of said company's water works situated in Berlin and in the township of Success, is hereby ratified, confirmed and approved.

## **Section 6. [Bylaws authorized.]**

Said city is hereby authorized and empowered through its city council to establish all needful bylaws to prevent injury to its water works and to any of the appurtenances thereof, and to prevent any pollution of the water or of any springs and ponds from which it may take water for the use of said water works and of the water that enters its works, and may annex penalties for any single violation thereof as provided in public statutes.

## **Section 7. [Property tax exempt.]**

Said city is hereby exempt from paying any tax on any property owned, used and held by it exclusively for its water works wherever the same is situated.

## **Section 8. [Supply of water to customers.]**

Said city may supply water for any of the purposes mentioned herein to such persons or corporations outside the geographical limits of the city as in the judgment of the water commissioners are reasonably accessible to its mains, and can be profitably and economically served without detriment to the interest of the city.

## **Fluorides in public water system.**

Upon the written application of five (5) percent, or three hundred (300) or more of the voters in any city, whichever is the lesser, presented to the city clerk prior to the municipal election the city clerk shall insert on the ballot to be used at said election the following question: "Shall permission be granted to introduce fluorides into the public water system?" Beside this question shall be printed the word "yes" and the word "no"

with proper boxes for the voter to indicate his choice. If a majority of the voters at said election do not approve the use of fluorides in the public water system for said city no fluorides shall be introduced into the public water system. If fluorides have prior to said vote been so introduced such use shall be discontinued until such time as the voters of the city shall by majority vote approve the use of such fluorides. Notwithstanding the foregoing, if fluorides are currently being introduced into the public water system of said city, pursuant to a popular referendum previously conducted, the city clerk shall not insert the aforementioned question on the ballot to be used at the municipal election except upon written application of not less than ten (10) percent of the registered voters of said city. (Ch. 273, Laws of 1959, approved by referendum, March 10, 1964)

## DIVISION 5. MUNICIPAL POWER DEPARTMENT AUTHORITY\*

### [Section 1. Acquisition of electrical plant.]

The members of the city council of the City of Berlin, deem it expedient for the city to acquire or establish a plant or plants for the manufacture and distribution of electricity for the use of the city, of its inhabitants and others and for such other purposes as may be permitted, authorized or directed by the public utilities commission of the State of New Hampshire, such acquisition or establishment to be accomplished in accordance with the provisions of chapter 38 of the Revised Statutes of New Hampshire, as amended.

**Editor's note**-Printed herein is the resolution of the City Council of the City of Berlin adopted by referendum on June 9, 1970 regarding the establishment of a municipal power department authority. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

## DIVISION 6. BONDED INDUSTRIAL PARKS AND INDUSTRIAL FACILITIES \*

### Section 1. Declaration of need and purpose.

It is hereby declared that there is a need for the development of industrial facilities within the cities of Berlin and Keene in order to alleviate and prevent unemployment and underemployment in each such city and the region in which each such city is located, to insure the continued growth and prosperity of said cities and regions and to promote the general welfare of the citizens thereof and of the state. It is the purpose of this act to authorize the cities of Berlin and Keene and the Berlin and Keene Industrial Development Authorities to foster and encourage the development of industrial facilities by acquiring, developing and operating industrial parks within the respective by aiding the construction and expansion of industrial facilities within each city, without the use of city funds, through the issue of industrial development revenue

bonds. The two (2) industrial assistance programs authorized for each city by this act are intended to be mutually independent, although such independence shall not preclude the financing of industrial facilities within an industrial park by the issue of revenue bonds; and all the powers herein conferred are intended to be in addition to and not dependent upon any powers conferred on said cities or authorities by any other law. It is further declared that the actions authorized by this act serve a public purpose and that in carrying out the provisions of this act each city and authority shall be regarded as performing essential governmental functions.

**\*Editor's note**-Printed herein is the act authorizing the bonds for industrial parks and facilities enacted as Laws of 1974, Ch. 26. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by history note immediately following the amended section.

## **Section 2. Definitions.**

As used in this act the following words and terms shall have the following meanings.

(a) "Authority"- the industrial development authority or industrial park authority created by action of the council.

"Board"- the board of directors of the authority.

"City"- in reference to the City of Berlin shall mean the City of Berlin and in reference to the City of Keene shall mean the City Council of the City of Keene.

"Council – in reference to the City of Berlin shall mean the City Council of the City of Berlin and in reference to the City of Keene shall mean the City Council of the City of Keene.

"Rent" – the payments which a tenant is obligated to make under an industrial park lease or an industrial development lease.

"Tenant" – the person primarily liable for the payment of rent under an industrial park lease or an industrial development lease.

As used in this section, sections 1 through 7 and sections 19 and 20 of this act the following words and terms shall have the following meanings:

"Industrial park project" – any project for the acquisition by gift or purchase and the development of land within the city as the site for an industrial park, and for the purposes of this definition the term "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, power, or communication facilities which are incidental to use of the site as an industrial park, but, except with respect to such facilities, such term does not include the provision of structures or buildings. The term industrial park project shall also include any project for the expansion or further development of an industrial park.

"Industrial park building project" – any project to be undertaken by the authority for the construction, expansion or improvement of a building or structure, including machinery or equipment, which shall be suitable for use for manufacturing, warehousing,

processing wastes or other industrial purposes and which is to be located in an industrial park established under this act.

“Industrial park lease” –a written instrument to which the authority and a tenant are parties and which provides for the use and occupancy of land in an industrial park, or land and all or part of an industrial park building, or part of an industrial park building, and which also provides for the payment of rent.

As used in this section and sections 6 through 20 of the act the following words and terms shall have the following meanings:

“Bond” –an evidence of indebtedness which is issued by the authority under this act to finance an industrial development project in whole or in part, or to refund indebtedness incurred for that purpose, and which is payable solely from revenues, other than taxes or payments in lieu thereof, derived from such project or facility.

“Industrial development project” –the establishment or expansion of an industrial development facility within the city which is financed in whole or in part, by the issue of bonds.

“Industrial development facility” –any land, any building, structure or other improvement and all real and personal properties including but not limited to machinery and equipment, which shall be suitable for use for manufacturing, warehousing, processing wastes, or other industrial purposes, but not including raw materials, work in process or stock in trade. Facilities incidental to the foregoing such as utility lines, storage accommodations and transportation facilities shall be deemed to be part of an industrial facility.

“Industrial development lease” –a written instrument to which the authority and a tenant are parties and which provides for the use of and occupancy of an industrial facility and the payment of rent.

“Industrial development project costs” –the costs of establishing or expanding an industrial development facility and of placing the same in operation. Such costs may include the costs of:

- Acquiring land, buildings, structures and facilities, whether by purchase or construction;
- Acquiring rights in or over land, air or water;
- Improving land and improving buildings, structures and facilities by remodeling, reconstruction or enlargement;
- Acquiring and installing machinery and equipment;
- Obtaining professional or advisory services;
- Interest prior to and during construction and until one year after the completion of a project;
- Creating reserves; and

Any other costs or expenses which are reasonably incidental to an industrial development project.

“Trust indenture” –a written instrument between the authority and any national bank or trust company doing business in the State of New Hampshire or in the commonwealth of Massachusetts, as trustee, which secures one (1) or more series of bonds.

Whenever the context so requires, the meanings of words and terms as defined above may be appropriately modified.

### **Section 3. Industrial parks and buildings.**

The city, acting through the authority, may engage in industrial park projects and industrial park building projects and may operate and maintain industrial parks and industrial park buildings. Such operation shall include the sale or lease of industrial park buildings or parts thereof. The authority may also impose reasonable fees and charges upon owners, tenants or occupants of land, buildings or facilities located in industrial parks for services furnished by the authority. The costs of engaging in industrial park projects and industrial park building projects and the costs of operating and maintaining industrial parks and industrial park buildings may be appropriated by the council and advanced to the authority or may be met from revenues derived from the operation of such parks and buildings. Until the authority has paid to the city an amount equal to the total of all sums advanced to the authority by the city to finance industrial park projects and industrial park building projects and also an amount equal to all interest paid by the city with respect to such advances which were raised by borrowing, all revenues derived from the operation of such parks and buildings, less the necessary maintenance costs thereof which may be expended by the authority without appropriation by the council, shall be paid to the city. After payment to the city of the amounts described in the preceding sentence, the authority may expend from operations without appropriation by the council for additional industrial park projects. Sums advanced to the authority by the city to meet operating and maintenance costs shall be repaid by the authority, if the council so requires at the time of making such advances.

### **Section 4. Sales and leases.**

The sale of any industrial park land, interests herein or industrial park buildings or parts thereof shall be on such terms and conditions as the authority deems appropriate, except that no property may be sold for less than the fair value thereof as determined by the authority. Industrial park leases shall contain such terms and conditions as the authority deems appropriate and may be for periods, including extensions or renewals thereof exercisable solely at the tenant's option, of not more than fifty (50) years. No property shall be leased for less than the fair value thereof as determined by the authority. In determining the fair value of property for the purpose of its sale or lease, the authority shall obtain and consider an opinion as to its value for such purpose

furnished by a qualified and independent real estate appraiser. Any determination of fair value reached by the authority in good faith shall be conclusive.

### **Section 5. Determinations of public purpose.**

The authority shall not engage in any industrial park project or any industrial park building project unless the council has found after a public hearing, of which notice shall be given by publishing at least once in a newspaper of general circulation in the city at least five (5) whole days before such hearing, that the proposed project and the operation of the same will serve a public use and provide a public benefit and that the proposed activity will be within the policy of , and the authority conferred by, this act. Such determination may be made by the council upon the written recommendation of the authority supported by such documentation and information as the council may require, if the council first finds that:

The proposed industrial park project or the proposed industrial park building project is feasible;

It is probable that the city will recover from the authority in accordance with section 3 of this act the full amount of advances from the city to the authority and interest costs incurred by the city to finance the project within a reasonable period, but such period need not be limited by the term of any borrowing or borrowings by the city for the purpose of making such advances;

Engaging in the project will alleviate or prevent unemployment or underemployment, either in whole or in part, in the city or in the region in which the city is located;

That a proposed industrial park project is consistent with existing plans for the development of the city and any city ordinance regulating the use of land;

That a proposed industrial park building will be suitable for use for manufacturing, warehousing, processing wastes or other industrial purposes and that its construction will conform to any applicable building code;

It is probable that the proposed project will generate for the city tax receipts, payments in lieu of taxes or other revenues which are in the aggregate greater than the estimated costs to the city of furnishing public services to any owners, tenants or occupants of the project; and

The proposed project will aid in the development, growth and prosperity of the city and the region in which the city is located.

### **Section 6. Bonds for industrial parks.**

The city may borrow money pursuant to the municipal finance act for the purpose of engaging in industrial park projects without regard to any debt limit imposed by the

municipal finance act, but the aggregate face amount of bonds or notes issued under this section for such purpose shall not exceed one million, five hundred thousand dollars (\$1,500,000.00) outstanding at any one (1) time.

### **Section 7. Bonds for industrial park buildings.**

The city may borrow money pursuant to the municipal finance act for the purpose of engaging in industrial park building projects without regard to any debt limit imposed by the municipal finance act, but the aggregate face amount of bonds or notes issued under this section for such purpose shall not exceed one million dollars (\$1,000,000.00) outstanding at any one (1) time.

### **Section 8. Other provisions concerning notes and bonds.**

Notes issued in anticipation of bonds authorized under either of the two (2) preceding sections shall not be deemed outstanding debt when such bonds are issued. Indebtedness incurred under either or both of said sections shall at no time be included in the net indebtedness of the city in order to determine its borrowing capacity for any purpose other than those authorized by said sections.

### **Section 9. Covenants with bond holders.**

The city, by resolution of its city council, may covenant with holders of its bonds issued under sections 6 and 7 of this act, in such manner and to such extent as the council deems necessary, that the city will act in such a way as to preserve, or refrain from acting in such a way as to defeat any exemption from federal income tax which may be applicable with respect to interest on such bonds at the time when they are issued.

### **Section 10. Powers of the authority with respect to industrial development projects.**

The authority shall have the following powers:

To engage in industrial development projects and to acquire, own and dispose of industrial development facilities within the city.

To issue bonds to pay industrial development project costs, or to reimburse a tenant for payments for such costs made before or after the bonds are issued, or to refund bonds previously issued.

To lease industrial development facilities as owner and lessor.

To mortgage, pledge or assign as security for bonds, through use of a trust indenture or otherwise, any interest which the authority may have in an industrial development facility as owner and lessor.

In the event of a default by a tenant, to lease or sell the industrial development facility to another person in whole or in part.

To make contracts or take any other action which is necessary or desirable in connection with the exercise of the foregoing powers.

Nothing in this act shall be construed to authorize the authority to operate an industrial development facility itself or to conduct any business enterprise therein.

### **Section 11. Industrial development leases.**

Every industrial development lease shall:

Provide for the payment of rent by the tenant at such time and in such amounts as are necessary in order to pay the principal and interest of all bonds issued to finance the industrial development project as these become due; and

Obligate the tenant to pay all the costs and expenses of operation, maintenance and upkeep of the industrial development facility.

Any industrial development lease may:

Provide for payments of rent which include amounts in addition to the amounts required to pay bonds;

Obligate a tenant to pay rent before the industrial development facility exists or becomes functional and to pay rent after the industrial development facility has ceased to exist or be functional to any extent and from any cause whatsoever;

Obligate a tenant to pay rent regardless of whether the tenant is in possession or is entitled to be in possession of the industrial development facility;

Allocate responsibility between the authority and the tenant for making purchases and contracts required for the industrial development project;

Contain a tenant's option to purchase the industrial development facility from the authority for nominal consideration upon payment of the bonds or upon the tenant's making adequate and secure provision for their payment and provide for the automatic conveyance of the industrial development facility upon the effective exercise of such option;

Provide that some or all of the tenant's obligations thereunder shall be unconditional and shall be binding and enforceable in all circumstances whatsoever notwithstanding any other provision of law; and

Contain such other provisions and covenants relating to the use, maintenance and replacement of the industrial development facility, which the authority and the tenant deem necessary for the protection of themselves or others.

No industrial development lease may be for a term or more than forty (40) years.

### **Section 12. Trust indentures.**

A trust indenture may contain a mortgage, pledge or assignment of all or part of any interest or right which the authority may have as the owner or lessor of an industrial development facility. Any pledge or assignment of a right to receive money which is contained in a trust indenture shall be fully effective from the time when the trust indenture is executed with or without any subsequent physical delivery or segregation of such money and without any filing or recording under the uniform commercial code or otherwise.

A trust indenture may also contain covenants of the authority as to:

The creation and maintenance of reserves;

The issuance of other bonds with respect to the industrial development facility;

The maintenance, repair, and replacement of the industrial development facility;

The insurance of the industrial development facility against risk of loss;

The custody, investment, and application of moneys;

The use of surplus bond proceeds;

Action by the authority in the event of a default by the tenant under the industrial development lease;

The subjecting of additional property to the lien of the indenture;

Any other matter which affects the security for the bonds in any way.

A trust indenture may limit the rights of bond holders to enforce obligations of the authority under the trust indenture or obligations of the authority or the tenant under the industrial development lease.

### **Section 13. Bonds.**

Bonds authorized under this act may be issued:

In one (1) or more series of one (1) or more denominations and bearing one (1) or more rates of interest;

In bearer form or registered form with or without privileges of conversion and reconversion from one (1) form to the other;

Payable in serial installments or as term bonds, and any series may consist of both types of bond, provided that all of the bonds of every series shall mature not later than forty years after their dates; and

Subject to redemption prior to maturity, with or without the payment of any redemption premium, in accordance with the provisions of the trust indenture.

Bonds shall bear the manual signature of the chairman of the board and the manual or facsimile signature of at least one other member of the board; and interest coupons, if any, shall bear the facsimile signature of the chairman. Bonds shall also bear the seal of authority or a facsimile of the seal. Bonds executed as herein provided shall be valid notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to hold office.

III. Every bond shall bear a statement on its face that it does not constitute an indebtedness of the city or the authority except to the extent permitted by this act. Bonds may be sold at public or private sale. The price at which bonds are sold may be par or may be more or less than par, but the original purchaser thereof shall be obligated to pay accrued interest for the period, if any, from the date of the bonds to the date of delivery. All bonds issued under this chapter and interest coupons applicable thereto, if any, shall be deemed to be negotiable instruments and to be investment securities under the uniform commercial code.

No purchaser of bonds shall in any way be bound to see to the proper application of the proceeds thereof.

#### **Section 14. Approval of the council.**

The authority shall not acquire any industrial development facility, or execute any industrial development lease or trust indenture or issue any bonds with respect thereto, unless the council has found after a public hearing, of which notice shall be given by publishing at least once in a newspaper of general circulation in the city at least five (5) whole days before such hearing, that the proposed acquisition, leasing, operation and use of such industrial development facility will serve a public use and provide a public benefit and that such acquisition and leasing will be within the policy of and the authority conferred by this act. Such determination may be made by the council upon the written recommendation of the authority supported by such documentation and information as the council may require, if the council first finds that:

(a) The proposed industrial development project and the financing thereof are feasible;

The establishment and operation of the industrial development facility will alleviate or prevent unemployment or underemployment, either in whole or in part, in the city or the region in which the city is located;

The proposed tenant has the skills and financial resources necessary to operate the industrial development facility successfully;

Adequate provision has been made or will be made for the payment of the cost of the construction of the industrial development facility and that under no circumstances will the city be obligated directly or indirectly, for the payment of the cost of construction of such industrial development facility, or for the payment of the principal of, or interest on, any obligations issued to finance such construction from funds other than those received under the provisions of the lease or the trust indenture;

Adequate provision has been made or will be made in the industrial development lease for the payment of all costs of operation, maintenance, and upkeep of the industrial development facility by the tenant or occupant so that under no circumstances will the city be obligated, directly or indirectly, for the payment of such costs from funds other than those received under the provisions of the industrial development lease or the trust indenture; and

The proposed acquisition, leasing, operation and use of such industrial development facility will aid in the development, growth and prosperity of the city and the region in which the city is located.

### **Section 15. Obligations of the city.**

No industrial development lease, trust indenture, bond or other instrument shall in any way obligate the city to raise any money by taxation or use other public funds for any purpose in relation to an industrial development facility. Neither the city nor the authority shall pay or promise to pay any debt or meet any financial obligation to any person at any time in relation to an industrial development facility financed in whole or in part by the issue of bonds, except from moneys received or to be received under the provisions of an industrial development lease or trust indenture entered into under this act or derived from the exercise of the authority's rights under such instruments. Notwithstanding the foregoing provisions of this section, the authority may accept and expend with respect to an industrial development facility any gifts or grants received from any source in accordance with the terms of such gifts or grants. Bonds issued under this act to finance industrial development projects shall not be deemed indebtedness of the city for the purpose of determining the city's power to borrow money under sections 6 and 7 of this act, the municipal finance act or any other enabling authority whether enacted before or after the effective date of this act.

## **Section 16. Action by the authority.**

All actions by the authority under this act may be authorized by resolutions of the board passed on the affirmative votes of at least two-thirds of the board members present and voting.

## **Section 17. Trust funds.**

All moneys received or held pursuant to an industrial development lease or a trust indenture shall be deemed to be trust funds to be held and applied solely in accordance with the industrial development lease or the trust indenture.

## **Section 18. Bonds exempt from taxation.**

All bonds and the interest thereon shall be exempt from taxation in the State of New Hampshire.

## **Section 19. Tax exemption and payment for services in lieu of taxes.**

Any industrial park or part thereof, any industrial park building or any industrial development facility while owned by the city is declared to be public property and shall be exempt from all taxes and special assessments of the city; provided that in lieu of such taxes and special assessments the city shall require any tenant or occupant of any such industrial park or part thereof, industrial park building or industrial development facility to make payments annually to the city for such tenant's or occupant's just share of the public expense, including but not limited to education, highway maintenance, fire and police protection and other similar public expenses and governmental services, and provided further that the board of taxation shall determine, after a hearing thereon, that such payments constitute just share of the public expense.

## **Section 20. Construction and effect of other laws.**

The powers conferred by this act are supplemental and alternative to other powers conferred by law.

No notice, proceedings or approval shall be required with respect to any action taken under this act except as provided in this act.

Purchases and contracts required for any industrial park project, industrial park building project or industrial development project may be made or let without regard to any provision of law relating to public purchases or contracts.

The provisions of this act shall be liberally construed in order to effect its purposes.

If any provision of this act shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

## DIVISION 7. RECREATION FIELD IN MILAN\*

### **Section 1. [Authorized.]**

The City of Berlin is hereby authorized and empowered to construct, manage and own a recreation field for all purposes incident to recreation and for that purpose may take, purchase, lease and hold real estate and erect, construct, and maintain such buildings and structures as may be necessary.

### **Section 1a. [Maximum amount of expenditure.]**

The cost of the real estate and construction and erection of buildings and structures thereon, referred to in the preceding section, shall not exceed fifteen thousand dollars (\$15,000.00) in addition to the amount already expended.

### **Section 2. [Purchase of specific parcel of land.]**

For the purpose of this act said city is hereby authorized and empowered to purchase for the sum of seventy-five dollars (\$75.00) the following parcel of land: A lot of land situated in the Town of Milan in the County of Coos being a part of lot 16, range 11 and lot 17, range 11, containing eight (8) acres more or less.

### **Section 3. [Contracts authorized.]**

Said city is authorized to contract with individuals, firms or corporations who may desire to use said recreation field and to make such contracts, establish such tolls and charges for rent for the use of said field as shall be deemed reasonable.

**\*Editor's note-**Printed herein is the act authorizing the recreation field adopted as Laws of 1937, Ch. 261. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

### **Section 4. [Board of trustees-Appointment, terms, etc.]**

To carry out the provisions of this act the mayor shall appoint, subject to the approval of the city council, a board of trustees to consist of three (3) members all of whom shall be residents of said city. Said trustees shall serve for such term, and

receive such compensation, as the mayor and council shall from time to time determine.

#### **Section 5. [Same-General authority.]**

Said board of trustees shall have full charge and supervision of such recreation fields as shall be assigned to it by the mayor and city council, but shall have no control over public parks, and playgrounds now under the jurisdiction of the park commission. Said board shall have the expenditure of all money appropriated by the mayor and council for the purpose of said recreation fields and have authority to employ such persons as may be necessary to carry on the work of the board. Said board may also establish such rules and regulations as it may deem proper for the efficient operation of said fields.

#### **Section 6. [Tax exemption; payments in lieu of taxes; use generally.]**

Said recreation field and structures thereon or therein shall be operated for the benefit of the public and all structures and improvements connected therewith shall be exempt from taxation, provided that the City of Berlin shall make payments on or before the first day of November of each year to the said Town of Milan of a sum equal to the taxes which would have been assessed for such year at the assessed valuation of the same as determined for the tax year 1936. Said field shall be policed by the officials of said Milan when requested and paid by the City of Berlin. The regulation of business, play, games, sports and exhibitions on the Lord's day on said field shall be governed by ordinances adopted by the City of Berlin in accordance with the provisions of law relative thereto. All revenue received on account of said field or structure shall be paid to the city treasurer at least once a month, who shall hold the same in a separate fund, designated as the recreation fund to be used solely for the erection and maintenance of structures on said field.

#### **Section 7. [Powers of mayor, council not affected.]**

No provisions hereof shall be so construed as to repeal any of the powers of the mayor and council heretofore granted.

### **DIVISION 8. PENSIONS FOR MEMBERS OF THE FIRE AND POLICE DEPARTMENTS AND DEPARTMENT OF PUBLIC WORKS.\***

#### **Section 1. Fire Department.**

The mayor and council of the City of Berlin may, at the request of the chief of the fire department, retire from active service any permanent member of said department who is sixty-five (65) years of age and who has performed faithful service in the department for a period of twenty (20) consecutive years; or any member of the department who has been disabled while in the actual performance of duty; and may grant a pension to such retired member or the widow of a member dying from injuries

received while engaged in the actual performance of his duties at a fire, for a period not exceeding one (1) year at a time. In computing such term of twenty (20) consecutive years, a permanent member who has served for fifteen (15) consecutive years shall be accredited with his term of service as a call man, two (2) years' service as a call man being regarded as equivalent to one (1) years' service as a permanent member providing the requisite number of years of service as a call man and as a permanent member combined shall have been continuous service. Before a pension is granted to a disabled member, the physician of the local board of health shall certify to the mayor and council that such disabled member is incapacitated either mentally or physically for performing his duty as a member of the department.

**\*Editor's note-**Printed herein is the act authorizing the pension system for members of the fire department, police department and public works department enacted as Laws of 1927, Ch. 233. Regular full time employees of these departments may be granted a pension in accordance with the terms of the collective bargaining agreement negotiated between the respective union and the city subject to the terms and conditions as may be mandated by state and federal laws and regulations. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

## **Section 2. Public works department.**

The mayor and council of the City of Berlin may, at the request of the head of the public works department, retire from active service any permanent member of said department who is sixty-five (65) years of age and who has performed faithful service in the department for a period of twenty-five (25) consecutive years; or any member of the department who has been disabled while in the actual performance of duty; and may grant a pension to such retired member for a period not exceeding one (1) year at a time. Before a pension is granted to a disabled member, the physician of the local board of health shall certify to the mayor and council that such disabled member is incapacitated either mentally or physically for performing his duty as a member of the department.

## **Section 3. Police department.**

The mayor and council of the City of Berlin may, at the request of the chief of the police department, retire from active service any permanent member of said department who is sixty-five (65) years of age and who has performed faithful service in the department for a period of twenty-five (25) consecutive years; or any member of the department who has been disabled while in the actual performance of duty; and may grant a pension to such retired member or the widow of a member dying from injuries received while engaged in the actual performance of his duties, for a period not exceeding one (1) year at a time. Before a pension is granted to a disabled member, the physician of the local board of health shall certify to the mayor and council that

such disabled member is incapacitated either mentally or physically for performing his duty as a member of the department.

#### **Section 4. Amount.**

The pension paid to any retired members of the fire, police and public works departments of said city shall be equal in amount to one-half the pay received by such member during the twelve (12) months immediately preceding his retirement.

### **DIVISION 9. RETIREMENT SYSTEM FOR CERTAIN MUNICIPAL EMPLOYEES\***

#### **Section 1. [Authorized; eligibility.]**

The City of Berlin is hereby empowered to create a retirement system for the employees, who are not under any other system of retirement except social security, of said city. Employees will be eligible to become members of and receive the benefits therefrom by complying with the requirements of said system and making such payment to the retirement funds as may be established.

#### **Section 2. [Creation of system; board of trustees.]**

The mayor and council may create an employees' retirement system. All of the business of said system shall be transacted, all of its funds in vested and all of its cash, securities and other property held in trust, for the purposes for which received in the name of said system. The mayor and council, if such a system is created, may elect a board of trustees, the number of and tenure of office to be determined by the mayor and council, which board of trustees shall have control of and the duty of administering the affairs of said retirement system.

#### **Section 3. [Receipt of funds; insurance coverage.]**

For the purpose of this act, the city may raise and appropriate money; may accept money or other property to be held in trust and invested and reinvested under the direction of the board of trustees, and use the income thereof; may enter into contracts of insurance or annuity with insurance companies admitted to do business in New Hampshire to effectuate the purposes of this act and pay the premiums for such contracts from moneys coming into its possession under the terms of this act.

**\*Editor's Note-**Printed herein is the act authorizing the retirement system for those employees not under any other system of retirement enacted as Laws of 1961, Ch. 350. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.

#### **Section 4. [Amount of benefit.]**

No retirement benefit hereunder shall be granted for a sum greater than one-half of the maximum annual salary which the employee received while in the service of the city and in the determination of the amount of retirement benefit the mayor and council may fix the amount which said employee shall contribute to said system and said contribution may vary in accordance with the age of the employee at the time of his entrance to said system.

#### **Section 5. [Applicable considerations.]**

Said city in adopting a retirement system hereunder shall consider the same free from the discharge of any existing legal or contractual liability of said employees. Past services rendered by employees may be considered as a means of qualification for retirement benefits and also as a basis for amount of benefits.

#### **Section 6. [Exempt status of benefits.]**

The retirement benefits to be received by said employees as may hereunder be provided by said city shall be exempt from attachment and the operation of laws relating to insolvency or bankruptcy.

#### **Section 7. [Severability.]**

If any provision hereof shall be declared unconstitutional, the remaining provisions hereof shall not by reason thereof be invalid.

### **DIVISION 10. INSURANCE BENEFITS FOR MUNICIPAL EMPLOYEES\***

#### **Section 1. [Plan authorized.]**

The mayor and council of the City of Berlin are hereby authorized to establish a plan for providing life, accident, health, and hospitalization insurance benefits for the regular employees of the city and may appropriate such sums of money as they deem necessary for the purpose of paying a proportionate share of the cost of such benefits or any part thereof.

**\*Editor's note-**Printed herein is the act authorizing the City of Berlin to provide insurance benefits for city employees enacted as Laws of 1945, Ch. 274. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Words added for clarification have been added in brackets []. Amendments have been included and are indicated by a history note immediately following the amended section.