

**ORDINANCE NO. 2673**

**ORDINANCE TO CREATE SECTION 152-24 OF THE CITY CODE OF  
THE CITY OF NEW BERLIN REGARDING TRANSIENT LODGING**

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The Common Council of the City of New Berlin, Waukesha County, Wisconsin do ordain as follows:

**SECTION I**

Section 152-24 of the City of the City of New Berlin is hereby created to read as follows:

Section 152-24 – Transient Lodging. Any person or entity which maintains, manages or operates a short-term rental (which means a residential dwelling that is offered for rent for a fee and for fewer than 30 consecutive days) shall be required to do the following:

- A. Obtain from the Department of Agriculture, Trade and Consumer Protection a license as a tourist rooming house as defined in Wisconsin Statute Sec. 97.01(15k) when required to do so under said Statute; and any person who maintains, manages or operates a short-term rental as defined in this subsection shall obtain from the City a short-term rental license as provided for in in this Section. The City shall establish a license fee from time to time based on the City’s actual cost of issuing and monitoring said license. The Common Council shall establish such license fee by Resolution from time to time.
- B. Short Term Rental License. The City Clerk shall issue a short-term rental license if an applicant follows the procedures set forth in Subsection C of this Ordinance and demonstrates compliance with the provisions of this Section of the Code. A short-term rental license is issued for one (1) license year, and may be renewed annually as provided for in this Section. The short-term license shall contain the following information:
  - (1) The name of the property owner and if applicable the property manager, with contact information including mailing address and a telephone number where the property owner or property manager is available.
  - (2) The license term.
  - (3) The State of Wisconsin Tourist Rooming House License Number.

Upon issuance, a license-holder shall provide a copy of this Code section and a copy of the license to all parties using the property for short-term rental use, prior to the commencement of each such use.

- C. Short-Term Rental License Application, Renewal, and Revocation Procedure.
  - (1) Applications. All applications for short term rental licenses shall be filed with the City Clerk. No license shall be issued unless a completed

application form is accompanied by payment of the required application fee, which fee shall be non-refundable. Each application shall include the following information and documentation for each short-term rental unit in order to demonstrate compliance with the requirements of this Section:

- a. The name of the property owner and or property manager, with contact information including mailing address and a telephone number at which the property owner and/or property manager is readily available.
- b. The street address of the property proposed to be made available for short term rental use.
- c. A description of the premises proposed to be made available for short term rental use.
- d. A copy of the Department of Agriculture, Trade and Consumer Protection Tourism House License, as defined in Wisconsin Statute Sec. 97.01(15k), in effect during the short-term license year.
- e. Written certification by the property owner that the short-term rental meets the following requirements:
  - i. All short-term rental properties shall be subject to and comply with Wisconsin Administrative Code ATCP 72, which is hereby fully incorporated by reference:
  - ii. A minimum of one (1) off-street parking stall shall be provided for every guest bedroom with a minimum of two (2) parking stalls required. All parking areas shall meet the applicable size and location requirements of the City Code, and shall be hard-surfaced and maintained in a reasonably dust-free condition;
  - iii. The property owner and/or property manager shall be available at all times when the property is rented. The property owner must notify the City Clerk within three (3) business days of any change in the contact information for the property owner or property manager and submit the revised contact information to the City Clerk within the same time period.
  - iv. The “property manager” shall be defined as any person who is not the property owner and is authorized by the property owner, expressly or impliedly, to act as agent and as the local contact person on behalf of the property owner for one or more short-term rental, and to take remedial action and promptly respond to any violation of this Section or the City Code relating to the licensed premises.
  - v. Sleeping quarters related to a short-term rental shall only be located within the principal structure on a lot. Accessory buildings shall not be used for sleeping quarters.
  - vi. Occupancy limits shall not exceed the number of occupants allowed in Wisconsin Administrative Code Section ATCP 72.14(2)(b) per bedroom, and also shall not exceed 8 per 1,000 square feet of living area within the principal structure.
  - vii. A short-term rental property shall not have more people on site than the higher of twenty (20) people or the maximum

number of people allowed under Wisconsin Administrative Code Section ATCP 72.14(2)(b).

- viii. The property boundaries shall be reasonably delineated by approved fences, vegetation or other means to ensure that all users can identify the boundaries of the property and can accordingly confine their use to the licensed parcel. The applicant shall provide a survey or sketch showing the property boundaries and provide it to the City Clerk, as well as to any proposed tenant.
- ix. All refuse containers shall be screened from public view, as required by any applicable zoning or building code requirements.
- x. In addition to possible revocation of the short-term rental license provided in this Section, any failure by the license holder, after the issuance of a license, to adhere to the requirements of this Section shall be considered a violation of this Ordinance and shall be enforced in accordance Section 1-18 of the City of New Berlin Municipal Code. Each day that a violation occurs and continues shall be considered a separate violation and will be enforced accordingly.

(2) Upon the filing of an application pursuant to this section, and prior to the issuance of any license, the property described in the application shall be inspected by the City Building Inspector, as well as the Fire Department, to investigate and determine if the property is in compliance with applicable state, county, or local ordinances, rules or regulations including, but not limited to, this Subsection and the terms of the Fire Code requiring a working smoke detector and carbon monoxide detector on each level of the building. Each department conducting such an inspection shall provide a written report to the City Clerk confirming compliance or, alternatively, detailing any observed violations. Any observed violations shall be corrected by the applicant prior to the issuance of any license. In the event the applicant fails to correct any observed violations or if the property fails to meet the requirements of Section, the City Clerk shall deny the application for a license. In no event shall a license be issued, and any issued license shall be deemed suspended, when the property which is the subject of the license is under an order issued by the Building Inspector to bring the premises into compliance with state, county, or local ordinances, rules or regulations.

(3) Renewal. Each application for a renewal of a short-term rental license shall include all information and documentation required as part of the original application in an updated form and payment of a renewal fee which shall be non-refundable. A renewal application and the applicable fee must be filed with the City Clerk at least 45 days prior to the license expiration date in order to allow the City Clerk adequate time to review and investigate the application. No renewal license shall be issued unless a completed application form is accompanied by payment of the required application fee.

Upon the filing of a renewal application pursuant to this section, and prior to the issuance of any renewal license, the property described in the application shall be inspected by the Fire Department and Building Inspector to investigate and determine if the property is in compliance with applicable state, county, or local ordinances, rules or regulations including, but not limited to, this Section. Each department conducting such an inspection shall provide a written report to the City Clerk confirming compliance or, alternatively, detailing any observed violations. Any observed violations shall be corrected by the applicant prior to the renewal of any license. In the event the applicant fails to correct any observed violations or if the property fails to meet the requirements of this Section, the City Clerk shall deny the application for a renewal license. Additionally, the City Clerk may request reports from the Police Department, Fire Department and Building Inspector regarding any enforcement actions occurring at the property in the preceding short-term rental license year. The Clerk shall review the application and any enforcement actions and may approve or deny the application after considering the number, frequency, and/or severity of any previous enforcement action related to the property, and whether the conduct related to the previous enforcement action substantially harms or adversely impacts the predominantly residential uses and nature of the surrounding neighborhood. If the City Clerk determines to deny an application to renew the license, the Clerk shall notify the applicant in writing of the reason(s) for such decision and the applicant's right to appeal to the Common Council as provided in this section. In no event shall a renewal license be issued, and any issued license shall be deemed suspended, when the property which is the subject of the license is under an order issued by the Building Inspector to bring the premises into compliance with state, county, or local statutes, ordinances, rules or regulations.

- (4) Revocation. A short term rental license may be revoked by the Common Council, after notice to the licensee and a hearing, during the term of a license year and for one or more of the following reasons:
- a. Failure by the licensee to make payment of delinquent fees, taxes, special charges, forfeitures, or other debt owed to the City.
  - b. The issuance of three (3) or more total citations during any short term rental license year for violations of the Municipal Code of the City of New Berlin occurring at the licensed property. For purposes of this subsection, the total number of citations related to the licensed property shall be considered for the necessary calculation, notwithstanding whether such citations are issued to the license holder, the management company or a user of the property for short term rental use.
  - c. Failure by the licensee, at any time, to adhere to any requirements certified pursuant this Section.

Any resident of the City, or the City of its own accord, may file a sworn written complaint with the City Clerk alleging one or more of the reasons

set forth in this section as grounds for revocation of the short-term rental license. Upon filing of the complaint, the City Clerk shall notify the licensee of the complaint by certified mail, return receipt requested and provide the licensee with a copy of the complaint. Such notice shall also contain the time and place of the hearing before the Common Council on said complaint and consideration of revocation under this section. Any hearing under this section shall be held no sooner than 30 days after the notice required by this section is mailed to the licensee.

- (5) Appeal. The City Clerk's decision to deny an initial license or to deny renewal of a license may be appealed to the Common Council by filing a written appeal with the Clerk within 30 days after the date of mailing of the written notice of the City Clerk's decision. The Common Council shall hold a hearing within 30 days of the City's receipt of the written appeal, or the license shall be deemed granted. The City Clerk shall provide written notice of the date, time, and place of any appeal hearing to the licensee by certified mail return receipt requested. Any hearing under this section shall be held no sooner than 10 days after such notice is mailed to the appellant. If the Common Council finds the City Clerk's reasons for his or her decision to be sufficient, the decision shall be affirmed. If the Common Council finds the City Clerk's reasons for his or her decision insufficient, the decision shall be reversed, and the license shall be granted and issued. The Common Council shall provide appellant a written decision specifying the reasons for its determination, and provide such written decision to the appellant within 10 days of such determination.
- (6) Restrictions on License Transfers. Transfer of a short term license because of transfer or sale of the licensed property is not permissible. Should the licensed property be sold, transferred, or otherwise conveyed by the named applicant, then the issued license shall become void. Whenever a property changes ownership, a new license shall be required to ensure compliance with all applicable state and local laws and ordinances.

D. Violations of this Ordinance shall be enforced in accordance Section 250-6 of the City of New Berlin Municipal Code. Each day that a violation occurs shall be considered a separate violation and will be enforced accordingly.

## **SECTION II**

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

## **SECTION III**

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

**SECTION IV**

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

**PASSED AND ADOPTED** by the Common Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

APPROVED:

\_\_\_\_\_  
David Ament, Mayor

Countersigned:

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Rubina Medina, City Clerk