ORDINANCE COMMITTEE MEETING

Tuesday, February 21, 2023, 6:00 PM Town Council Chamber and Zoom Meeting Agenda

Videoconference Link:

https://berlinct-gov.zoom.us/j/89574668536?pwd=cnhVTFZIMGxINmpNRTJveitTbVITdz09

Conference Call Information:

Call-in Option:

929 205 6099

Meeting ID:

895 7466 8536

Passcode:

024759

- 1. CALL TO ORDER
- 2. PLEDGE OF ALLEGIANCE
- 3. AUDIENCE OF CITIZENS
- 4. APPROVAL OF MINUTES January 31, 2023
- 5. NEW BUSINESS Public Golf Course Commission
 [Consider increasing the membership from eight to nine members]
- 6. OLD BUSINESS Discussion on Off-Road Vehicles
- 7. ADJOURNMENT

Attachments:

- Minutes of January 31, 2023, Meeting
- Suggested Revisions to Berlin Code Book, Chapter II, Article 2, Part J Public Golf Course Commission
- Public Golf Course Commission Membership and Affiliations
- Memo from Attorney Coppola on Potential Amendments to Berlin Code Book, Chapter XVII, Article 5 – Regulating Off -Road Vehicles
- Copy of Chapter XVII, Article 5 Regulating Off-Road Vehicles

ORDINANCE COMMITTEE MEETING

Tuesday, January 31, 2023, 6:00 PM Town Council Chamber and Zoom Meeting Agenda

Zoom Meeting Login Information:

Call-in Option: 1 929 205 6099

Meeting ID:

875 7997 4246

Passcode:

889681

https://berlinct-gov.zoom.us/j/87579974246?pwd=cUxxTmhZR25EY3JtWnBYZFNOQjNQdz09

Members Present:

Mayor Mark Kaczynski - Chairman, Councilor Sandra Coppola, Councilor Charles Paonessa, Councilor Donna Risolo, Councilor Peter Rosso

Members Absent:

None.

Staff Present:

Arosha Jayawickrema - Town Manager Jennifer Coppola – Corporation Counsel

1. CALL TO ORDER

Councilor Paonessa called the meeting to order at 6:04 p.m.

2. PLEDGE OF ALLEGIANCE

3. AUDIENCE OF CITIZENS

Peter Zarabozo, 158 Elwood Rd.

Mr. Zarabozo asked to discuss a new business item that was proposed at the December 8 meeting regarding setting new requirements for appointed and elected officials. Which includes being an elector, which is already in place. Also, requiring the appointee or elected official to have \$1k on the grand list. He said that he disagrees because that essentially disenfranchises a group of citizens within our own town, namely renters, or people who may not have automobiles in their name. He asked how will that affect people who own homes and only have the property in the name of one spouse. Does that mean one of them can't serve as an elected or appointed official? Also, we have young kids who go to college locally and want to serve or take interest in the town. They may not have enough money to be on the grand list because they are living at home with their parents. It really limits and disenfranchises people who may want to serve the community in those capacities. I question why this would be proposed. Mayor Kaczynski said he appreciates Mr. Zarabozo's comments and it is on the agenda for discussion. There would not be any decisions made tonight on that issue.

Corporation Counsel Coppola said that it was inappropriate to be on the Ordinance Committee agenda because it is a charter issue. Eligibility to serve on any board or commission in town is covered by the charter. If there were to be any change, it would have to be through the charter amendment process, and not through this body. She advised not to have any further discussion with regard to this topic.

Mayor Kaczynski stated it is off the agenda and there will be no discussion. Town Manager Jayawickrema said that in the charter, section 2-12 states that no person shall be eligible for election to any town office who is not at the time of his election a resident elector of the set town and any person seeking to be a resident or elector of a said town and any person ceasing to be a resident / elector of said town shall cease to hold elective office in the town. Mayor Kaczynski said yes, that is a charter issue. Councilor Paonessa said that he wanted it be similar to the town meeting requirements. To participate in a town meeting, one has to be an elector of the town, and be responsible for \$1k in the Town's grand list. He said that he was not trying to exclude people who don't pay taxes. Mayor Kaczynski said if we move any further with it, it would have to be through a charter revision. I would be curious to see what other towns do just for our own information, but for now it is off our radar.

Lydia Borysiuk, 121 Devonshire Way

Ms. Borysiuk said that by simply defining the hours that these vehicles can be ridden still allows multiple vehicles for the entire block of time. The ordinance was written in October 2010, pre-COVID. COVID changed our lives. Many of us work from home. Our circumstances are different and I would like to know that our community and leadership of our community really reflects what our current residents are experiencing in this town. The ordinance allows for continuous riding and it allows any person that would have this kind of vehicle to ride along the property line, revving their engines back and forth continuously, not just driving through the entire property, but along the property line. That is what is happening. Which is why we are here to let you know what is weak in this ordinance. We've spent a lot of time talking about the noise level, but I have asthma. Fumes and dirt are contributing to my health issues. We need to take those issues into consideration when we are considering this ordinance. Because it is not simply the noise that is a nuisance, it is now the implications of the ordinance on the health of our residents. I have to start using my inhaler, which I don't need to be doing when I sit outside in my backyard, gathering dust all over me and smelling the fumes. Mayor Kaczynski said thank you for bringing those points up and we can look at that too.

Town Manager Jayawickrema added that the Rocky Hill ordinance states no all-terrain vehicle shall be operated in such manner. It says that you should not hear it from 500 ft. away period. It does not mention decibel levels. If you are operating something and it is 500 ft. away, you should not hear it. We could have some language to say 500 ft. from the property line. Mayor Kaczynski said that is a lot to ask. Town Manager Jayawickrema suggested that Mayor Kaczynski read the Rocky Hill ordinance. It does not say from the property line, but we could use their language. Councilor Paonessa said a greater distance from the property line would help with the dust. Town Manager Jayawickrema said it could be challenging if you come in 500 ft. from all directions, you might have a penny size area to ride on. Mayor Kaczynski said it might be overly restrictive, but we can see.

We try to be reasonable for everyone and we will try our best. We should focus on both the East Hartford ordinance and Rocky Hill ordinance.

Rita Bissonette, 135 Devonshire Way

Ms. Bissonette said as mentioned, the nuisance level is not just the noise, it is the dust and exhaust. Other considerations that need to be made is the lay of the land. Ms. Borysiuk's home is higher than mine as I have a gully. They are riding from the entire perimeter behind where the Borysiuk's house starts and when it hits my house, the sound resonates off any stone work, or building. I don't think any kind of environmental, or decibel ordinance would work for that. Seeing the dust levels and smelling the exhaust. I'm also asthmatic and have to start using my inhaler. It is a problem.

Corporation Counsel Coppola said they are different issues and they need to be treated differently. They need to be separated and she said that she will come up with something.

Ms. Bissonnette asked Lieutenant Solek if someone were to call the Police Department and give their name, would it have to be communicated to the offender? Lieutenant Solek said not necessarily. Ms. Bissonnette said that might help if you don't have to worry about that.

4. APPROVAL OF MINUTES - December 8, 2022

Councilor Paonessa moved to approve the December 8, 2022, meeting minutes.

Seconded by Councilor Coppola.

Those voting in favor: Mayor Kaczynski, Councilor Coppola, Councilor Paonessa. Councilor Rosso

Councilor Risolo abstained as she did not attend the December 8, 2022 meeting.

Vote being: 4-0. (MOTION CARRIED)

5. OLD BUSINESS - Discussion on Off-Road Vehicles

Town Manager Jayawickrema said Corporation Counsel Coppola found ordinances from other towns. Most have language that restricts these vehicles in the city limits. Also, most have 7 a.m. to 10 p.m. and 7 a.m. to 9 p.m. on Sundays and they are handled through a noise ordinance. They say not to exceed 55 decibels during the day, or 45 decibels on Sundays. Mayor Kaczynski said we don't have that. Town Manager Jayawickrema said we have language that restricts the ORV usage to 25 feet from the property line and 250 away from any residential dwelling. Rocky Hill restricts the usage to 500 ft. from the property line of the neighbor. Enforcement of measuring such distances should be taken into consideration in the Ordinance.

Lieutenant Solek said Police Chief McNally asked him to attend the meeting to answer any questions regarding enforcement. Mayor Kaczynski asked how complaints were currently handled. Lieutenant Solek said, if a neighbor feels that they are being disturbed by an ATV operation they can make a complaint. We would review the complaint to determine if it was happening outside of recommended hours, exceeding the decibel level, too close to their property, or too close to the roadway. We take what they

reported and make our own observations and speak with both parties. With this type of violation, we would always try to mediate between neighbors first before enforcement. This is a noise pollution quality of life violation, not a criminal offense. But if that doesn't work, there is enforcement by the way of state infraction. The Police Department doesn't have an opinion on whether we should change it one way or another, we will enforce whatever the Town comes up with.

Councilor Paonessa said some of these are complicated decibel levels and sound ranges. Is that practical to enforce? Lieutenant Solek said we do have decibel level restrictions in ours. That would be done by using a calibrated decibel meter, which we do not have right now. If a situation arose, we could obtain one. These situations don't come up frequently enough to keep one on hand. We rented a decibel meter when this ordinance was first enacted with the McMurray Dr. situation.

Councilor Paonessa said I don't want to create an ordinance that would be so hard to enforce. He would like to keep it simple. Lieutenant Solek said it would almost be easier to enforce if there wasn't a decibel level attached to it. Because then you would have a modified ATV, or dirt bike that won't comply to manufacturer's specs and it would be obvious to everyone and easily explainable that this was modified to make it louder than the manufacturer intent. When you put a number on it, then you have to bring out decibel meter and go a certain distance away from the vehicle. There is an idling component to it, so it is difficult to enforce. There are several other examples that don't have decibel levels in them from other towns.

Mayor Kaczynski asked if we had any luck with informal discussions at this point? Lieutenant Solek said the Police Department has not met with the homeowner on Edgewood Rd. He had an informal discussion with Mr. Borysiuk from Devonshire Way and he did not want a formal police investigation.

Corporation Counsel Coppola said one of the samples is Middletown and they have a provision in it with regard to noise from private property. It says no person shall operate or cause to be operated any motor driven cycle, all-terrain vehicle or snowmobile upon any private property in the city except with expressed permission of the owner. No person shall operate, or cause to be operated such a vehicle in any manner which would cause nuisance, annoyance, alarm or harassment of any kind to persons, domestic animals, or game.

Lieutenant Solek said less restrictive language still leaves a lot of room for interpretation. Because one person's nuisance and annoyance is not another person's nuisance. Councilor Paonessa said I agree, its subjective and there is an argument, but by the time the officer gets the meter and properly sets it up, it is going to turn into a science project. Lieutenant Solek said the decibel meter would require the party using the vehicle to cooperate. We couldn't take those levels without saying we would like to test the decibel levels of your vehicle because a neighbor feels it is annoying them, it is too loud and causing a disturbance. They would have to let the vehicle idle while we take the reading a distance away from it. Then they would have to ride it around like they are usually riding it while we take the reading from another distance away. It would be difficult to use that aspect of the ordinance as enforcement.

Corporation Council Coppola said she provided the committee with some ordinances that apply to public roadways. There is a racing ordinance included because you could put something like that in place. There was a separate snowmobile ordinance as well. East Hartford has the nuisance ordinance, which is relatively new to them. It indicates public nuisances affecting public safety. That definition is the operation of public private property, private residential property, or non-residential private property within 1,000 ft. of a residential property of any dirt bike, all-terrain vehicle, snowmobile, mini motorcycle, or other motorized vehicle not authorized for use on a street or road provided that the subdivision shall not apply to motorized vehicles used in the operation of a farmer in the maintenance of properties such as a riding lawnmower. They are actually defining the nuisance. This is going a different route by saying operating in this way constitutes a public nuisance and then they are able to enforce it as such. Town Manager Jayawickrema specifically said that he wanted to know what neighboring communities did, so I looked at all municipalities within 15 miles of yours.

Councilor Coppola said that she likes the fact that some of ordinances protect farms. Because sometimes you need that when you are using it to put down fertilizer or other activities related to farming. After hearing from Lieutenant Solek, she said that the current ordinance might not be enforceable because of the difficulty in measuring the noise levels and we might want to think about using distance instead. Mayor Kaczynski added that he likes the nuisance angel. Councilor Paonessa said we have to define it but have our legal counsel work on that. The nuisance level sounds like a better way to go at it.

Commissioner Risolo asked if we are just looking at recreational vehicles or farming equipment. Mayor Kaczynski said that we would make it a bit broader. It does not have to be just a dirt bike. It could be a tractor without a muffler. Councilor Paonessa said we don't want someone calling the cops every time somebody cuts the grass. Mayor Kaczynski said we have to be careful with how we word it. Councilor Risolo asked what about leaf blowers. Corporation Counsel Coppola said many communities have a provision specifically for leaf blowers. I don't recall whether you do, but it would be specifically limiting the hours of them because they are so loud.

Mayor Kaczynski asked to look at the nuisance angle. Corporation Counsel Coppola said East Hartford was specifically a nuisance ordinance. Mayor Kaczynski asked to use that as a model when drafting the language. Mayor Kaczynski said we could buy a decibel meter. Corporation Counsel Coppola said it is not unusual for a town not to have a sound level meter. Oftentimes the communities share them. They are very sensitive, and you need to be trained in order to understand how to use them properly. There are certain types of noises that are not easy to identify, but they can very much be a nuisance, especially those low decibel hum type. That might be caused if you have an industrial building that has a fan, cyclone, or something on top. If you do a noise ordinance, you will want to hit those types of nuisances as well. Mayor Kaczynski said he hesitates to take decibels completely out of it. Corporation Counsel Coppola said you have to be careful in terms of having language that is so subjective in nature that it is really not warning of what the offense is. People have to be able to understand what you are trying to enforce against in terms of conforming their conduct. Mayor Kaczynski asked

Corporation Counsel Coppola to work something with the nuisance and decibels too. If there is something better in some of these ordinances. We will look through them too and see if we have any suggestions as we work this through.

Councilor Coppola said let's say it is 250 ft., how difficult would it be for a Police Officer to show up and ask where your property line is? You can have a house sitting on 3 acres and be right next to one property line and further from another. I think we have to be careful if we are going to put something in there that it needs to be "x" feet away. Corporation Council Coppola said that she had some concerns about just picking a number out of the air if you were going to change it because of the implications. We may want to have different standards. Because you want to be fair to all the residents and recognize that this isn't just going to apply in regard to one situation, but when you pass an ordinance, it applies to all properties all across town. Mayor Kaczynski agreed that you can't make an ordinance for one specific thing. For the hours of operation, we just have a block of time.

Corporation Counsel Coppola said the operation of any ORV within 250 ft. of any residential dwelling is hereby prohibited before 8 a.m. and after 8 p.m. Monday through Saturday and before 9 a.m. and after 6 p.m. on Sunday. Mayor Kaczynski said some of the ordinances had blocks of time for no more than two or three hours. Obviously 8 a.m. to 8 p.m. is a long day of riding, which are some of the complaints I've heard. Corporation Counsel Coppola said we did discuss that last time, another potential limitation is prohibiting the activity to go on for 6 to 8 hours a day. That is something that we talked to Police Chief McNally about and that does become difficult for evidence gathering. Mayor Kaczynski said he does not want to overburden the Police Department.

Councilor Paonessa asked Lieutenant Solek if he had dirt bike complaints before? Lieutenant Solek said related to this ordinance, I believe the McMurry Dr. situation was what came out of this. Councilor Paonessa asked if in general you have had trouble with kids riding around like crazy? Officer Solek said no, not riding rampant. Councilor Paonessa asked has anybody ever resisted to comply? Officer Solek said no and the more serious offenses would be riding on roadways. Is there any question on complaint version? Corporation Counsel Coppola said yes, there was some discussion with the ordinance committee about whether or not anonymous complaints could be received because we do have the requirement in the ordinance that it be a formal complaint. Police Chief McNally was against accepting anonymous complaints.

Lieutenant Solek said the ordinance in the enforcement section reads to act upon complaint. We take that as a resident calling us saying who they are, where they live and where the violation is so we can gather information. This ordinance isn't used by Police Officers to take enforcement action when nobody is being aggrieved by someone. If there no one is being annoyed and alarmed then we wouldn't go there and enforce this without a complaint. Mayor Kaczynski said if it is an anonymous complaint and someone does not want to come forward, I would think we would drive by to see if it is true. If not, somebody is calling to make a problem for somebody when there isn't a problem. You could probably determine that. Lieutenant Solek said yes, we always look into it, but it would make it more difficult to actually get to enforcement of the complaint

because you need independent verification of that anonymous complaint. You do not have a witness to testify to the complaint. If they said every Sunday, they are riding on my property and over the line, and we went there next Sunday, we will be able to verify the anonymous complaint. Mayor Kaczynski said the person making the complaint if it is anonymous would have to understand that. You can only do so much if you call and make a complaint about anything. I can see it both ways. Lieutenant Solek said it would be an opportunity for education to say that we do have an ordinance and you are riding outside of that ordinance. Mayor Kaczynski said we could talk more with Chief of Police McNally.

Corporation Counsel Coppola said the language says with respect to privately owned land, no Police Officer shall initiate an investigation or attempt to enforce or issue a summons to enforce this article except upon a complaint. You can change that language if it is too restrictive. Mayor Kaczynski asked Corporation Counsel Coppola to add that to the draft and get it back to the committee for the next meeting. The committee will meet again on February 21 at 6:00 p.m. to look at the draft.

6. NEW BUSINESS - Requirements to be elected and appointed as public officials
This agenda item was removed from discussion at the meeting per Mayor Kaczynski.

7. ADJOURNMENT

Councilor Paonessa moved to adjourn at 6:50 p.m.

Seconded by Councilor Coppola.

Those voting in favor: Mayor Kaczynski, Councilor Coppola, Councilor Paonessa, Councilor Risolo, Councilor Rosso

Vote being: 5-0. (MOTION CARRIED)

Submitted by Alina Brown

> Received on 2/15/2023 at 1:53:27 PM by Town Clerk Kathryn J Wall

Part J. - Public Golf Course Commission

Sec. 2-190. Establishment.

There shall be and is hereby created, in the Town of Berlin, a Public Golf Course Commission hereinafter referred to as the Commission.

(Ord. No. 06-17, 9-19-2017; Ord. No. 01-18, 2-20-2018; Section No. changed 03-17-2020)

Sec. 2-191. Definitions.

The following definitions shall apply to Sec. 2-193 through Sec. 2-194 herein:

- (a) "Fiscal year" means the fiscal year of the Town of Berlin beginning on July 1 and ending on June 30 of every year.
- (b) "Golf course" refers to Timberlin Golf Course, owned by the Town of Berlin including, without limitation, any and all of the following as they relate to any such Public Golf course: land, rights and interests in land; rights of way, approaches and contract rights; office(s) and other buildings and facilities; paved areas; access roads; garages, parking lots and other parking structures; furnishings, equipment and apparatus; all other structures, facilities and improvements necessary and convenient to the development and maintenance of any such golf course and for the promotion and accommodation of any such golf course; and all other property (real, personal, mixed or otherwise), now or hereafter constructed or acquired, of or belonging to or pertaining to any such golf course.

(Ord. No. 06-17, 9-19-2017; Ord. No. 01-18, 2-20-2018; Section No. changed 03-17-2020))

Sec. 2-192. Composition; appointment, removal, and term of members; annual meeting and election of officers.

The Public Golf Course Commission shall be composed of eight (8) resident electors of the Town. All members of the Commission shall be appointed by the Town Council and may be removed by the Town Council. Each of the eight (8) members shall serve for a term of three (3) years, ending each January, with appointments staggered so that replacement/reappointments take place for no more than two (2) or three (3) members each year. Vacancies shall be filled for any unexpired term by the Town Council.

Upon establishment, the Commission shall elect a Chairman, a Vice Chairman, and a Secretary from its members to serve until its first annual meeting. Thereafter, each January, the Commission shall elect a Chairman and a Vice Chairman. At the first meeting of its first full year, a Secretary will be hired to record the minutes of the meetings of the Commission. The Commission shall schedule regular monthly meetings, which schedule shall be filed with the Town Clerk, designating the time and place thereof.

The agenda and minutes of all Commission meetings will be filed with the Town Clerk on a timely basis, pursuant to Connecticut General Statutes.

(Ord. No. 06-17, 9-19-2017; Ord. No. 01-18, 2-20-2018; Section No. changed 03-17-2020)

Sec. 2-193. Powers and duties; staff.

The Commission shall have the power to:

- (a) Make and ensure enforcement of policies, rules, and regulations for the orderly play of golf and the operation of Timberlin Golf Course and attendant facilities, which rules and regulations shall be reviewed and approved by the Town Council;
- (b) Provide input and recommendations to be used in the negotiations of all proposed contracts with any entity involved in the operation of the golf course and attendant facilities, to the Director of Golf and Town Manager; and
- (c) Work with the Director of Golf to develop and prioritize alteration plans, renovations, and capital improvements based on available funds.

The Commission shall submit reports to the Town Manager and/or the Town Council as may be requested from time to time.

Staffing for the operation and maintenance of the golf course shall be provided for in the final Town Council approved budget, prepared and submitted by the Director of Golf to the Town Manager as his direct report. The Commission will have reviewed the budget prior to submission to the Town Manager.

(Ord. No. 06-17, 9-19-2017; Ord. No. 01-18, 2-20-2018; Section No. changed 03-17-2020))

Sec. 2-194. Budget; schedule of charges.

The Director of Golf shall prepare a fiscal year golf course expense budget, to the Town Manager containing his estimate of projected expenses. The Commission will have reviewed the budget prior to submission to the Town Manager.

The Director of Golf will present a schedule of fees, rates, rentals, and charges for the ensuing calendar year, developed in concert with the Commission, to the Town Council for their review and adoption at the first Town Council meeting in January.

The Golf Commission shall make annual revenue projections based upon its recommended rates and present such recommendations to the Town Manager. The recommended rates shall be based upon the

Commission's analysis of market (including rates of nearby competitors) and play considerations and shall be set to maximize revenues for the golf course. The Town Manager shall consider the recommendations of the Commission and present proposed rates to the Town Council for its review and action at a Town Council meeting in January.

The course financial performance will continue to be measured based on course revenues, expenses, and charges from other Town departments, e.g. Building Maintenance and Town Garage for in kind services needed at the golf course.

(Ord. No. 06-17, 9-19-2017; Ord. No. 01-18, 2-20-2018; Ord. No. 04-20, 3-17-2020; Section No. changed 03-17-2020))

Sec. 2-195-199. Reserved.

February 20, 2023

James Norton, Chairman Timberlin Golf Commission Arosha Jayawickrema, Berlin Town Manager

It is with regret that I inform you that effective immediately, I hereby resign from all positions on the Timberlin Golf Commission.

Timberlin Golf Club is an underappreciated jewel in our community. I have had the honor of participating in the creation of the Commission and serving as Commission for over 5 years representing golfers and the residents of Berlin. As Commissioner, my goal was always to protect, preserve and improve Timberlin. My hope is that this goal will be continued by all Commissioners in the coming years.

Thank you for the opportunity to serve.

Sincerely,

James Bugella

RECEIVED FOR RECORD BERLIN TOWN OF FRIC

2023 FEB 21 AM 9: 12

BERLIN, CT.

PUBLIC GOLF COURSE COMMISSION

| NAME/ADDRESS | TERM EXPIRES | AFFILIATION | INFORMATION: |
|---------------------------------------------------------------|--------------------------------------------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Peter J. DeFazio | 1/31/2024 | Unaffiliated | Consists of eight (8) members |
| 92 Wildermere Road | | | for terms of three (3) years. |
| Berlin, CT 06037 | | | Not more than five (5) of |
| TELEPHONE: (860) 883-7680 EMAIL: pdefazio@icommllc.com | whom shall be of the same political party. | | |
| James J. Bugella, Jr Vice Chair | 1/31/2024 | Unaffiliated | Ordinance Adopted: |
| 136 Elton Road | | | 2017/09/19 & amended |
| Berlin, CT 06037 | | | 2/20/2018 (changing |
| TELEPHONE: (860) 798-9650 EMAIL: jamesbu2@comcast.net | membership from 7 to 8) | | |
| Gale A. Lemieux | 1/31/2025 | Democrat | |
| 102 Wildermere Road | | | |
| Berlin, CT 06037 | | | |
| TELEPHONE: (860) 828-0090 EMAIL: gal57@aol.com | | | |
| Sebastian J. Senia | 1/31/2025 | Democrat | 7 |
| 8 Dunham Drive | | | |
| Berlin, CT 06037 | | | |
| TELEPHONE: (860) 828-1198 | | | - |
| EMAIL: seb.senia@gmail.com | | | 4 |
| James E. Norton – <u>Chairman</u> | 1/31/2026 | Republican | |
| 36 Steepleview Drive | | | |
| Berlin, CT 06037 | | | |
| TELEPHONE: (860) 306-5216 EMAIL: <u>inorts36@gmail.com</u> | STAFF LIAISON: | | |
| Nancy L. Berger | 1/31/2026 | Republican | Sol Guerrero, Director |
| 1146 High Road | | | 860-828-7054 |
| Berlin, CT 06037 | | | sguerrero@berlinct.gov |
| TELEPHONE: (860) 597-5547 EMAIL: nb550@comcast.net | | | |
| James Green | 1/31/2026 | Democrat | |
| 29 Bannan Lane | | | |
| Berlin, CT 06037 | | | |
| TELEPHONE: (860) 919-4506 EMAIL: jimmygreen690@gmail.com | | | |
| Joseph M. Pulcini | 1/31/2024 | Unaffiliated | |
| 162 Crater Lane | - | | *************************************** |
| Berlin, CT 06037 | | | To the second se |
| TELEPHONE: (860) 416-5196 | | | RECORDING SECRETARY: |
| EMAIL: pulcini@comcast.net | | | |
| | | | Alina Brown |
| | | | labedas@yahoo.com |
| | | | |
| TELEPHONE: EMAIL: | | | |
| Revised: | Norton appointe | d Chair, and Bug | ella appointed Vice Chair. |
| 2/17/2023 | | | |
| | | | No. 1 |

Public Golf Course Commission Membership and Affiliations Ordinance adopted 9/19/2017

Nancy Berger

Current term expires 1/31/2026

Appointed in 2017 (Original Member)

Lady Niners

James Bugella, Jr.

Current term expires 1/31/2024

Appointed in 2017 (Original Member)

Men's Club

Peter DeFazio

Current term expires 1/31/2024

Appointed in 2017 (Original Member)

Men's Club

James Green

Current term expires 1/31/2026

Appointed in 2021

Men's Club

Gale Lemieux

Current term expires 1/31/2025

Appointed in 2017 (Original Member)

Ladies Club (18 holes)

James Norton

Current term expires 1/31/2026

Appointed in 2017 (Original Member)

Men's Club

Joseph Pulcini

Current term expires 1/31/2024

Appointed in 2021

Not a Golfer

Sebastian Senia

Current term expires 1/31/2025

Appointed in 2017 (Original Member)

Men's Club

| Current Count | Affiliation | Proposed | Term |
|---------------|--------------|----------|------------------------|
| 5 | Men's Club | 4 | 2 Terms (3 years each) |
| 1 | Ladies' Club | 1 | 2 Terms (3 years each) |
| 1 | Lady Niners | 1 | 2 Terms (3 years each) |
| 1 | Non-Golfers | 1 | 2 Terms (3 years each) |
| 0 | Senior's | 2 | 2 Terms (3 years each) |

Truck means any motor vehicle solely registered as a commercial vehicle and has a gross vehicle weight of at least one thousand (1,000) pounds. Public safety, educational, municipal and municipal purpose vehicles are exempt from the provisions of this article. (Ord. No. 4-88, § 1, 8-22-1988)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 17-111. Prohibited acts.

No person shall operate a truck on any public road where the town has erected a sign in a conspicuous place on such road, which effectively states that trucks are prohibited from operating on such road, unless the truck has a point of origin or destination point on such road or an intersecting road which has no alternative access. (Ord. No. 4-88, § 2, 8-22-1988)

Sec. 17-112. Penalty for violation of article.

Any person violating the terms of this article shall be fined in accordance with the town fee schedule for each offense.

(Ord. No. 4-88, § 3, 8-22-1988)

Secs. 17-113-17-119. Reserved.





Article 5. - Regulating Off-Road Vehicles

Sec. 17-120. Policy.

The state legislature has found and declared that:

- (1) excessive noise is a serious hazard to the health, welfare and quality of life of residents of the state;
- (2) exposure to certain levels of noise can result in physiological, psychological and economic damage;
- (3) a substantial body of science and technology exists by which excessive noise may be abated:
- (4) the primary responsibility for control of noise rests with the state and the political subdivisions thereof; and
- (5) each person has a right to an environment free from noise that may jeopardize his or her health, safety or welfare. The town council adopts these findings and policy statement.

This article is intended to protect, preserve and promote the health, safety, welfare and quality of life of the residents of the town through the regulation of noise, disturbance and inconvenience caused by the use of off-road vehicles as defined herein. (Ord. 5-10, 10-19-2010)

Sec. 17-121, Definitions.

a) "Off-Road Vehicle" (hereinafter "ORV") as used in this article shall include the following: "Snowmobiles" as defined in state statute § 14-379; "All-terrain vehicles" as defined in state statute § 14-379; Motorcycles, motorized dirt bikes, motorized go-carts,

or any other motorized vehicle, registered or unregistered, which is being used for off road recreational purposes.

- b) "Operate" means to control the course of or otherwise use an ORV;
- c) "Operator" means the person who controls the course of and operation of an ORV;
- d) "Owner" means the owner of the ORV;
- e) "dB(A)" means the standard abbreviation for "A weighted sound level in decibels";
- f) "Lot" means a parcel of land which is part of an approved subdivision as a designated lot, the map of which has been recorded with the town clerk or a parcel of land described by metes and bounds, the deed of which has been recorded with the town clerk;
- g) "Immediate family" means a spouse, child, grandchild, parent or grandparent. (Ord. 5-10, 10-19-2010)

Cross reference—Definitions generally, chapter 1 § 1-2 of this code book.

Sec. 17-122. Prohibition on town owned property.

It is illegal to operate or possess an ORV on any town owned land, including all parks and open space land.

(Ord. 5-10, 10-19-2010)

Sec. 17-123. Vehicle registration and written land owner permission.

- a) The written permission of the landowner or his duly authorized agent shall be carried by any person operating an ORV and shall be available for inspection whenever such person operates an ORV.
- b) No person operating an ORV shall refuse to produce their vehicle registration (as required under state statute § 14-386) and/or the written permission of the landowner or his agent when requested by an authorized law enforcement officer.
- c) Upon the request by an authorized law enforcement officer and upon the failure to produce required vehicle registration and/or written permission from the landowner (or his agent) upon whose property the vehicle is being operated, the law enforcement officer shall stop the operator from further use of said ORV and shall escort the operator with the vehicle to a location accessible to a commercial towing service. From this location the ORV shall be moved at the vehicle owner's expense to a location designated by the police department. The ORV shall remain at this designated location until the owner of the vehicle claims it by providing valid proof of ownership and by paying all applicable towing and storage charges. In addition to said towing and storage charges, the owner (or parent of the owner if he or she is a minor) shall pay the fines listed in the town fee schedule for failure to produce valid registration and/or written permission to operate on the private property of another.
- d) The provisions of this section requiring written permission of the landowner or his agent do not apply to the operation of an ORV on premises owned or leased by the owner of said vehicle or his or her immediate family.

(Ord. 5-10, 10-19-2010)

Sec. 17-124. Operational restrictions.

a) Proximity to Adjoining Land: No person shall operate an ORV less than twenty five (25) feet from the adjoining property line unless such person owns the abutting property or has

- written permission from the owner of such abutting property (which written permission must be with the operator at all times).
- b) Proximity to Public Road: No person shall operate an ORV within twenty five (25) feet of a public road unless the operator is lawfully entering such road for travel or lawfully crossing such road;
- c) Hours of Operation: The operation of any ORV within two hundred and fifty (250) feet of any residential dwelling is hereby prohibited before 8:00 a.m. and after 8:00 p.m., Monday through Saturday, and before 9:00 a.m. and after 6:00 p.m. on Sunday.

(Ord. 5-10, 10-19-2010)

Sec. 17-125. Noise restrictions.

- a) Noise Restrictions: Municipal officers enforcing this article shall make reference to the regulations of the state department of motor vehicles, § 14-80a-1, et seq. entitled "Maximum Permissible Noise Levels for Vehicles." Measurement of noise levels shall be done in a manner consistent with the standards and procedures set forth in these regulations promulgated by the department of motor vehicles. Noise emissions from an ORV when measured with a sound level measuring microphone located fifty (50) feet from the ORV shall not exceed eighty (80) dB(A) at any time or under any condition of surface grade, vehicle load, acceleration or deceleration, or at any speed or rpm. In addition, noise emissions from an ORV may not exceed ninety-nine (99) dB(A) at a distance of twenty (20) inches at idle.
- b) Mufflers: Each ORV operated by an internal combustion engine shall be provided with muffler(s) designed to prevent excessive, unusual or unnecessary exhaust noise. Each muffler shall be maintained by the vehicle owner or operator in good working order and in constant operation.

No person, including an ORV dealer or repairer, shall install or use upon said vehicle a muffler lacking interior baffle plates or other effective muffling devices, a gutted muffler, a muffler cutout, a straight exhaust, or any other mechanical device which will amplify the noise emitted by such vehicle.

(Ord. 5-10, 10-19-2010)

Sec. 17-126. Exclusions and exceptions.

The following vehicles or activities shall be exempt from this article:

- (a) Farming equipment or farming activity, as defined in state statutes §§ 1-1 and 12-91;
- (b) Vehicles used for mowing, lawn maintenance and other yard work, provided that all equipment complies with other provisions of this article pertaining to mufflers and noise;
- (c) Vehicles used for gardening, provided that all equipment complies with other provisions of this article pertaining to mufflers and noise;
- (d) ORV used by authorized law enforcement officers, fire fighters or emergency medical personnel while on duty and acting within the scope of their employment;
- (e) Vehicles used in the normal course of snow removal from driveways or sidewalks, provided that all equipment complies with other provisions of this article pertaining to mufflers and noise;

(f) Businesses that provide ORVs and a place to ride to the public on commercial property and are authorized to do so by all municipal and state agencies having jurisdiction over the property and activity in question.

(Ord. 5-10, 10-19-2010)

Sec. 17-127. Enforcement.

The police department is charged with enforcing the provisions of this article. With respect to privately owned land no police officer shall initiate an investigation, or attempt to enforce or issue a summons to enforce this article, except upon complaint. The chief of police may develop regulations or procedures consistent with this article for the enforcement thereof, including but not limited to the metering procedures and training of officers. (Ord. 5-10, 10-19-2010)

Sec. 17-128. Fines.

In addition to any offenses enumerated in state statutes §§ 14-379 through 14-390, non-compliance with any section of this article shall constitute a separate offense and shall carry a fine for each violation as set forth in the town fee schedule. (Ord. 5-10, 10-19-2010)

Sec. 17-129. Appeals.

Any person fined pursuant to this article may appeal such fine to the town manager or his/her designee within thirty (30) days of the issuance of said fine, and then, if necessary, to the superior court.

(Ord. 5-10, 10-19-2010)

Sec. 17-130. Relation to nuisance and other laws.

Nothing in this article shall be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance with this article is not a bar to a claim of nuisance, or any other private cause of action, by any person. A violation of this article shall not be deemed to create a nuisance per se. The provisions of this article shall not be construed to prevent the enforcement of other ordinances, regulations, or statutes that prescribe other standards for the type of noise or conduct involved.

(Ord. 5-10, 10-19-2010)

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MEMORANDUM

TO: Berlin Town Council Ordinance Committee

FROM: Jennifer N. Coppola, Esquire, Ciulla & Donofrio, LLP

DATE: February 17, 2023

RE: Potential Amendments to "Regulating Off-Road Vehicles" Ordinance

for Discussion at February 21, 2023 Ordinance Committee Meeting

To revisit, the following sections of the "Regulating Off-Road Vehicles" (ORVs) Ordinance were discussed at the Ordinance Committee's last meeting held on January 31, 2023 as potential sections to amend:

(1) Sec. 17-124. Operational Restrictions.

The Committee discussed whether subsection a) "Proximity to Adjoining Land" should be revised to increase the distance of twenty-five (25) feet from the adjoining property line. As part of the discussion previously was the enforcement concern of being able to measure "from the adjoining property line." However, to change the point of measurement, setbacks must be considered. No amendment is being proposed. Input from Zoning Staff should be received if pursued.

The Committee also discussed potential revision to subsection c) "Hours of Operation." As reflected in the ordinance examples provided, the limitations on hours of operation are, as strict if not more strict, than those imposed by the ordinances of other municipalities. However, given a chief complaint of residents is the interference with the quiet enjoyment of the outdoor use of their property, including at mealtimes, the Committee may want to encourage ORVs only be operated during the late morning to late afternoon hours such as 10:00 a.m. to 4:00 p.m. all days of the week. This proposed amendment has been included in the draft amendment copy ("Draft") to be presented at your February 21st meeting. Furthermore, there was a discussion regarding limiting the duration of use at any one time during the day. A limitation on the duration of use per day has also been included in the Draft of no more than three (3) hours total per day.

(2) Sec. 17-125. Noise restrictions.

While concerns about the process required for obtaining decibel readings were discussed, amendments to subsection a) of this section are not being proposed. It is noted that subsection b) addresses noise emitted from mufflers on ORVs with an internal combustion engine without reference to a limitation(s) on decibels.

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The addition of a prohibition of modification of ORVs' engines or exhausts systems was considered. A new subsection c) is proposed: "No person shall operate or cause to be operated any off-road vehicle which is modified, altered, broken, or in disrepair so as to emit excessive, unreasonably loud, or offensive levels of noise."

(3) Sec. 17-127. Enforcement.

There was again a good deal of discussion about this section with particular concern expressed regarding the following provision in the section: "With respect to privately owned land no police officer shall initiate an investigation, or attempt to enforce or issue a summons to enforce this article, except upon complaint."

The following amendment is proposed: ".... Upon receipt of a complaint of, or upon observation of a possible violation of this article by the police department or other department of the town, the police department shall initiate an investigation and if it is determined that a violation exists, it shall attempt to enforce or issue a summons to enforce this article. Any anonymous complaint received shall be independently verified...."

(4) Sec. 17-130. Relation to Nuisance and other laws.

Currently, this section provides: Nothing in this article shall be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance with this article is not a bar to a claim of nuisance, or any other private cause of action, by any person. A violation of this article shall not be deemed to create a nuisance per se. The provisions of this article shall not be construed to prevent the enforcement of other ordinances, regulations, or statutes that prescribe other standards for the type of noise or conduct involved.

It is proposed that this nuisance provision be separated into two subsections a) and b) to address public nuisance and private nuisance separately. In addition, Sec. 17-130 is proposed to be amended to state only: "The provisions of this article shall not be construed to prevent the enforcement of other ordinances, regulations, or statutes that prescribe other standards for the type of noise or conduct involved."

Subsection b) as proposed states: "b) *Private Nuisance*. Compliance with this Article is not a bar to a claim of private nuisance, or any other private cause of action, by any person."

Subsection a) as proposed states: "a) *Public Nuisance*. No person shall operate or cause to be operated any off-road vehicle, upon any public property, any private residential property, or any private non-residential property within the

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Town of Berlin, in any manner, which would cause nuisance, annoyance, alarm, or harassment of any kind to any person(s). Racing of an off-road vehicle(s) shall be considered a public nuisance per se.

There are additional amendments that will be presented for your consideration, including amendments to the "Purpose" of the Ordinance.