CITY OF NEW BERN BOARD OF ALDERMEN MEETING DECEMBER 13, 2022 – 6:00 P.M. CITY HALL COURTROOM 300 POLLOCK STREET

- Meeting opened by Mayor Odham. Prayer Coordinated by Alderman Kinsey. Pledge of Allegiance.
- Roll Call.
- Approve Agenda.
- Request and Petition of Citizens.

Consent Agenda

- Consider Adopting a Resolution Initiating the Upset Bid Process for 304 and 308 S.
 Front Street.
- 6. Consider Adopting a Resolution Authorizing the Submission of a BRIC Grant Application.
- Consider Adopting a Resolution Calling for a Public Hearing to Rezone 910 and 914 Bloomfield Street.
- Approve Minutes.

- Presentation by Governing Board.
- 10. Presentation of City Employees of the Year.
- 11. Recognition of 2022 Citizens Police Academy.
- 12. Presentation by Craven County Alcoholic Beverage Control Board.
- Presentation of the Annual Comprehensive Financial Report and Audit for Fiscal Year Ending June 30, 2022.
- Conduct a Public Hearing and Consider Adopting Revisions to the Land Use Ordinance.
- 15. Appointment of Mayor Pro Tempore and Administration of Oath.
- Consider Adopting a Resolution to Amend the Classification Pay Plan for Fiscal Year 2022-23 as Part of the Market Analysis Pay Study.

- Consider Adopting a Budget Ordinance Amendment for FY2022-23 to Provide for Amendment to Classification Pay Plan.
- Consider Adopting a Resolution Authorizing the City Manager to Execute a Change Order for the City Hall Elevator Project to Include a Fire Alarm System.
- 19. Consider Adopting an Ordinance Amendment to the City Hall Elevator Project Fund.
- Consider Adopting a Budget Ordinance Amendment for FY2022-23.
- Consider Adopting a Resolution Awarding Contract-I for the Township No. 7 Sewer Improvements Phase-III Project.
- Consider Adopting a Resolution Awarding Contract-II for the Township No. 7 Sewer Improvements Phase-III Project.
- Consider Adopting an Ordinance to Amend the Township 7 Sewer Improvements Project Fund.
- Consider Adopting a Resolution Approving a Declaration of Intent to Reimburse the Township 7 Sewer Improvements Project.
- Consider Adopting a Resolution in Support of NC Department of Transportation Reducing the Speed Limit on NC 43 Between SR 1483 (Briarwood Lane) and the 0.101 Mile Mark North of SR 1481 (Gracie Farms Road).
- Consider Adopting a Resolution Approving a Bill of Sale for the Tisdale House and Special Warranty Deed for Tax Parcel ID 8-011-27000 (1311 Rhem Avenue).
- Consider Adopting a Resolution Approving a General Warranty Deed Between Habitat for Humanity of Craven County NC, Marie Brown, and the City of New Bern for 2007 Pearson Street.
- 28. Appointment(s).
- 29. Attorney's Report.
- 30. City Manager's Report.
- New Business.
- Closed Session.
- 33. Adjourn.

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham Mayor Foster Hughes City Manager Brenda E. Blanco City Clerk Kimberly A Ostrom Director of Finance

Memo to: Mayor and Board of Aldermen

From: Foster Hughes, City Manager

Date: December 09, 2022

Re: December 13, 2022 Agenda Explanations

1. Meeting opened by Mayor Jeffrey T. Odham. Prayer Coordinated by Alderman Kinsey. Pledge of Allegiance.

- 2. Roll Call.
- 3. Approve Agenda.
- 4. Request and Petition of Citizens.

This section of the agenda is titled Requests and Petitions of Citizens. This is an opportunity for public comment, and we thank you for coming to the Board of Aldermen meeting tonight to share your views. We value all citizen input.

Speaker comments are limited to a maximum of 4 minutes during the public comment period. At the conclusion of 4 minutes, each speaker shall leave the podium. Comments will be directed to the full board, not to an individual board member or staff member. Although the board is interested in hearing your comments, speakers should not expect any comments, action, or deliberation from the board on any issue raised during the public comment period.

In the board's discretion, it may refer issues to the appropriate city officials or staff for further investigation. If an organized group is present to speak on a common issue, please designate one person to present the group's comment, which shall be limited to a maximum of 4 minutes.

Consent Agenda

Consider Adopting a Resolution Initiating the Upset Bid Process for 304 and 308 S. Front Street.

(Ward 1) At the August 09, 2022 meeting, a suggestion was made and direction subsequently given to place signage on the "Talbot's lots" advertising the property for sale. At the November 08, 2022 meeting, a minimum bid of \$750,000 was established for the two parcels. Betty Wilson has tendered an offer of \$825,000, and it is requested the Board consider adopting a resolution to initiate the upset bid process pursuant to NCGS §160A-269. A memo from Brenda Blanco, City Clerk, is attached along with a copy of the offer and aerial map of the property.

Consider Adopting a Resolution Authorizing the Submission of a BRIC Grant Application.

(Wards 2 and 5) FEMA administers the Building Resilient Infrastructure and Communities ("BRIC") program, which makes federal funds available for hazard mitigation activities. Staff desires to apply for a BRIC grant in the amount of \$200,000 to be used for planning and scoping the restoration of the Duffyfield canal project. The grant will be matched by the City's award of the NC Attorney General's Environmental Enhancement grant in the amount of \$150,000. A memo from Matt Schelly, Interim Director of Development Services, is attached.

Consider Adopting a Resolution Calling for a Public Hearing to Rezone 910 and 914 Bloomfield Street.

(Ward 5) The Redevelopment Commission is requesting to rezone two parcels totaling 0.252 +/- acres from R-6 Residential to C-4 Neighborhood Business District. The parcels are located at 910 and 914 Bloomfield Street. The Planning and Zoning Board unanimously approved the request at its November 01, 2022 meeting. It is requested a public hearing be held on January 10, 2023 for the Governing Board's consideration. A memo from Mr. Schelly is attached.

8. Approve Minutes.

Draft minutes from the November 22, 2022 meeting are provided for review and approval.

9. Presentation by Governing Board.

The Governing Board will make a brief presentation.

10. Presentation of City Employees of the Year.

The Employee of the Year program has been reinstated to recognize employees who have demonstrated excellent performance in their job duties over the previous 12-month period. Under the new program, one employee from three service categories will be recognized: Public Service, Public Safety, and Public Utilities/Works. Except for Department Heads, Division Superintendents, Division Chiefs, Fire Battalion Chiefs, and Police Captains, all regular full and part-time employees were eligible for nomination. Nominees were reviewed by a Selection Committee and announced at an employee luncheon on December 08, 2022. The winner of each category will be recognized at this meeting and presented with a certificate and \$300.

11. Recognition of 2022 Citizens Police Academy.

Graduates of the recent Citizens Policy Academy will be in attendance to give an overview of their experience. The latest academy marked the 25th session to be held.

12. Presentation by Craven County Alcoholic Beverage Control Board.

A representative from the Craven County Alcoholic Beverage Control ("ABC") Board will provide an annual briefing and present a check to the City for its portion of ABC sales.

Presentation of the Annual Comprehensive Financial Report and Audit for Fiscal Year Ending June 30, 2022.

A representative from Thompson, Price, Scott, Adams and Company, P.A., the firm that performed the City's audit, will be present to discuss the findings of the June 30, 2022, Annual Comprehensive Financial Report ("ACFR") and audit.

Conduct a Public Hearing and Consider Adopting Revisions to the Land Use Ordinance.

Chapter 160D of the general statutes consolidates development regulations that were previously in Chapters 153A and 160A. Local governments are required to update their ordinances to conform with the new chapter. To comply with Chapter 160D, the Planning and Zoning Bord unanimously reviewed and recommended revisions to the City's Land Use Ordinance at its November 01, 2022 meeting. A memo from Mr. Schelly is attached.

15. Appointment of Mayor Pro Tempore and Administration of Oath.

The City charter provides that at the first meeting in December the Board will appoint one of its members to serve as Mayor Pro Tem for a one-year term. The designee will perform mayoral duties in 2023 during the absence of the Mayor.

Consider Adopting a Resolution to Amend the Classification Pay Plan for Fiscal Year 2022-23 as Part of the Market Analysis Pay Study.

Piedmont Triad Regional Council conducted a market pay study for the City of New Bern. The analysis provides necessary data to ensure New Bern's salaries are competitive and comparable with employees in relevant labor markets. To act on the results of the market study, it is proposed the City's classification pay plan be amended. Positions that have advanced by one grade will receive a 3% annual salary increase, 2 grades a 6% annual salary increase, and 3 grades a 10% annual salary increase. Positions that decrease by one grade will receive a 1% bonus. There are 55 positions recommended for a one-grade advance, 122 recommended for a two-grade advance, 24 recommended for a three-grade advance, and 2 recommended to decrease by one grade. A memo from Sonya Hayes, Director of Human Resources, is attached along with a copy of the market study.

17. Consider Adopting a Budget Ordinance Amendment for FY2022-23 to Provide for Amendment to Classification Pay Plan.

In correlation with the amended classification pay plan, this budget amendment allocates funds for the increased costs of salaries and benefits for the period of January 1, 2023 through June 30, 2023. Pay increases were calculated on positions that were adjusted by one or more pay grades. If the newly-calculated salary did not meet the minimum of the respective pay grade, then the salary was brought to the minimum of that grade. Fund balance was appropriated as follows to provide for the increased costs: \$766,019 from General Fund, \$81,636 from Water Fund, \$73,999 from Sewer Fund, \$216,243 from Electric Fund, \$3,494 from the MPO Plan Grant, and \$13,277 from the Solid Waste Fund. A memo from Kim Ostrom, Director of Finance, is attached.

Consider Adopting a Resolution Authorizing the City Manager to Execute a Change Order for the City Hall Elevator Project to Include a Fire Alarm System.

(Ward 1) The fire alarm coverage for City Hall will need to be extended to the elevator annex in order to meet current fire and building codes. A change order is requested to increase the previously approved contract with Daniels and Daniels Construction Company by \$70,708.51. The proposed resolution authorizes the City Manager to execute a change order to include this alarm work. A memo from George Chiles, Interim Director of Public Works, is attached.

Consider Adopting an Ordinance Amendment to the City Hall Elevator Project Fund.

(Ward 1) In conjunction with the previous item, this budget ordinance amends the City Hall Elevator Project Fund by \$70,709 to provide for the fire alarm system. Funds will be appropriated from the General Fund balance. A memo from Mrs. Ostrom is attached.

20. Consider Adopting a Budget Ordinance Amendment for FY2022-23.

(Ward 1) As the final step to provide funding for the fire alarm system in the elevator annex, this amendment will appropriate \$70,709 from General Fund balance. The amendment also appropriates \$189,108 from General Fund balance for the repointing of City Hall and make appropriations to cover encumbrances for outstanding purchase orders as of June 30, 2022 that have been rolled forward. Lastly, it makes transfers from the Water and Sewer Funds' fund balances to cover Phase III of the Township 7 Sewer Improvements Project. A memo from Mrs. Ostrom is attached.

Consider Adopting a Resolution Awarding Contract-I for the Township No. 7 Sewer Improvements Phase-III Project.

(Ward 3) In 2010, the City established the Township No. 7 Sewer Improvements project and has since completed Phases I and II. Phase III remains to be completed and will increase transmission capacity at the equalization basin, construct a new transmission force main across the Trent River, and relocate Lift Station No. 10. Bids were received in November, and James L. Cayton Utilities, Inc. submitted the lowest bid at \$5,646,728 for the linework. It is requested the Board consider authorizing the City Manager to execute a contract with this vendor. A memo from Jordan Hughes, City Engineer, is attached along with a copy of the bid tabulation.

22. Consider Adopting a Resolution Awarding Contract-II for the Township No. 7 Sewer Improvements Phase-III Project.

(Ward 1) Related to the previous item, this contract is for the relocation of the pump station from the bank of Lawson Creek Park. Bids for this portion of the work were also received in November, and Peters and White Construction Co. of Chesapeake, VA submitted the lowest bid at \$959,395. It is requested the Board consider authorizing the City Manager to execute a contract with this vendor. A memo from Jordan Hughes is attached along with a copy of the bid tabulation.

23. Consider Adopting an Ordinance to Amend the Township 7 Sewer Improvements Project Fund.

(Wards 1 and 3) The Township 7 Sewer Improvements Project Fund will be amended by \$6,106,123 for Phase III of the project. Construction costs will initially be covered by a transfer of \$4,869,181 from the Sewer Fund and \$500,000 from Golden Leaf grant funds. Financing options will be reviewed with the intent of reimbursing the Sewer Fund. Additionally, \$1,236,942 will be transferred from the Water Fund to complete work on water lines in the same area. The Water Fund will not be reimbursed for this transfer. A memo from Jordan Hughes is attached.

24. Consider Adopting a Resolution Approving a Declaration of Intent to Reimburse the Township 7 Sewer Improvements Project.

(Wards 1 and 3) This item relates to the previous items for the Township 7 Sewer Improvements project. As required by IRS regulations, a declaration of intent to

reimburse must be adopted prior to or within 60 days of payment of expenditures that will be reimbursed through financing proceeds. A memo from Mrs. Ostrom is attached.

- Consider Adopting a Resolution in Support of NC Department of Transportation Reducing the Speed Limit on NC 43 Between SR 1483 (Briarwood Lane) and the 0.101 Mile Mark North of SR 1481 (Gracie Farms Road).
 - (Ward 5) After completing an engineering and traffic investigation, NCDOT recommended the speed limit on NC Highway 43 between Briarwood Lane and Gracie Farms Road be reduced from 55 mph to 50 mph. This item was tabled at the Board's July 12, 2022 meeting after Alderman Best suggested the speed be reduced to 45 mph. NCDOT evaluated the area and found that the density of the development did not warrant a reduction to 45 mph. The proposed resolution confirms the City's concurrence with the reduction to 50 mph. A memo from Mr. Chiles is attached along with a map of the area.
- Consider Adopting a Resolution Approving a Bill of Sale for the Tisdale House and Special Warranty Deed for Tax Parcel ID 8-011-27000 (1311 Rhem Avenue).
 - (Ward 1) The City has been working with New Bern Preservation Foundation on the transfer of the Tisdale house and sale of property on Rhem Avenue. The purchase price of the parcel is \$45,000. To preserve the Tisdale house, restrictions and obligations are being imposed through restrictive covenants and a preservation agreement.
- Consider Adopting a Resolution Approving a General Warranty Deed Between Habitat for Humanity of Craven County NC, Marie Brown, and the City of New Bern for 2007 Pearson Street.
 - (Ward 2) On September 24, 2019, the City approved the conveyance of 2007 Pearson Street to Habitat for Humanity for the purpose of developing affordable housing for low and moderate-income families. Habitat has subsequently constructed a home on the property and intends to transfer the home to a buyer. By executing a deed to transfer ownership to the buyer, the City will release any rights retained under a Transfer and Reversion Agreement between the City and Habitat. A memo from Jaimee Bullock Mosley, Assistant City Attorney, is attached.
- 28. Appointment(s).
- 29. Attorney's Report.
- 30. City Manager's Report.
- 31. New Business.

- 32. Closed Session.
- 33. Adjourn.

INDIVIDUALS WITH DISABILITIES REQUIRING SPECIAL ASSISTANCE SHOULD CALL 639-2931 NO LATER THAN 3 P.M. THE DATE OF THE MEETING

AGENDA ITEM COVER SHEET



Agenda Item Title:Consider Adopting a Resolution to Initiate the Upset Bid Process for 304 and 308 S. Front Street

Date of Meeting: 12/13/2	2022	Ward # if applicable: 1
Department: City Clerk		Person Submitting Item: Brenda Blanco
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing: N/A
Explanation of Item:	of 304 and 308	as tendered an offer of \$825,000 for the purchase South Front Street. At the Board's November imum bid of \$750,000 was established for the
Actions Needed by Board:	Consider adopti	ng resolution
Backup Attached:	Memo, resolution the property	on, offer to purchase, map and aerial picture of
Is item time sensitive?		
Will there be advocate	s/opponents at t	he meeting? □Yes ☒ No
Cost of Agenda Item:		
		een budgeted and are funds available ☐Yes ☐ No
and certified by the Fir	nance Director?	□ res □ No

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kim Ostrom
Director of Finance

MEMO TO:

Mayor and Board of Aldermen

FROM:

Brenda Blanco, City Clerk

DATE:

December 01, 2022

SUBJECT:

Offer to Purchase

Betty Wilson has made an offer to purchase 304 and 308 South Front Street ("Talbots" lots). At its November 08, 2022 meeting, the Board established a minimum bid requirement of \$750,000. Ms. Wilson's offer of \$825,000 exceeds this amount.

The property was acquired by the City in 2000.

/beb

RESOLUTION

THAT WHEREAS, the City of New Bern owns certain real property identified as 304 and 308 South Front Street, Craven County parcel identification numbers 8-001-C-103 and 8-001-C-101; and

WHEREAS, North Carolina General Statute § 160A-269 permits the City to sell property by upset bid after receipt of an offer for the property; and

WHEREAS, the City has received an offer to purchase the above described property in the amount of \$825,000.00 submitted by Betty Idell Wilson; and

WHEREAS, Betty Idell Wilson has paid the required five percent (5%) deposit on the offer.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

- Section 1. The Board of Aldermen of the City of New Bern authorizes the sale of its interest in the property described above through the upset bid procedure of North Carolina General Statute § 160A-269.
- Section 2. The City Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
- Section 3. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the City Clerk within ten (10) days after the notice of sale is published. At the conclusion of the 10-day period, the City Clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
- Section 4. If a qualifying higher bid is received, the City Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Aldermen.
- Section 5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.

Section 6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check or certified check. The City will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset bid if a qualifying higher bid is received. If the City accepts the final high bid, the deposit of the final high bidder will be applied to the purchase price at closing, and if the final high bidder is unable to complete the purchase of the property, the deposit shall be forfeited.

Section 7. The terms of the final sale are:

- (a) The Board of Aldermen must approve the final high offer before the sale is closed, which it may do within thirty (30) days after the final upset bid period has passed; and
 - (b) The buyer must pay with cash at the time of closing.

Section 8. The City reserves the right to withdraw the property from sale at any time before the final high bid is accepted, and the right to reject all bids at any time, specifically including the initial offer.

Section 9. If no qualifying upset bid is received after the initial public notice, and if the offer set forth above has not been subsequently rejected, the offer set forth above is hereby accepted, and the appropriate city officials are authorized to execute the instruments necessary to convey the property to Betty Idell Wilson.

ADOPTED THIS 13th DAY OF DECEMBER, 2022.

	JEFFREY T. ODHAM, MAYOR	_
BRENDA E. BLANCO, CITY CLERK		

NORTH CAROLINA

CRAVEN COUNTY

OFFER TO PURCHASE AND CONTRACT

Betty Idell Wilson , as Buyer, hereby offers to purchase and CITY OF NEW BERN, as S
upon acceptance of said offer, agrees to sell and convey, all of that plot, piece or parcel of land described below (hereafter refer as the "Property"), upon the following terms and conditions:
1. REAL PROPERTY: Located in or near the City of New Bern, Craven County, North Carolina, being known as and
particularly described as: Street Address: 304 and 308 South Front Street, New Bern, NC 28560
Sirver Address.
Subdivision Name: NA
Tax Parcel ID No.:8-001-C -101 & 8-001-C -103
Plat Reference: 1065 & 069 1796 & 0043 1765 & 0639
Being all of that property more particularly described in Deed Book, Page in the Craven County Registry.
 PURCHASE PRICE: The purchase price is \$825,000 and shall be paid as follows: (a) \$41,250 EARNEST MONEY DEPOSIT with this offer by □ cash □ bank check ♥ certified check
(a) \$\frac{41,250}{250}\$, EARNEST MONEY DEPOSIT with this offer by \(\sqrt{2}\) cash \(\sqrt{2}\) bank check \(\sqrt{2}\) certified check held by Seller until the sale is closed, at which time it will be credited to Buyer, or until this contract is otherwise protection terminated. In the event this offer is not accepted, then all earnest monies shall be refunded to Buyer. In the event of breat this contract by Seller, all earnest monies shall be refunded to Buyer upon Buyer's request In the event of breach of this coby Buyer, then all earnest monies shall be forfeited to Seller upon Seller's request, but such forfeiture shall not affect any remedies available to Seller for such breach.
(b) \$ 783,750 , BALANCE of the purchase price in cash or readily available funds at Closing.
3. CONDITIONS:
(a) This contract is not subject to Buyer obtaining financing.
(b) The Property must be in substantially the same or better condition at Closing as on the date of this offer, reasonable wear an excepted.
(c) The Property is being sold subject to all liens and encumbrances of record, if any
(d) Other than as provided herein, the Property is being conveyed "as is".
(e) This contract is subject to the provisions of G.S. §160A-269. Buyer acknowledges that this contract is subject to certain r provisions and the rights in others to submit upset bids in accordance therewith.
(f) Title shall be delivered at Closing by QUITCLAIM DEED
4. SPECIAL ASSESSMENTS: Seller makes no warranty or representation as to any pending or confirmed governmental spassessments for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, or pending or confirmed ow association special assessments. Buyer shall take title subject to all pending assessments, if any.
5. PAYMENT OF TAXES: Any ad valorem taxes to which the Property is subject shall be paid in their entirety by Buyer.
6. EXPENSES: Buyer shall be responsible for all costs with respect to any title search, title insurance, recording of the deed a legal fees. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under
agreement, and for any excise tax (revenue stamps) required by law.
7. EVIDENCE OF TITLE: Not Applicable.
8. CLOSING: Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any ard documents and papers necessary in connection with Closing and transfer of title within thirty (30) days of the granting of approval of the sale by the City of New Bern's Board of Aldermen pursuant to G.S. §160A-269. The deed is to be made Betty Idell wilson
9. POSSESSION: Unless otherwise provided herein, possession shall be delivered at Closing.
10. PROPERTY INSPECTION, APPRAISAL, INVESTIGATION:
(a) This contract is not subject to inspection, appraisal or investigation, as the Property is being bought "as is." Seller make
representation as to water, sewer, conditions, title, access, or fitness for any intended use.
(b) CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION.
11. RIGHT OF ENTRY, RESTORATION AND INDEMNITY: Buyer and Buyer's agents and contractors shall not have the rigenter upon the Property for any purpose without advance written permission of the Seller. If such permission is given, Buyer
indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or i
to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property. This inder
shall survive this contract and any termination hereof.
12. OTHER PROVISIONS AND CONDITIONS: (ITEMIZE ALL ADDENDA TO THIS CONTRACT AND ATT HERETO.): None.
Buyer Initials Seller Initials

13. RISK OF LOSS: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller.

14. ASSIGNMENTS: This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and the assignee's heirs, successors or assigns (as the case may be).

15. PARTIES: This contract shall be binding upon and shall inure to the benefit of the parties, i.e., Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

16. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or

17. ENTIRE AGREEMENT: This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and

signed by all parties.

18. NOTICE AND EXECUTION: Any notice or communication to be given to a party herein may be given to the party or to such party's agent. This offer shall become a binding contract (the "Effective Date") when signed by both Buyer and Seller and such signing is communicated to the offering party. This contract is executed under seal in signed multiple originals, all of which together constitute one and the same instrument, with a signed original being retained by each party, and the parties adopt the word "SEAL" beside their signatures below.

BUYER:		SELLER	
(If an individu	nal)	CITY OF NEW BERN	
Date: Nov Address: 505	(SEAL) tty Idell Wilson Billy Solet vember 16, 2022 Yourney /6, 2 ROGERS CT nt Woods, NC 28562 -772-3642 curtisgatlin@cca-group.n wilsonwin505@gmail.com	Date:	(SEAL)
By: Its: Address:	(SEAL	i,	
Phone:			



304 & 308 S. Front Street

Ownership: City of New Bern Size: 0.394 Acres+- Tot. C-1 Cent. Business Zoning: Land Use: Vacant Commercial Lot

Flood Hazard: AE (SFHA)

Tax Values

25

Land: Land: \$567,630 Tot.

Building: Building: \$0

50

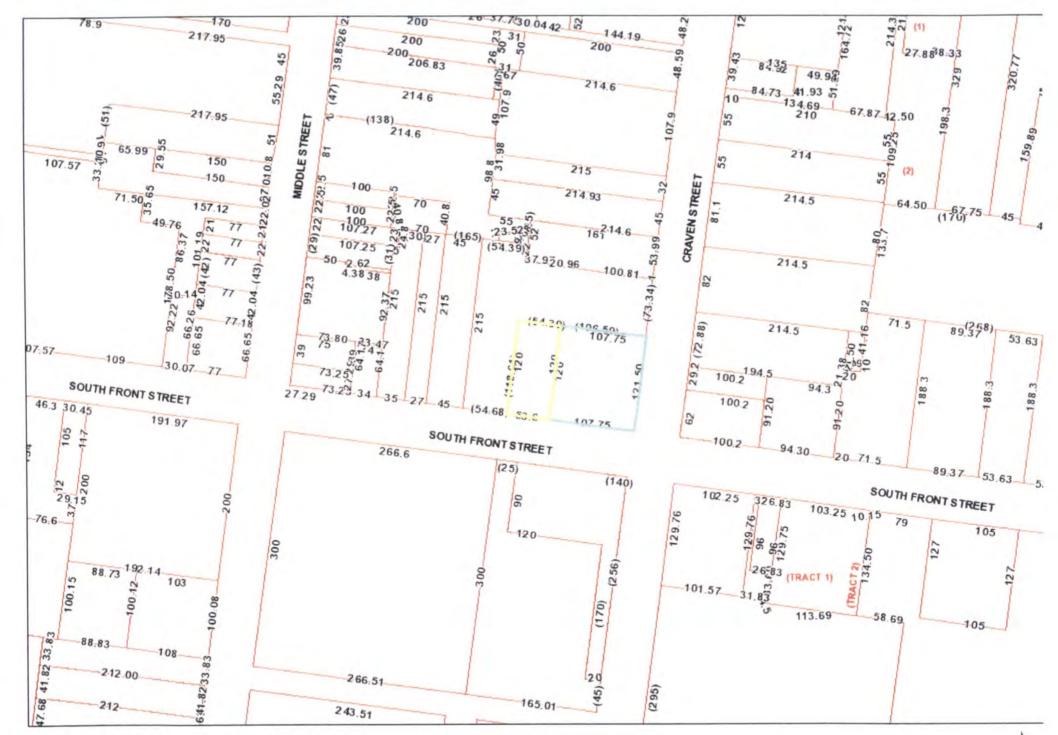
Total: Total: \$567,630 Tot. 8-001-C-101 (part) & 103 Tax ID (PID):

Note: Min. Bid: \$750,000

1 inch = 50 feet

Feet 100 150





AGENDA ITEM COVER SHEET



Agenda Item Title:Consider Adopting a Resolution Authorizing the Submission of a Building Resilient Infrastructure and Communities (BRIC) Grant Application.

Date of Meeting: 12/13/2	2022	Ward # if applicable: Wards 2 & 5	
Department: Developmen	nt Services	Person Submitting Item: Matt Schelly, Interim Director of Development Services	
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:	
Explanation of Item:	a Building Resi	ting a Resolution Authorizing the Submission of lient Infrastructure and Communities (BRIC) on for Restoration of the Duffyfield Canal g and Scoping.	
Actions Needed by Board:	Adopt Resolution		
Backup Attached:	Memo, Resolut	ion, BRIC supporting documents	
Is item time sensitive?	□Yes □No		
Will there be advocate	s/opponents at t	the meeting? Yes No	
		been budgeted and are funds available	
and certified by the Fin	nance Director?	Yes □ No	

Additional Notes:



MEMORANDUM

TO: Mayor Jeffrey Odham, City of New Bern Board of Aldermen

FROM: Matt Schelly, Interim Director Development Services

DATE: December 1, 2022

SUBJECT: Consider Adopting a Resolution Authorizing the Submission of a Building

Resilient Infrastructure and Communities (BRIC) Grant Application.

The Building Resilient Infrastructure and Communities (BRIC) program, administered by FEMA, makes federal funds available to states, local communities, tribes and territories for hazard mitigation activities. The BRIC program recognizes the growing hazards associated with climate change, and the need for natural hazard risk mitigation activities that promote climate adaptation and resilience with respect to those hazards. In North Carolina, the BRIC Program is administered through a partnership with the North Carolina Division of Emergency Management (NCEM). NCEM has the authority and responsibility for developing and maintaining a State Standard Hazard Mitigation Plan, reviewing the Building Resilient Infrastructure and Communities Program subapplications, recommending technically feasible and cost-effective sub-applications to FEMA and providing pass-thru funding for FEMA-approved and awarded project grants to eligible sub-applicants.

The City of New Bern is requesting \$200,000.00 which will be matched by the NC Attorney General's Environmental Enhancement Grant in the amount of \$150,000.00. These funds will be used for the Restoration of the Duffyfield Canal Project Planning and Scoping. The final application will be submitted to North Caroling Department of Emergency Management on January 6, 2023.

Please contact Matt Schelly at 639-7583 should you have questions or need additional information.

RESOLUTION

WHEREAS, the City has been made aware of a grant, the Building Resilient Infrastructure and Communities ("BRIC") program, administered by the Federal Emergency Management Agency ("FEMA") which makes federal funds available to states, U.S territories, federally recognized tribal governments, and local communities for hazard mitigation activities; and

WHEREAS, the City submitted a Letter of Interest to the North Carolina Division of Emergency Management ("NCEM"), and NCEM has determined that the project has potential as a 2022 BRIC project sub-application; and

WHEREAS, the City has been invited to fully develop a project sub-application for this project for official submission to BRIC; and

WHEREAS, a cost share is required for all sub-applications funded for the BRIC program; the grant request is \$200,000.00; and

WHEREAS, the non-federal cost share may consist of cash, donated or thirdparty in-kind services, materials, or any combination thereof; and

NOW, THEREFORE, be it resolved that the Board of Alderman of City of New Bern hereby:

- Authorize staff to execute a full grant sub-application to the BRIC program administered by FEMA in the amount of \$200,000.00 to support the Duffyfield Canal Restoration Project Planning and Scoping; and
- The City of New Bern will match this with \$150,000.00 from the NC Attorney General's Environmental Enhancement Grant.

ADOPTED THIS 13TH DAY OF DECEMBER 2022.

BRENDA E. BLANCO, CITY CLERK

JEFFREY T. ODHAM, MAYOR

Qualitative Criterion Number 3: Implementation Measures

Restoration of Duffyfield Canal Project Scoping and Planning

The Project will produce design and engineering incorporating nature-based solutions to bring the restoration of a major drainage system for the City of New Bern to shovel ready status.



The Greater Duffyfield Community.

Inspire Confidence	The framework and processes created as part of this effort are expected to remain in place and continue to support resilience in the City of New Bern over time. The investment efforts over the last 15 years are beginning to show positive results but a comprehensive, achievable vision is needed to further advance progress.
Challenges	[Excerpt from narrative] The acquisition of easements and properties can be time consuming and quickly become the critical pathway to implement future improvement properties.
Costs/ Schedule	[Excerpt from narrative] Task 1: Community Engagement, \$35,000 Task 2: Data Collection, \$120,000 Task 3: Hydrologic & Hydraulic Analysis, \$110,000 Task 4: Preliminary Engineering, \$50,000 Task 5: Summary of Findings, \$15,000 Task 6: Grant Administration Services, \$20,000 Total: \$350,000 Task 1: Community Engagement, 5/23/2023, 10 months Task 2: Data Collection, 5/23/2023, 3 months Task 3: Hydrologic & Hydraulic Analysis, 6/1/2023, 5 months Task 4: Preliminary Engineering, 11/7/2023, 5 months Task 5: Summary of Findings, 3/26/2024, 2 months Task 6: Grant Administration Services, 5/5/2023, 12 months Assuming a Notice to Proceed is issued to the selected consultant in mid-May 2023, it is anticipated that this project scope will be completed by the end of May 2024.
Monitoring Strategies	During the project, the project management team will meet routinely. This will ensure the entire project team is well informed about progress. In addition, a detailed workplan will be developed which specifies project milestones and benchmarks. The level of community engagement will also be monitored and evaluated.
Resources	 2020 Pamlico Regional HMG Plan (FEMA approved) 2022 New Bern Resiliency Plan ((attached) Public surveys, stakeholder meetings, intergovernmental collaborative workshops, DHHS CEDS plan and other related resiliency products intended to drive resiliency with diversity and inclusivity.

Restoration of Duffyfield Canal Project Scoping and Planning

oring and Flam	
Examples	Including: NC Attorney General's Office, NCDEQ Division of
	Coastal Management through NOAA, NC Community
	Foundation, NC Emergency Management/Recovery, Duke
	Energy Foundation, Wells Fargo Foundation, and the
	North Carolina Office of Recovery and Resiliency.

North Carolina Department of Public Safety
On Behalf of Columbus County
Wastewater Treatment Facility Resiliency Project



Implementation Measures

The Duffyfield Canal Scoping Project will include data acquisition, community engagement, hydrologic and hydraulic analysis, concept design, and a summary of findings/preliminary engineering. The City will procure a consulting firm to complete the above tasks. See the table below for an estimated project budget and attached for a more detailed budget:

Table 1. Project Budget

Tuble 2.1.10jest 2.1.10jest		
Task	Cost	
Task 1: Community Engagement	\$35,000	
Task 2: Data Collection	\$120,000	
Task 3: Hydrologic & Hydraulic Analysis	\$110,000	
Task 4: Preliminary Engineering	\$50,000	
Task 5: Summary of Findings	\$15,000	
Task 6: Grant Administration Services	\$20,000	
Total	\$350,000	

In addition, the City expects to complete this work within 12 months. A detailed schedule is attached. The following is a summary of the anticipated project schedule by task:

Task	Start Date	Task Duration
Task 1: Community Engagement	8/23/2023	10 months
Task 2: Data Collection	8/23/2023	3 months
Task 3: Hydrologic & Hydraulic Analysis	9/1/2023	5 months
Task 4: Preliminary Engineering	2/7/2023	5 months
Task 5: Summary of Findings	6/26/2024	2 months
Task 6: Grant Administration Services	8/23/2023	12 months

Assuming a Notice to Proceed is issued to the selected consultant in mid-August 2023, it is anticipated that this project scope will be completed by the end of August 2024.

City of New Bern Project Team

The City of New Bern has an experienced project management team that will be tasked with successful project implementation. This project management team is comprised of a variety of individuals with individualized skill sets who will work in partnership to ensure this project stays within budget and on schedule. This project management team will work closely with the selected engineers and consultants assisting with the project. The consultants will be procured carefully with priority given to those who can demonstrate a successful history of producing similar program

BRIC Application 2022 City of New Bern Restoration of Duffyfield Canal Project Scoping and Planning deliverables within a specified timeline and budget.

Project team members include:

- Matthew Schelly, Interim Development & Economic Services Director
- Margaret Shields, Grant Administration Consultant
- Alice Wilson, AICP, GISP, GIS Manager, Development Services

[Continued]

Potential Implementation Challenges

Potential Implementation Challenge: Property & Easement Acquisition

The mid-section of the Duffyfield Canal in which the City anticipates Phase 1 improvements will be implemented transects over 30 private properties. At a minimum, the City will need to acquire temporary construction easements from these property owners before implementing the chosen improvement projects. In addition to temporary easements, the City also wishes to acquire permanent Drainage Easements from the surrounding property owners such that the City would have access to the canal plus ten feet on either side for future maintenance and inspection activities. In addition, the anticipated improvements associated with Phase 2 improvements will likely require the City to acquire properties in the immediate vicinity of the canal.

The acquisition of easements and properties can be time consuming and quickly become the critical pathway to implement future improvement properties. As part of this scoping project, the City will work with the selected consultant to identify the easements and properties required to implement future improvements so the City can proactively determine the feasibility of acquisition and identify the funding and time requirements needed to fulfill these acquisitions.

Potential Implementation Challenge: Environmental Permitting

The Duffyfield Canal and several of its contributing tributaries are identified as blue line streams on the local USGS Quad map and thus are assumed to be "waters of the United States" and jurisdictional to the Army Corps of Engineers. In addition, it is anticipated that the low-lying lands in the vicinity of the canal, including the large area to the west of Henderson Park are jurisdictional wetlands. Proposed impacts to any jurisdictional streams or wetlands will require permit approval from the Army Corps of Engineers. Depending on the permit type, acquiring these permits can take anywhere from 2 to 18 months and can quickly become a critical pathway to implementing future improvements.

In order to proactively determine the permitting requirements for future Phase 1 and Phase 2 improvements, the City will enlist the services of a consultant that can delineate and identify jurisdictional features during the completion of Task 2 – Data Collection. This will allow for permit planning during the development of concept plans for future improvements and allows the City to identify funding (for potential mitigation payments) and time requirements needed to permit future improvements.

Potential Implementation Challenge: Community Engagement

COVID-19 continues to impact community participation and engagement activities. To combat this, the City will consider virtual and in-person outreach activities and provide multiple options for residents to provide input on the project. Fortunately, the City has been adaptive to addressing these challenges and has successfully developed and implemented projects utilizing similar techniques during this pandemic.

Monitoring and Evaluation Strategies

During the project, the project management team will meet routinely. This will ensure the entire project team is well informed about progress. In addition, a detailed workplan will be developed which specifies project milestones and benchmarks. The level of community engagement will also be monitored and evaluated.

AGENDA ITEM COVER SHEET



Agenda Item Title:

Consider Adopting a Resolution Calling for a Public Hearing to Rezone 910 and 914 Bloomfield Street.

Date of Meeting: 12/13/2	2022	Ward # if applicable: Ward 5
Department: Developme	nt Services	Person Submitting Item: Matt Schelly, Interim Director of Development Services
Call for Public Hearing	g: ⊠Yes□No	Date of Public Hearing: 1/10/2023
Explanation of Item:		ment Commission has requested consideration to cels, totaling 0.252 +/- acres, from R-6 to C-4.
Actions Needed by Board:	Adopt a Resolu	tion
Backup Attached:	Memo, Resolu	tion, Map
Is item time sensitive?		
Will there be advocate	s/opponents at t	the meeting? Yes No
Cost of Agenda Item: N	N/A	
9	enditure, has it	been budgeted and are funds available ☐Yes ☑ No

Additional Notes:



MEMORANDUM

TO: Mayor Jeffrey Odham, City of New Bern Board of Aldermen

FROM: Matt Schelly, Interim Director Development Services

DATE: December 6, 2022

SUBJECT: Consider Adopting a Resolution Calling for a Public Hearing to Rezone

910 and 914 Bloomfield Street.

The Redevelopment Commission of New Bern has requested consideration to rezone two parcels, totaling 0.252 +/- acres, from R-6 Residential C-4 Neighborhood Business. The parcels located at 910 and 914 Bloomfield are further identified as Craven County Parcel ID #'s 8-006-319 and 8-006-320. (Ward 5) The purpose of the proposed rezoning request is for the development of a Wellness Center for Duffyfield residents.

The Planning and Zoning Board unanimously approved this application at their November 1, 2022, meeting and recommend approval of the request.

Please contact Matt Schelly at 639-7583 should you have questions or need additional information.

RESOLUTION

THAT WHEREAS, the Board of Aldermen of the City of New Bern desires to call for a public hearing to receive public comments on a request to rezone 0.25 +/- acres located at 910 and 914 Bloomfield Street from R-6 Residential District to C-4 Neighborhood Business District. The property is further identified as Craven County Parcel Identification Numbers 8-012-119 and 8-006-320.

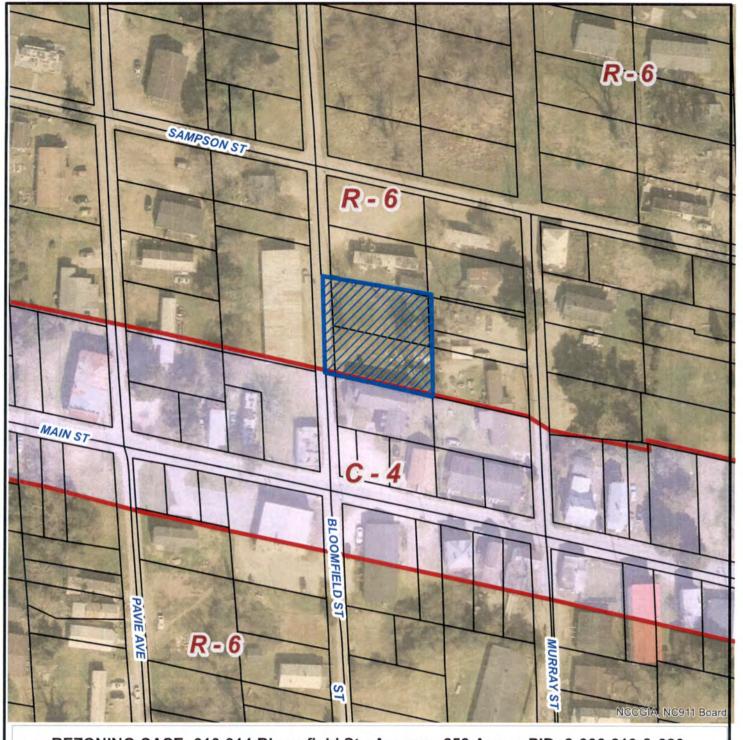
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That a public hearing will be conducted by the Board of Aldermen of the City of New Bern at 6:00 p.m. on Tuesday, January 10, 2023 in the City Hall Courtroom, or as soon thereafter as the matter may be reached, in order that all interested parties may be given an opportunity to be heard on a request to rezone 0.25 +/- acres located at 910 and 914 Bloomfield Street from R-6 Residential District to C-4 Neighborhood Business District. The property is further identified as Craven County Parcel Identification Numbers 8-012-119 and 8-006-320.

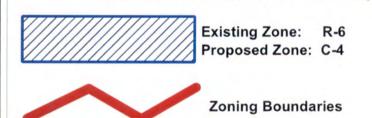
ADOPTED THIS 13th DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK



REZONING CASE: 910-914 Bloomfield St - Approx. .252 Acres: PID: 8-006-319 & 320 LOCATION: East side of Bloomfield St, between Main and Sampson Streets.



Imagery Early 2020

N CITY of NEW BERN Development Services

Scale: 1 = 100 ft 0 50 100

Feet

200

AGENDA ITEM COVER SHEET



Agenda Item Title: Presentation of City Employees of the Year

Date of Meeting: 12/13/	2022	Ward # if applicable:
Department: Administrat	tion	Person Submitting Item: Foster Hughes, City Manager
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:
Explanation of Item:		ger will present Employee of the Year Awards ty, Public Service, and Public Utilities/ Works.
Actions Needed by Board:		
Backup Attached:	Memo	
Is item time sensitive?	⊠Yes □No	
Will there be advocates	s/opponents at t	he meeting? □Yes ☒ No
Cost of Agenda Item:		
If this requires an expe and certified by the Fir		been budgeted and are funds available ☐Yes ☐ No

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

To: Mayor and Board of Aldermen

From: Foster Hughes, City Manager

Date: December 7, 2022

Subject: Presentation of Employees of the Year Award

Background Information:

We have created a new Employee of the Year program. Annually, awards will be given in three categories:

- Public Safety Fire-Rescue and Police.
- <u>Public Service</u> Administration, Development Services, Finance, Human Resources, IT, and Parks & Recreation.
- Public Utilities/Works Electric Utility, Public Works, and Water Resources.

Department Heads are responsible for nominating employees for this award. A committee appointed by the City Manager determines who the winner in each category will be.

The winners will be announced at the City Employee luncheon in December. A plaque and check for \$300 to the winners will be presented during the December Board meeting.

AGENDA ITEM COVER SHEET



Agenda Item Title: Presentation of Citizen's Police Academy

Date of Meeting: 12/13/2022 Department: Police Call for Public Hearing: □Yes⊠No		Ward # if applicable: N/A Person Submitting Item: Patrick Gallagher, Chief of Police Date of Public Hearing:			
			Explanation of Item:	Presentation of 15 CPA graduate certificates and remarks from class President-Linda Grzeika	
			Actions Needed by Board:	N/A	
Backup Attached:	N/A				
Is item time sensitive?		he meeting? □Yes ☒ No			
The there be day ocure.	, opponents at t	ine meeting. — Tes — Tito			
Cost of Agenda Item: \$		acon budgeted and are funds evallable			
and certified by the Fin		been budgeted and are funds available ☐Yes ☒ No			

Additional Notes:

AGENDA ITEM COVER SHEET



Agenda Item Title: Presentation by Craven County Alcoholic Beverage Control Board

Date of Meeting: 12/13/2022 Department: City Clerk Call for Public Hearing: □Yes⊠No		Ward # if applicable: N/A Person Submitting Item: Brenda Blanco Date of Public Hearing: N/A			
			Explanation of Item:	A representative from the Craven County ABC Board will present a check to the City for its portion of ABC sales and provide an annual briefing regarding the ABC Board.	
			Actions Needed by Board:	None	
Backup Attached:	PowerPoint presentation				
	DV. DN.				
Is item time sensitive?					
will there be advocates	s/opponents at t	he meeting? Yes No			
Cost of Agenda Item:					
If this requires an expe		been budgeted and are funds available			

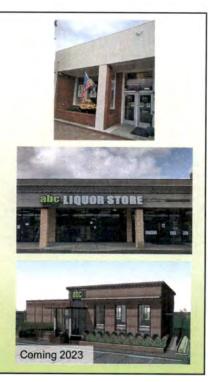
Additional Notes:





NEW BERN BOARD OF ALDERMAN

ANNUAL BRIEFING
DECEMBER 13, 2022



1



CRAVEN COUNTY
established 1935



MISSION STATEMENT

The mission of the Craven County
ABC Board and its employees shall be
to serve all Craven County and our
localities responsibly by controlling
the sale of spirituous liquor and
promoting customer-friendly, safe,
modern, and efficient stores.





Craven County



2



CCABC Board Membership

Dennis "Denny Bucher: Member Ken Morris III: Member Kathleen Cook: Secretary Carol Crayton: Vice Chairperson Wilfred "Chip" Chagnon: Chairman





CCABC Management Team

Paul Brown: General Manager Meloni Wray: Finance Officer

ALE Special Agent: Brent Massey
CCABC Enforcement

and The 30+ Men & Women Professional Who Serve Our Citizens with Care and Concern



3



CRAVEN COUNTY ABC BOARD FY 2021-22 OBJECTIVE RESULTS

- New Liquor By The Drink (LBD) Store #4 opened within present CCABC Board warehouse
 - First ABC Board in NCABC System to offer both free delivery and store services exclusive to LBD customers, Launched March 2022
- New Bridgeton Store and LBD Store/Warehouse/Offices Campus Groundbreaking on July 25, 2022
 - Campus Designed and Construction Program Management:
 MBF Architects, PA, New Bern
 - \$5.316M Contract Award to Farrar & Sons Construction From Farmville, NC
 - Estimated Campus Completion August 2023
 - · First Year Sales Estimated at \$3.5-4M
- Grand Re-Opening of Store #1 Downtown New Bern on March 17,2022
 - · Complete Remodel and Front Store Enlargement-40% Larger Sales Floor
 - · Décor in Keeping With Historic District Theme
 - Total Investment Since 2019 Hurricane Florence Flooding Over \$350,000





CRAVEN COUNTY ABC BOARD FY 2021-22 OBJECTIVE RESULTS







- Modernization & Expansion of Downtown Completed:
 - · Downtown Store: Expansion by 30%, also Interior Upgrades: Flooring, Lighting, A/C Units, Team Galley Area, Product Signage Video
- Continued COVID-19 Board Protocols for Citizen and Personnel Safety in Effect
 - · Only One Store Closed for Two Days Cleaning/Sanitizing Due to Staff COVID-19 Exposure
 - Followed Paid Quarantine Period for Affected Employees
- Since December 2021 Stores Have Felt Negative Effects from Liquor Industry Shortages and Distribution, Vastly Improved Since Spring '22
 - · High Product Demand of All Imports in Limited Supply
 - · Board has Purchased Product Directly from Distributers and N.C. Distillers

5

CRAVEN COUNTY ABC BOARD FY 2022-2023 GOALS & OBJECTIVES

MEET OR EXCEED OUR MISSION STATEMENT BY:

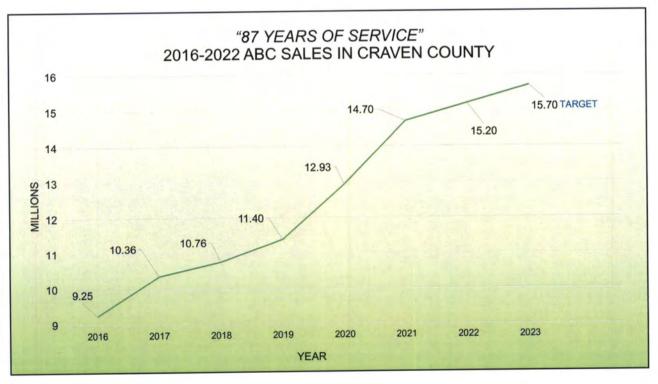
- · Exceed Growth estimates by 3%, Sales Revenue to 15.7 Million
- · Become More Effective In Operations:
 - · Streamline Store and HQ Operations with Improved Warehouse and Delivery Operations
- New Store Location Progress:
 - Assure the New Bridgeton Campus is Completed as Contracted
- Improving Our "Promoting Customer Friendly Store" Policy:
 - Store Product Layouts & Upscale "Boutique Sales" Area Improvements
 - Placed "Take-Away Product" Coolers in All Store.
- Employee Development/Retention:
 - Across the Board 3% Raise New Minimum Wage Now \$13.52 an Hour
 - Increased Employee Professional Development Opportunities:
 - Offer Tuition Assistance for Employees Desiring Continuing Education in Retail Marketing & Business Majors at Craven Community College (CCC).
 - Instituted CCC On-Line "Leadership Development" Classes for Managers
 - · Developed Assistant Manager Intern Program. Graduated Two Assistant Managers In March

CRAVEN COUNTY ABC BOARD FY 2022-2023 GOALS & OBJECTIVES

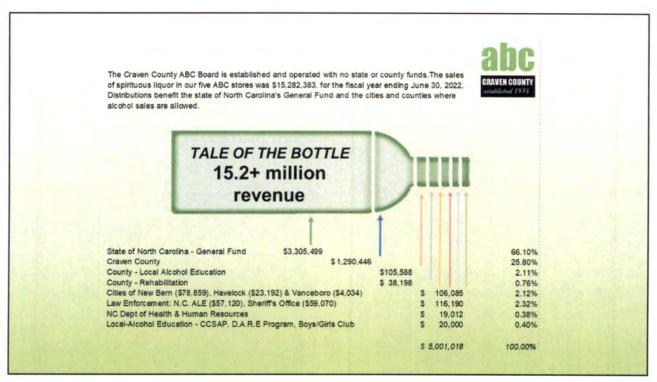
MEET OR EXCEED OUR MISSION STATEMENT BY:

- Improving Our "Controls First-Safe Store" Policy:
 - Stores are Safer with Increased Alcohol Law Enforcement Agent (ALE),
 County & Local Law Enforcement "Community Policing" Presence; and Increased Enforcement
 Outreach & Education of Liquor By The Drink Establishments.
- Video Capture Program (FLOCK) In Havelock & Vanceboro Stores
 - Installed in Parking lots to assist CC Sheriff's Office, ALE, and other Law Enforcement in 'Real-Time' Surveillance and Reporting
- Support of Underage Drinking & Opiate Crises Programs:
 - Provide 7% Of Gross Revenue: To Craven County For Substance Abuse Prevention, Sponsor ALE Drug And Alcohol Education Programs
 - Craven County Board Of Education/Sheriff Dept. D.A.R.E. Program Sponsorship through Partners In Education (PIE)
 - Sponsorship of Boys & Girls Club Anti-Drug/Drinking and Health Life Program

7



8



9



THANK YOU!



BRIEFING CONCLUDED

Any Questions For Your Craven County ABC Board?

Craven County



CHEERS!



NEW BERN BOARD OF ALDERMAN, MAYOR, CITY MANAGER AND STAFF

THANK YOU FOR YOUR SUPPORT!

TOTAL \$78,859
FOR YOUR CITIZENS FROM YOUR
CRAVEN COUNTY ABC BOARD

BRIEFING CONCLUDED -- PENDING YOUR QUESTIONS?

11

AGENDA ITEM COVER SHEET



Agenda Item Title:
Presentation of the Annual Comprehensive Financial Report and Audit for the Fiscal Year Ending June 30, 2022

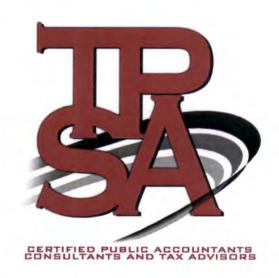
Date of Meeting: 12/13	3/2022	Ward # if applicable: Person Submitting Item: Kim Ostrom, Director of Finance Date of Public Hearing:			
Department: Finance					
Call for Public Hearing	g: □Yes⊠No				
Explanation of Item:	Company, P./	ive from Thompson, Price, Scott, Adams and A. will discuss the ACFR and the Audit e fiscal year ending June 30, 2022.			
Actions Needed by Board:	None-Informational Purpose Only				
Backup Attached:		version of the Annual Comprehensive ort and the presentation from the Auditor.			
Is item time sensitive?	□Yes ⊠No				
		the meeting? Yes No			
Cost of Agenda Item:	anditure has it	been budgeted and are funds available			
and certified by the Fir		그는 프로그램이 가면프레 아웃은 기업이 없어 하는 이 이 이 점점 기업을 하는 때 가다는 모으므로			

Additional Notes:



Presentation of Audit Results

Fiscal Year Ended June 30, 2022



Alan W. Thompson, CPA 1626 S Madison Street PO Box 398 Whiteville, NC 28472 910.642.2109 phone 910.642.5958 fax www.tpsacpas.com

CITY OF NEW BERN

Presentation Agenda

	PAGE(s
I. GENERAL COMMENTS	
II. REQUIRED COMMUNICATIONS	
SAS 114	1-3
III. AUDIT RESULTS	4-11
IV. QUESTIONS AND COMMENTS	
V CLOSE	



Thompson, Price, Scott, Adams & Co, P.A.

P.O. Box 398 1626 S Madison Street Whiteville, NC 28472 Telephone (910) 642-2109 Fax (910) 642-5958

Alan W. Thompson, CPA R. Bryon Scott, CPA Gregory S. Adams, CPA

November 7, 2022

To the City of New Bern New Bern, North Carolina

We have audited the financial statements of the governmental activities, business-type activities, each major fund, and the aggregate remaining fund information of the City of New Bern for the year ended June 30, 2022. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, *Government Auditing Standards*, and Uniform Guidance (if applicable), as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated April 20, 2022. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by City of New Bern are described in Note 1 to the financial statements. No new accounting policies were adopted, and the application of existing policies was not changed during the year. We noted no transactions entered into by the City of New Bern for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. There were no significant estimate(s) or assumptions noted during the audit.

Certain financial statement disclosures are particularly sensitive because of their significance to the financial statement users. There are no such disclosures identified.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. Some of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

Disagreements with Management

For purposes of this letter, a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated November 7, 2022.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Auditing Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the City of New Bern's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

 Efforts need to be made to ensure revenues are collected for projects with negative fund balances, otherwise transfers need to be budgeted and recorded to clear them up.

The Local Government Commission (LGC) will no longer initiate communications about concerns or findings (formerly considered unit letters). They have created a spreadsheet that has to be completed and submitted with the audit report. If that worksheet identifies what they consider a "Financial Performance Indicators of Concern" (FPICs), we are required to communicate those items to the Board. The City is required to submit a response within 60 days of the Board meeting in which the financial statements are presented. The detailed audit response should be presented to the entire Board, and signed by the entire Board, Finance Officer, and Manager. There were 2 FPICs noted that will require a response: 1 for budget violations in the Public Education Television Department, and 1 due to the deficit

fund balances discussed in the Stewardship note and finding (all funds with deficit fund balances must be addressed in your response to the LGC even if it is a multi-year fund that was not included in the finding).

Other Matters

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

Please ensure that management and the Board is aware of the new GASB pronouncements for the upcoming fiscal year. Be especially mindful of GASB No.87: Leases, as the implementation of this standard will take a significant amount of time and resources to gather the necessary information. If the proper resources are not allotted for the implementation of this standard, this could potentially cause a significant delay in the completion of the upcoming audit.

This information is intended solely for the use of the City Commissioners and management of the City of New Bern and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Thompson, Dice, Scott adams & Co., P.A.

Thompson, Price, Scott, Adams & Co, P.A.

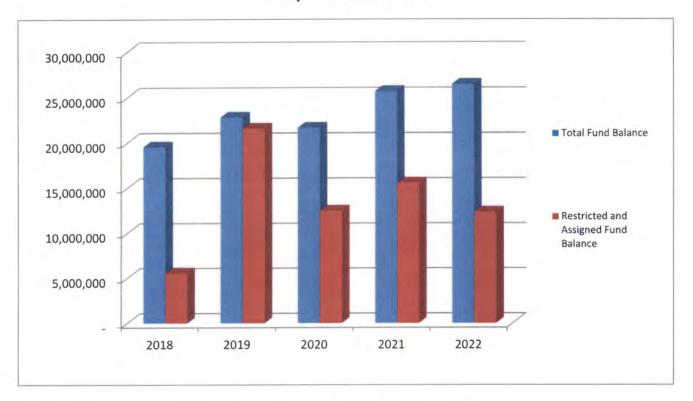
CITY OF NEW BERN

FINANCIAL INFORMATION FOR 5 YEARS

	2022	2021	2020	2019	2018
Total Fund Balance - General Fund	26,473,854	25,687,191	21,681,255	22,829,395	19,571,904
Unavailable Fund Balance (Reserve for State Statute, Prepaid,					
and Inventories)	12,044,406	14,611,301	13,086,936	19,111,754	5,335,023
Restricted and Assigned Fund Balance	12,334,643	15,569,453	12,488,839	21,590,110	5,574,926
General Fund Expenditures (including transfers out, less loan		77.7	69.0	100.00	
proceeds)	36,189,750	32,377,414	34,610,992	28,049,823	36,043,235
Fund Balance Available as % of General Fund Expenditures	39.87%	34.21%	24.83%	13.25%	39.509
Unassigned Fund Balance (Previously Unreserved and	70	2000		1,742,744	
Undesignated Fund Balance)	13,499,590	9,823,280	7,331,940	1,539,023	13,864,240
	*****	20.040	24 4004	F 4004	20.470
Unassigned Fund Balance as % of General Fund Expenditures	37.30%	30.34%	21.18%	5.49%	38.479
Unassigned Fund Balance as % of General Fund Expenditures	55.400/	45.000/	25 020/	45 7706	20.470
excluding FEMA Florence Fund Balance	52.10%	46.88%	35.92%	46.77%	38.479
Revenues over (under) expenditures before contributions and					
transfers	200 604	12 614 2021	/2 777 916)	(57.750)	(2.225.250
General Fund	208,684	(2,614,293)	(2,777,816)	(57,759)	(3,235,259
Electric Fund Water Fund	2,309,742	4,838,346 2,402,285	2,606,493 2,135,080	3,000,966 2,220,635	7,622,536 1,910,085
	2,683,963			1,077,029	1,351,541
Sewer Fund	1,582,924	1,504,981	1,293,257	1,077,029	1,331,341
Cash vs. Accumulated Depreciation - Electric Fund					
Total Fixed Assets	89,228,458	87,073,241	84,766,232	82,610,860	80,134,478
Accumulated Depreciation	52,654,026	51,155,127	48,952,094	46,508,429	44,239,876
Cash	18,579,622	20,107,225	19.246.256	21,404,728	22,002,070
Casii	10,373,022	20,107,223	13,240,230	21,404,720	22,002,070
Cash vs. Accumulated Depreciation - Water Fund					
Total Fixed Assets	70,592,164	70,260,679	70,029,309	69,005,222	67,926,267
Accumulated Depreciation	24,888,999	23,216,681	21,691,246	20,035,709	18,538,965
Cash	14,403,629	12,816,320	11,360,690	10,723,980	10,199,145
	21,100,000	20,020,000	22,200,000	20,, 20,200	20,200,210
Cash vs. Accumulated Depreciation - Sewer Fund					
Total Fixed Assets	104,737,659	103,419,252	102,137,678	100,505,060	97,644,647
Accumulated Depreciation	41,852,225	39,744,913	37,596,634	35,294,940	33,401,544
Cash	7,125,769	7,360,167	6,996,879	6,515,829	6,953,471
Cash vs. Fund Balance					
Cash - General	18,820,751	14,982,151	10,751,962	6,876,690	17,315,194
Cash - Electric Fund	18,579,622	20,107,225	19,246,256	21,404,728	22,002,070
Cash - Water Fund	14,403,629	12,816,320	11,360,690	10,723,980	10,199,145
Cash - Sewer Fund	7,125,769	7,360,167	6,996,879	6,515,829	6,953,471
Cash - FEMA Hurricane Florence	. 704 074	2 252 476		-	
Cash - American Recovery Plan Fund	6,704,351	3,352,176			
Cash - Other Governmental	2,110,875	1,937,701	1,823,556	3,049,259	4,192,732
5 101	26 472 054	25 607 101	21.681.255	22 020 205	10 571 004
Fund Balance - General	26,473,854	25,687,191		22,829,395	19,571,904
Net Position - Electric Fund	54,418,019	52,709,725	50,208,485	50,597,196	49,564,830
Net Position - Water Fund Net Position - Sewer Fund	45,559,941 68,548,845	42,895,978 66,985,921	40,493,693 65,480,940	38,099,223	35,456,141 60,541,989
Fund Balance - FEMA Hurricane Florence	(1,403,398)	(5,749,480)	(3,796,739)	63,444,023	00,541,969
Fund Balance - American Recovery Plan Fund	(1,403,336)	(3,743,460)	(3,730,733)	(12,200,606)	
Fund Balance - Other Governmental Funds	1,525,601	(1,144,231)	510,692	1.040,575	3,662,596
Tana salance street acternmental range	2,525,002	(1)11112011	310,032	1,010,075	3,002,550
Property Tax Rates	0.48	0.48	0.48	0.46	0.46
Callesting Passantane	00.450	00.430	00.075	20.2421	00.555
Collection Percentages	99.15%	99.44%	99.07%	99.34%	99.399
Collection Percentages (excluding Motor Vehicle)	99.06%	99.38%	98.99%	99.28%	99.339
Total Property Valuation	3,120,739,021	3,016,195,048	2,934,241,459	2,895,026,457	2,847,142,818
Total Levy Amount	16 604 679	16 122 047	15 467 427	14 592 070	14 275 220
Total Levy Amount	16,604,678	16,123,847	15,467,427	14,582,070	14,275,238
Debt (excluding OPEB, compensated absences, LGERS)					
Governmental Activities	9,416,263	10,860,233	8,494,257	10,249,000	8,627,381
	21,355,931	27,700,591	34,091,306	40,874,790	46,515,202

CITY OF NEW BERN FINANCIAL INFORMATION FOR 5 YEARS 2022 2021 2020 2019 2018 Breakdown of General Fund Revenues Ad Valorem Taxes 16,915,838 16,528,384 15,752,998 14,928,512 14,600,912 Other Taxes, License & Permits 1,050,580 675,417 558,380 661,904 Intergovernment Revenue 15,346,110 13,994,570 12,617,576 12,443,181 11,810,293 Sales and Services 609,746 705,361 949,770 670,742 377,582 Investment Earnings 35,965 5,247 184,772 593,409 472,720 413,715 Miscellaneous 279,669 861,066 448,758 313,421 Total 33,187,328 33,145,208 30,629,291 29,607,939 28,236,832 Breakdown of General Fund Expenditures General Government 1,671,329 1,112,906 1,546,075 1,010,449 2,224,047 **Public Safety** 18,526,749 18,852,582 21,037,914 17,158,185 16,460,158 Public Works 5,655,149 6,345,192 5,727,305 4,811,427 9,464,211 **Environmental Protection** Cultural & Recreational 3,489,272 3,562,330 3,592,917 3,014,102 2,997,455 Economic & Physical Development 2,068,426 1,687,409 1,765,000 1,527,204 1,565,906 Debt Service 2,248,446 2,013,749 2,249,061 2,144,331 2,153,314 Total 33,985,204 35,759,500 33,407,107 29,665,698 34,865,091

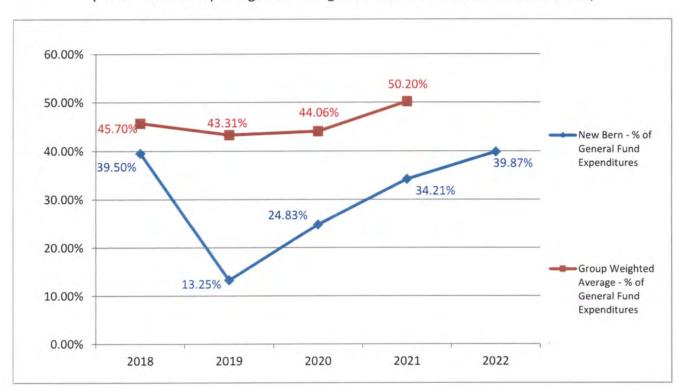
Analysis of Fund Balance



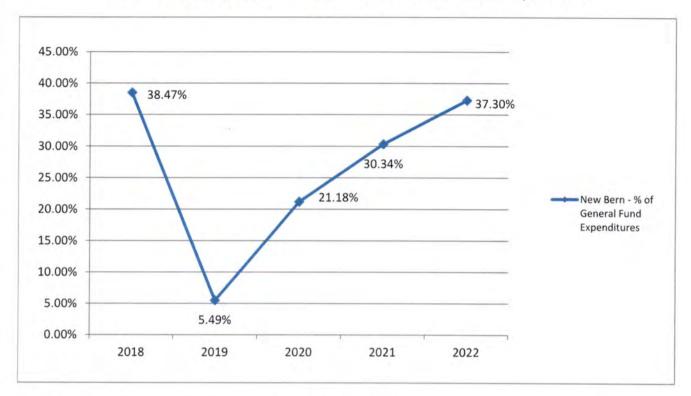
City of New Bern

Analysis of Fund Balance Available

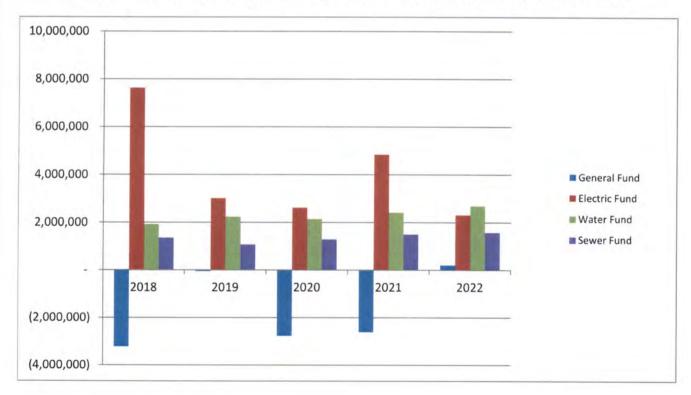
(Note - 2022 Group Weighted Average Not Available at Date of Presentation)



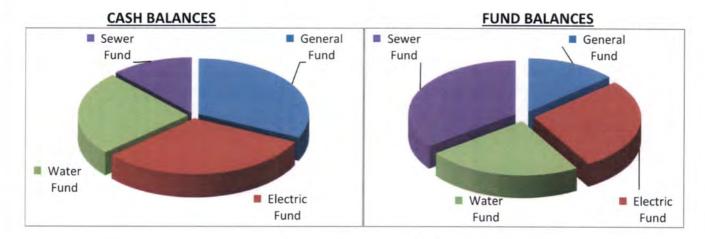
City of New Bern
Analysis of Unassigned Fund Balance as a % of General Fund Expenditures



City of New Bern
Analysis of Revenues Over (Under) Expenditures before Transfers and Contributions



Analysis of Cash and Fund Balances at June 30, 2022



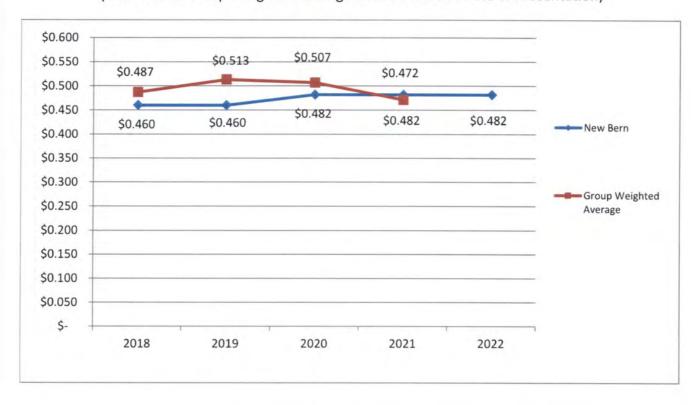
General Fund	
Electric Fund	
Water and Sewer Fund	
Total	

	20)22		
Cas	h Balances	Fund Balances		
\$	18,820,751	\$ 26,473,854		
	18,579,622	54,418,019		
	21,529,398	114,108,786		
\$	58,929,771	\$ 195,000,659		

City of New Bern

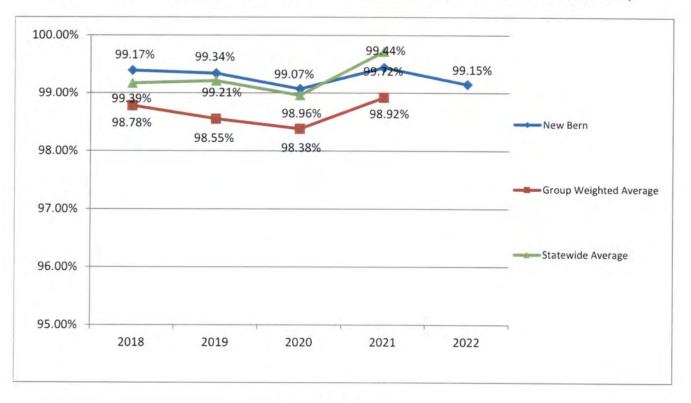
Property Tax Rates

(Note - 2022 Group Weighted Average Not Available at Date of Presentation)



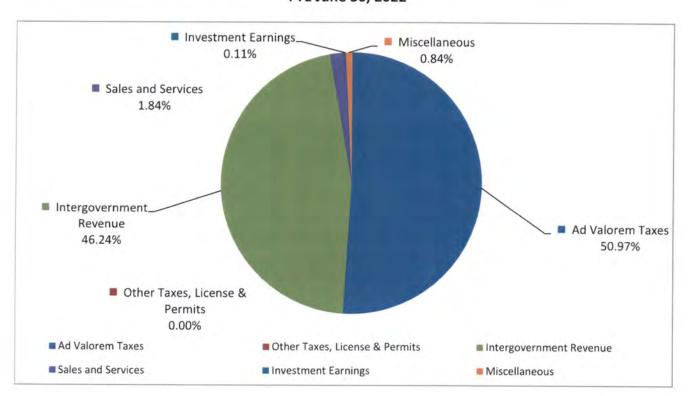
Collection Percentages

(Note - 2022 Group/Statewide Weighted Average Not Available at Date of Presentation)

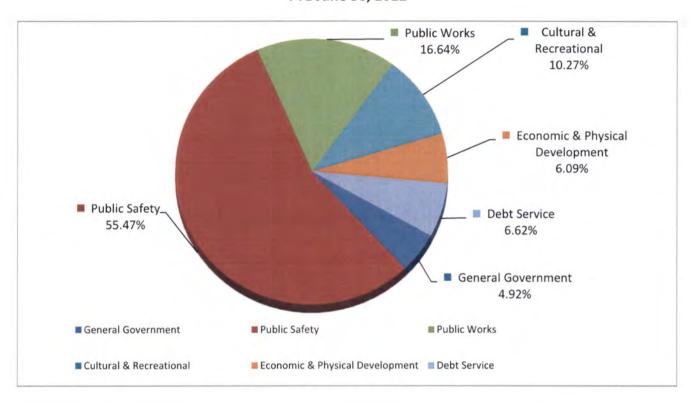


City of New Bern

Break Down of General Fund Revenue FYE June 30, 2022



Break Down of General Fund Expenditures FYE June 30, 2022



ADDITIONAL RREQUIRED COMMUNICATIONS

Changes to Audit Process

The Local Government Commission (LGC) will no longer initiate communications about concerns or findings (formerly considered unit letters). They have created a spreadsheet that has to be completed and submitted with the audit report. If that worksheet identifies what they consider a "Financial Performance Indicators of Concern" (FPICs), we are required to communicate those items to the Board.

You are required to submit a response within 60 days of the Board meeting in which the financial statements are presented. The detailed audit response should be presented to the entire Board, and signed by the entire Board, Finance Officer, and Manager.

The items identified as FPICs are related to the budget violations (you will only need to respond to the violation in the Public Education Television Department) and deficit fund balances in multi-year and annually budget project funds.

GENERAL PERFORMANCE INDICATORS	2022	Target		
Did your audit disclose as a finding any budget violations? (Yes or No)	Yes	No over- expenditures	Yes	The unit has expenditures that exceed the legal budget ordinance. This indicates that the unit's purchase order system, contract approval process and / or payment process is not in compliance with North Carolina General Statute 159.
The Unit had material weaknesses, significant deficiencies, and/or statutory violations that should be addressed in the FPIC Response Letter.	Yes		Yes	This indicator lists whether the unit has any material weaknesses, significant deficiencies, or management letter comments that require a response.

AGENDA ITEM COVER SHEET



Agenda Item Title:

Conduct a Public Hearing Amending the City of New Bern Land Use Ordinance for revisions consistent with Chapter 160D of the North Carolina General Statutes.

Date of Meeting: 12/13/2022		Ward # if applicable: All			
Department: Developme	nt Services	Person Submitting Item: Matt Schelly, Interim Director of Development Services			
Call for Public Hearing	g: □Yes□No	Date of Public Hearing:			
Explanation of Item:	Conduct a Public Hearing Amending the Land Use Ordinan for revisions consistent with Chapter 160D of the NC Gener Statutes.				
Actions Needed by Board:	Adopt Ordinance				
Backup Attached:	Memo, Ordinance				
4					
Is item time sensitive?	□Yes □No				
Will there be advocates	s/opponents at t	he meeting? Yes No			
Cost of Agenda Item:					
		been budgeted and are funds available			
and certified by the Fir	nance Director?	I Yes I No			

Additional Notes:



303 First Street, P.O. Box 1129 New Bern, NC 28563 (252)639-7587

MEMORANDUM

TO: Mayor Jeffrey Odham, City of New Bern Board of Aldermen

FROM: Matt Schelly, Interim Director Development Services

DATE: December 1, 2022

SUBJECT: Conduct a Public Hearing Amending the City of New Bern Land Use

Ordinance for revisions consistent with Chapter 160D of the North

Carolina General Statutes.

The new Chapter 160D consolidates the current statutes for development regulations (now 153A and 160A for counties and cities, respectively), local governments are required to update ordinances to conform with the new chapter.

The Planning and Zoning Board unanimously recommended approval of revisions to the Land Use Ordinance consistent with Chapter 160D of the NC General Statutes during their November 1, 2022, meeting.

Please contact Matt Schelly at 639-7583 should you have questions or need additional information.

AN ORDINANCE TO AMEND APPENDIX A "LAND USE" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN TO CONFORM TO THE MANDATED STATUTORY CHANGES REQUIRED BY CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

THAT WHEREAS, the Planning and Zoning Board meeting date and the Board of Aldermen Notice of Public Hearing was published in accordance with G.S. 160D-601 in the <u>Sun Journal</u>, a local newspaper, once a week for two (2) successive weeks, said notice having been published the first time not less than ten (10) days prior to the date of such hearing; and

WHEREAS, the Planning and Zoning Board of the City of New Bern unanimously recommends that certain amendments be made to Appendix A "Land Use" of the Code of Ordinances of the City of New Bern to conform to the statutory changes mandated by Chapter 160D of the North Carolina General Statutes; and

WHEREAS, the City's development services staff further recommends approval of said proposed amendments; and

WHEREAS, in accordance with the provisions of the North Carolina General Statute 160D-605, the Board of Aldermen does hereby find and determine that the adoption of ordinance is consistent with the adopted land use plan and other city plans, and that the adoption of the ordinance is reasonable and in the public interest due to its consistency with the land use plan and other city plans, and as a result, its furtherance of the goals and objectives of the land use plan; and

WHEREAS, the said public meeting was actually conducted at 6:00 p.m. on December 13, 2022, wherein a reasonable opportunity was given to all those in attendance to speak either in favor or against the said change or to make relevant comments; and

WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect said revisions to Appendix A "Land Use" of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

SECTION 1. That Article I "General Provisions" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Sections 15-2, 15-3, 15-4, 15-5, 15-7, and 15-10 in their entirety and inserting in their stead the following:

"Section 15-2. Authority.

This ordinance is adopted pursuant to the authority granted by G.S. 160D-103.

Section 15-3. Jurisdiction.

- (a) This ordinance is effective throughout the city's planning and development regulation jurisdiction, which consists of the area within the corporate boundaries of the city and the area beyond the city limits within which the extraterritorial jurisdiction of the city has been extended, in accordance with Chapter 160D as both may be amended from time to time.
- (b) In addition to other locations required by law, a copy of a map showing the boundaries of the city's planning jurisdiction shall be available for public inspection in the planning and inspections department and the engineering department.

Section 15-4. Effective dates.

- (a) The original subdivision ordinance of the City of New Bern was adopted by the board of aldermen on February 7, 1956 and became effective immediately thereafter, and has been subsequently amended most recently as November 22, 2022.
- (b) The original zoning ordinance of the City of New Bern was adopted by the board of aldermen on June 2/3, 1953. No effective date was stated. The existing zoning ordinance was adopted on March 5, 1968, effective on March 15, 1968.
- (c) The original flood damage prevention ordinance was adopted by the board of aldermen of the City of New Bern on May 24, 1978. The current flood damage prevention ordinance was adopted on April 28, 1987, and became effective upon adoption.

Section 15-5. Relationship to existing zoning, subdivision and flood control ordinance.

- (a) To the extent that the provisions of this ordinance are the same in substance as the previously adopted provisions that they replace in the city's zoning, subdivision, or flood control ordinances, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this ordinance merely by the reenactment of the zoning ordinance.
- (b) Chapter 160D of the North Carolina General Statutes applies to this Ordinance. In the event of any conflict between this Ordinance and Chapter 160D, the provisions of Chapter 160D shall control.

Section 15-7. No use or subdivision of land or building except in conformity with ordinance provisions.

(a) Subject to article VIII of this ordinance, Nonconforming Situations, no person shall commence or proceed with development as defined in Section 15-15 without first securing approval from the city as herein provided.

(b) For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

Section 15-10. Computation of time.

- (a) Unless otherwise specifically provided, the time within which an action is to be taken shall be computed by excluding the first and including the last day. If the last day is Saturday, Sunday, or a legal holiday, that day shall be the next regular working day.
- (b) Unless specified otherwise, in the absence of evidence to the contrary, delivery by firstclass mail shall be deemed received on the third business day following deposit of the item for mailing with the United States Postal Service, and delivery by electronic mail shall be deemed received on the date sent.

SECTION 2. That Article I "General Provisions" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Section 15-12 as follows:

"Section 15-12. Conflicts of Interest.

- (a) Board of Aldermen. A Board of Aldermen member shall not vote on any legislative decision regarding a development regulation under this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board of Aldermen member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- (b) Appointed Boards. Members appointed to board by the Board of Aldermen shall not vote on any advisory or legislative decision regarding a development regulation under this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member appointed to the Planning and Zoning Board by the Board of Aldermen shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- (c) Administrative Staff. No staff member shall make a final decision on an administrative decision under this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee

of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city.

- (d) Quasi-Judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- (e) Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
- (f) Familial Relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships."

SECTION 3. That Article II. "Definitions" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by amending the introduction to Section 15-15, and deleting Sections 29, 30, 69, 75, 88, 111, 113, 127 and 142 in their entirety and inserting in their stead the following:

"Section 15-15. Basic definitions and interpretations.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated below when used in this ordinance. If a word or phrase used in this Ordinance is not defined by this Article or elsewhere in the Ordinance, to the extent such word or phrase is defined in Chapter 160D, that definition shall control.

...

- (29) Developer: As defined in N.C.G.S. §160D-102(11), "developer" means a person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
- (30) Development: As defined in N.C.G.S. §160D-102(12), "development" means any of the following:
- (a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
 - (b) The excavation, grading, filling, clearing, or alteration of land.
 - (c) The subdivision of land as defined in N.C.G.S. §160D-802.
 - (d) The initiation or substantial change in the use of land or the intensity of use of land.

1000

(69) Manufactured home: As defined in N.C.G.S. §143-145(7), a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. The term "manufactured home" does not include a "recreational vehicle."

...

(75) Mobile home: See Manufactured Home.

. . .

(88) Planning and development regulation jurisdiction: The geographic area defined in Section 15-3(a).

100

(111) Site plan: A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision.

...

- (113) Special use permit: A permit issued by the board of adjustment to authorize development or land uses in a particular zoning district upon presentation or competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits.
- (127) Subdivision: All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the subdivision regulations contained in this Ordinance:
- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
 - (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
 - (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the Town, as shown in its subdivision regulations.
 - (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the North Carolina General Statutes.
- (142) Vested right: The right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in N.C.G.S. §160D-108 or under common law.
- SECTION 4. That Article II. "Definitions" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Sections 35.5 and 88.5 as follows:
- (35.5) Dwelling: Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

(88.5) *Property:* All real property subject to land-use regulation by the city. The term includes any improvements or structures customarily regarded as a part of real property.

<u>SECTION 5</u>. That Article III. "General Provisions" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Sections 15-24 in its entirety and inserting in its stead the following:

"Section 15-24. Appointment and terms of planning and zoning board members.

- (a) There shall be a planning and zoning board consisting of eight members. Seven members, appointed by the board of aldermen, shall reside within the city. One member, appointed by the Craven County Board of Commissioners, shall reside within the city's extraterritorial planning area. If the Craven County Board of Commissioners fails to make the appointment within 90 days after receiving a resolution from the board of aldermen requesting that they be made, the board of aldermen may make the appointment. Members may be removed by the board of aldermen at any time for failure to attend three consecutive meetings without excuse, or for failure to attend thirty percent (30%) or more of the meetings within any 12-month period or, after a hearing, for other good cause related to performance of duties. All members shall have demonstrated special interest, experience, or education in banking, economics, environmental and land use policy, housing, or industry.
- (b) Planning and zoning board members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. Initially, Seats 2 and 3 shall serve a term that expires on June 30, 2021, Seats 5, 7 and 8 shall serve a term that expires on June 30, 2022, and Seats 1, 4 and 6 shall serve a term that expires on June 30, 2022. Vacancies shall be filled for the unexpired terms only.
- (c) Membership appointments shall be limited to two successive terms. Members appointed to fill a vacancy for an unexpired term that exceeds eighteen (18) months shall be considered as having served one full term.
- (d) All members may participate in and vote on all issues before the board, regardless of whether the issue affects property within the city or within the extraterritorial planning area.
- (e) All members appointed to the planning and zoning board shall, before entering their duties, qualify by taking an oath of office as required by N.C.G.S. §160A-61."

<u>SECTION 6</u>. That Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Section 15-26(e) as follows:

"Section 15-26. Meetings of the planning and zoning board.

....

- (e) Rules of procedure that are consistent with the provisions of Chapter 160D may be adopted by the board of aldermen for the planning and zoning board. In the absence of action by the board of aldermen, the planning and zoning board is authorized to adopt its own rules of procedure that are consistent with the provisions of Chapter 160D. A copy of any adopted rules of procedure shall be maintained by the city clerk and shall be posted on the city's website."
- SECTION 7. That Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Sections 15-26(e) and 15-26(f) as follows:

"Section 15-31. Appointment and terms of board of adjustment.

...

- (e) All members appointed to the board of adjustment shall, before entering their duties, qualify by taking an oath of office as required by N.C.G.S. §160A-61.
- (f) The board of adjustment shall follow the procedures set forth in this ordinance if making a decision or determination for which a quasi-judicial hearing is required."
- <u>SECTION 8.</u> That Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Section 15-33(d) as follows:

"Section 15-33. Meetings of the board of adjustment.

. .

- (d) Rules of procedure that are consistent with the provisions of Chapter 160D may be adopted by the board of aldermen for the board of adjustment. In the absence of action by the board of aldermen, the board of adjustment is authorized to adopt its own rules of procedure that are consistent with the provisions of Chapter 160D. A copy of any adopted rules of procedure shall be maintained by the city clerk and shall be posted on the city's website."
- SECTION 9. That Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-36(d) in its entirety.
- SECTION 10. That Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-40(a) in its entirety, and renumbering Section 15-40 accordingly.
- SECTION 11. That Part VI. "Notification of Official Meetings and Public Hearings of Public Bodies" of Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Part VI in its entirety and inserting in its stead the following:

"PART VI. NOTIFICATION OF OFFICIAL MEETINGS

Section 15-41. Notification requirements.

The following shall be considered the official minimum requirements for notification of public meetings for all City of New Bern public bodies. As used in this section, "public body" means any elected or appointed board commission or committee that exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function created by the board of aldermen or this Code of Ordinances, and shall specifically include the board of aldermen.

- (a) Public notice of official meetings. Each public body shall prepare and approve, by formal motion, a schedule of all regular meetings for the upcoming year showing the date, time and place of each regular meeting. The regular meeting schedules shall be distributed no later than seven calendar days prior to the first meeting of each year by electronic mail, regular U.S. mail, or by hand-delivery to members of each respective board, the city clerk, the clerk or secretary of each public body, and any party who has made a written request for such schedules. If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be distributed as provided herein at least seven days before the day of the first meeting held pursuant to the revised schedule. Additionally, no later than seven calendar days prior to the first meeting of each year, a copy of each schedule shall be posted and maintained in a conspicuous place at the office of the administrator also for each public body, and in a conspicuous and appropriate place on the city's website. Failure to adhere to the notice requirements established in this section will result in the postponement of any meeting until the notification requirements are met. Public bodies and their administrators may choose to post additional copies of their annual meeting schedules elsewhere and at any time.
- (b) Continuance of official meetings and public hearings. If a public body recesses a regular, special, or emergency meeting, or a public hearing, held pursuant to public notice given in compliance with section 15-41, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required. If a sign is required to be posted on a subject property prior to a public hearing, the sign shall be changed to reflect new hearing date and time consistent with the requirements of subsection (i).
- (c) Public notice of special meetings. Written notice for any meeting of any public body other than a regular meeting or emergency meeting shall (i) state the purpose of the meeting; (ii) be posted on the city's website, and on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (iii) be mailed, emailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed, emailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice required in this section shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board

or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting.

- (d) Public notice of emergency meetings. Written notice for any meeting called at an unscheduled time because of generally unexpected circumstances that require immediate consideration by a public body shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by email, by telephone, or by the same method used to notify the members of the public body, and shall be given immediately after notice has been given to those members. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this section (d).
- (e) Information to be provided to public bodies. The members of each public body shall receive an information packet, through a medium of their choosing, for each official meeting at least five calendar days prior to the meeting except in the case of a special called meeting. The information packet shall include a meeting agenda and supporting documentation for each agenda item. For any public hearings to be conducted during an official meeting, the information packet shall also include a copy of applications or cases to be heard, any available supplemental materials, and any staff findings or additional relevant information."

SECTION 12. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-46 in its entirety and inserting in its stead the following:

"Section 15-46. Permits required.

- (a) No person shall commence or proceed with development without first securing approval from the city as herein provided. The use made of property may not be substantially changed (see section 15-152), clearing, grading, or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:
 - (1) A zoning and/or building permit issued by the city; and
 - A special use permit issued by the board of adjustment.
- (b)Zoning permits, special use permits, and sign permits are issued under this ordinance in respect to plans submitted by the applicant that demonstrate compliance with the ordinance provisions contained herein. Such plans as are finally approved are incorporated into any permit issued in reliance thereon, and, except as otherwise provided in section 15-63, all development shall occur strictly in accordance with such approved plans.
- (c) A zoning permit, special use permit, or sign permit shall be issued in the name of the applicant (as defined in section 15-48), and shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the city.

- (d) An approval under this ordinance shall be in writing and shall attach to and run with the land. A development approval shall a provision requiring the development to comply with all applicable state and local laws. The city may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.
- (e) When this ordinance specifies that a matter may or shall be approved or disapproved, such approvals and disapprovals shall be communicated by the officer or board making the determination who shall in turn give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner."

SECTION 13. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-48 in its entirety and inserting in its stead the following:

"Section 15-48. Who may submit permit applications.

- (a) Applications for zoning, special use, or sign permits, or minor subdivision plat approval will be accepted only from the landowner, lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
- (b) The city may require an applicant to submit evidence of his authority to submit the application in accordance with subsection (a) whenever there appears to be a reasonable basis for questioning this authority."

SECTION 14. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-49 in its entirety and inserting in its stead the following:

"Section 15-49. Applications to be complete.

- (a) All applications for zoning, special use, or sign permits must be completed before the city is required to consider the application.
- (b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the city to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance.
- (c) In this ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of

the appendices to this ordinance. It may not be necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the city to evaluate the application in the light of the substantive requirements set forth in this text of this ordinance. However, whenever the city under this ordinance requires a certain element of a development to be constructed in accordance with the detail requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings shall have been submitted to and approved by the zoning administrator and/or the chief building inspector or his designee. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in article VII (Enforcement and Review).

- (d) The presumption established by this ordinance is that all of the information set forth in this ordinance is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the city may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the board of adjustment, the applicant may rely in the first instance on the recommendations of the zoning administrator as to whether more or less information than that set forth in this ordinance should be submitted.
- (e) The zoning administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the zoning administrator to determine compliance with this ordinance, such as applications for zoning permits to construct single-family houses or duplexes, or applications for sign permits, the zoning administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information."

SECTION 15. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-50 in its entirety and inserting in its stead the following:

"Section 15-50. Staff consultation before formal application.

- (a) To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this ordinance, preapplication consultation between the applicant and the planning staff is encouraged or required as provided in this section.
- (b) Before submitting an application for any other permit, applicants are strongly encouraged to consult with the planning staff concerning the application of this ordinance to the proposed development."

SECTION 16. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-51 in its entirety and inserting in its stead the following:

"Section 15-51. Staff consultation after application submitted.

- (a) Upon receipt of a formal application for a zoning, building or special use permit, or minor plat approval, the zoning administrator shall review the application and confer with the applicant to ensure that he understands the city staff's interpretation of the applicable provisions of this ordinance, that he has submitted all of the information that he intends to submit and that the application represents what he proposes to do.
- (b) If the application is for a project that requires site plan review, pursuant to section 15-71, the zoning administrator shall place the application on the agenda for departmental review.
- (c) If the application is for a special use permit, the zoning administrator shall place the application on the agenda of the appropriate board after the applicant indicates that the application is as complete as he intends to make it. If the zoning administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis."

SECTION 17. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-52 in its entirety and inserting in its stead the following:

"Section 15-52. Zoning permits.

- (a) A complete application form for a zoning permit shall be submitted to the zoning administrator by filing a copy of the application with the zoning administrator in the development services department.
- (b) The zoning administrator shall issue the zoning permit unless he finds, after reviewing the application, that:
- The requested permit is not within his jurisdiction according to the table of permissible uses; or
 - (2) The application is incomplete; or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance (not including those requirements imposed when a variance has been granted or those the applicant is not required to comply with under the circumstances specified in article VIII (Nonconforming Situations))."

SECTION 18. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-61 in its entirety and inserting in its stead the following:

"Section 15-61. Expiration of permits.

- (a) Unless a different period is provided by a special use permit, a zoning, special use, or sign permit shall expire automatically one year after the issuance of such permit if the work authorized by the permit has not been substantially commenced.
- (b) If after commencement the work or activity is discontinued for a period of twelve months after commencement, the permit shall immediately expire.
- (c) For purposes of this section, a permit within the jurisdiction of the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when a copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant."
- SECTION 19. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-62 in its entirety and inserting in its stead the following:

"Section 15-62. Effect of permit on successors and assigns.

- (a) Zoning, special use, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits run with the land. Accordingly, so long as the land or structures or any portion thereof covered under a permit continue to be used for the purposes for which the permit was granted, then:
- (1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and
- (2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued."
- SECTION 20. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-63 in its entirety and inserting in its stead the following:

"Section 15-63. Amendments to and minor modifications of permits.

(a) Minor deviations from the permit (including approved plans) issued by the board of adjustment, or the zoning administrator are permissible and the zoning administrator may authorize such minor deviations. A deviation is minor if it has no discernible impact on neighboring

properties, the general public, or those intended to occupy or use the proposed development. Such deviation shall be documented in writing and submitted to the appropriate permit-issuing authority.

- (b) Minor design modifications or minor changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (c) All other requests for changes in approved plans, including increases in density or intensity of use shall be considered major changes and be processed as new applications. If such requests are required to be acted upon by the board of adjustment, new conditions may be imposed in accordance with section 15-58, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.
- (d) The zoning administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b) and (c).
- (e) A developer requesting approval of changes shall submit a written request for such approval to the zoning administrator, and that request shall identify the changes. Approval of all changes must be given in writing."
- SECTION 21. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-67 in its entirety and inserting in its stead the following:

"Section 15-67. Vested rights.

Unless otherwise specified in this ordinance, by the planning and zoning board, or other statute, development approvals, except site-specific vesting plans, expire one year after issuance unless work authorized by the development approval has substantially commenced."

SECTION 22. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-68 in its entirety and inserting in its stead the following:

"Section 15-68. Site-specific vesting plan.

(a) A statutory vested right shall be deemed established upon the valid approval, by the planning and zoning board, of a site-specific vesting plan. Pursuant to G.S. §160D-108(d), the statutory vesting granted by this ordinance, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.

- (b) An approved site-specific vesting plan precludes any zoning action by the city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan and in accordance with applicable limitations and exceptions.
- (c) A vested right established pursuant to this section shall run for a period of two years from the effective date of the approval of the development application.
- (d) Limits of site-specific vesting plans.
- Nothing in this ordinance shall prohibit the revocation of the original approval or
 other remedies for failure to comply with applicable terms and conditions of the approval or this
 ordinance. The development remains subject to subsequent review and approvals to ensure
 compliance with the terms and conditions of the original approval as provided for in the original
 approval or by applicable regulations.
- 2. The establishment of a vested right pursuant to this ordinance shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the city including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
- 3. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right shall become effective upon the expiration or termination of the vested rights period provided for in this appendix.
- Any vested rights for a site-specific vesting plan are subject to the exceptions specified in G.S. §160D-108.1."
- SECTION 23. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-70 in its entirety and inserting in its stead the following:

"Section 15-70. Miscellaneous provisions pertaining to vested rights.

- (a) All decisions and determinations of the zoning administrator pertaining to vested rights may be appealed to the board of adjustment pursuant to section 15-91.
- (b) A site-specific development plan shall be deemed approved upon the effective date of the planning board's action relating thereto.
- (c) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

- (d) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "The planning and zoning board has granted a zoning vested right under G.S. §160D-108 on ______ {Insert Date} ______ valid for two (2) years from this date." The site-specific development plan shall not be valid unless signed by the director.
- (e) Nothing in this chapter shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this ordinance.
- (f) Nothing in this ordinance is intended or shall be deemed to create any vested right other than those established pursuant to G.S. §160D-108.
- (g) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The board of aldermen hereby declares that it would have passed this ordinance and each section, subsection, clause and phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences or clauses be declared invalid."

SECTION 24. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-77 in its entirety and inserting in its stead the following:

"Section 15-77. No subdivision without plat approval.

- (a) No person shall commence or proceed with a subdivision of land without first securing approval under this ordinance from the city.
- (b) No subdivision within the city's planning and development regulation jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the city as herein provided, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city.
- (c) The review officer, pursuant to G.S. 47-30.2, shall not certify a subdivision plat that has not been approved in accordance with this ordinance nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this ordinance.
- (d) A plat shall be prepared, approved and recorded pursuant to this ordinance whenever a subdivision of land takes place.
- (e) Building permits may be denied for lots that have been illegally subdivided.
- SECTION 25. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-78(g) in its entirety and inserting in its stead the following:

- "(g) If the subdivision is disapproved, the applicant may submit a revised preliminary plat, or appeal the decision as provided in Article V."
- SECTION 26. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-79(a) in its entirety and inserting in its stead the following:
- "(a) General plan. In filing a general plan, the applicant desiring to subdivide within the City of New Bern shall comply with the requirements herein below set forth.
 - (1) The general plan shall contain the following information:
 - (a) Existing and platted property lines, streets, buildings, watercourses, sewers, water mains (existing and proposed), transmission lines, bridges, culverts, drain pipes, city and county lines, and any public utility easements.
 - (b) Boundaries of tract, showing bearings and distances.
 - (c) Site plan of existing conditions including wooded areas, marshes, and wetlands, if applicable.
 - (d) Names of all adjoining property owners.
 - (e) Zoning classifications both on land to be subdivided and adjoining land.
 - (f) Plans for proposed utilities, including water, gas, sanitary sewer, storm drainage, electric, telephone, and cable.
 - (g) Other proposed rights-of-way, easements.
 - (h) Proposed lot lines, lot numbers, building envelopes in the case of PUDs, and approximate dimensions.
 - (i) Proposed minimum setback lines.
 - Contour map: one-foot intervals based on sea level datum.
 - (k) Proposed mini-parks, school sites, public open space, if applicable.
 - (l) Provisions for the preservation and maintenance of mini-parks and open space, including draft of conservation easement; if applicable.
 - (m) Proposed planting plan, including type and details of required screening, if applicable.
 - (n) Sketch vicinity plan.
 - (o) Name of owner, surveyor, and planner.
 - (p) Title, date, north point, and graphic scale.
 - (q) Verification of submission of stormwater management and sedimentation control plans, if applicable.
 - (r) Site data including acreage in total tract, mini-parks, open space, school sites, etc.; average lot size; total number of lots; lineal feet in streets.
 - (s) Profiles showing grades of streets, sewers, water lines, etc.
 - (t) Postal enumeration of each lot in the subdivision.
 - (u) Statement by developer/subdivider that wetlands are not present on the site or that appropriate permits have been sought.
- (2) The applicant shall submit two print and one digital (in a format deemed acceptable by the Zoning Administrator) set of copies of the general plan and any supplementary material to the secretary of the planning and zoning board at least two weeks prior to the regularly scheduled

meeting of the planning and zoning board of the City of New Bern. One set, consisting of 14 copies, shall be used for department review purposes. The second set, consisting of 14 copies, shall be provided for members of the planning and zoning board. The general plan shall be of a scale of one inch equals 100 feet or larger and shall be of a sheet size of 18 inches by 24 inches or larger.

- (a) If the proposal of the subdivider/developer is a planned unit development (PUD), then and in that event the city shall cause signs to be placed on property proposed to be developed as a PUD at least seven days prior to the meeting of the planning and zoning board at which it will be considered. Notice shall be published one time in a newspaper of general circulation in the community at least ten and not more than 25 days prior to the meeting of the planning and zoning board.
- (3) The planning staff shall distribute copies of the proposed subdivision to: (1) appropriate departments for review; (2) the district highway engineer as to proposed State streets, State highways, and related drainage systems; (3) the county health director or local public utility, as appropriate, as to proposed water or sewerage systems; and (4) any governmental agency or agencies having a specific interest in the subdivision for their recommendations. The planning staff shall consolidate such recommendations and present them, together with its own, to the planning and zoning board.
- (4) The general plan shall be reviewed by the planning and zoning board. During this review:
 - (a) The subdivider presents his plan and answers questions of the planning and zoning board and planning staff.
 - (b) The planning staff shall make recommendations to the planning and zoning board.
- (5) The planning and zoning board shall approve, approve conditionally, or disapprove the general plan.
 - (a) Approval of the general plan is authorization for the subdivider to proceed with the construction of the necessary improvements in preparation for the final plat.
 - (b) If approved conditionally, the conditions and reasons thereof shall be noted in the minutes and, if necessary, the planning and zoning board shall require the applicant to submit a revised plan.
 - (c) If the planning and zoning board should disapprove the general plan, the reasons for such action shall be noted in the minutes and recommendations made on the basis of which the proposed subdivision could be approved. The applicant may make such changes as will bring the proposed subdivision into compliance with the provisions of this ordinance and resubmit the plat for reconsideration by the planning and zoning board, or appeal the decision as provided in Article V.
 - (d) Failure on the part of the planning and zoning board to act within 60 days after a completed general plan is submitted shall be deemed approval.
 - (e) The action of the planning and zoning board shall be noted on one copy of the general plan. This copy shall be retained in the permanent files of development services department.

(f) Approval of the general plan by the planning and zoning board establishes a vested right as provided in sections 15-67 through 15-70 of this ordinance."

SECTION 27. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-80(1) in its entirety and inserting in its stead the following:

"(1) Certificate of approval.

I hereby certify that all streets shown on this plat are within the City of New Bern's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within 12 months after the date below) has been ensured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with the New Bern City Code, and therefore this plat has been approved by the New Bern Planning and Zoning Board subject to its being recorded in the Register of Deeds Office of Craven County within one year of the date below."

SECTION 28. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-82 in its entirety and inserting in its stead the following:

"Section 15-82. Performance guarantees.

In lieu of requiring the completion, installation, and dedication of all public improvements prior to final plat approval, the city may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements. Once said agreement is signed by both parties and the security required herein is provided, the final plat may be approved by the planning and zoning board if all other requirements of this ordinance are met. To secure this agreement, the developer shall provide, subject to approval of the city manager.

For purposes of this section, all of the following apply with respect to performance guarantees:

- (1) Type. The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee:
 - (a) Surety bond issued by any company authorized to do business in this State.
- (b) Letter of credit issued by any financial institution licensed to do business in this State.
- (c) Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- (2) Duration. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the

date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

- (3) Extension. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the city, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (5) of this subsection and shall include the total cost of all incomplete improvements.
- (4) Release. The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city that the improvements for which the performance guarantee is being required are complete. The city shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to city acceptance. When required improvements that are secured by a bond are completed to the specifications of the city, or are accepted by the city, if subject to its acceptance, upon request by the developer, the city shall timely provide written acknowledgement that the required improvements have been completed.
- (5) Amount. The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The Town may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.
- (6) Timing. A performance guarantee required under this section shall be posted at the time the plat is recorded.
- (7) Coverage. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- (8) Legal responsibilities. No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

- (a) The city.
- (b) The developer at whose request or for whose benefit the performance guarantee is given.
- (c) The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer."

SECTION 29. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-84 in its entirety and inserting in its stead the following:

"Section 15-84. Amendments to previously approved subdivision plans.

- (a) As referenced in section 15-63 (Amendments to and minor modifications of permits), minor changes or amendments to previously approved subdivision plans may be authorized by the zoning administrator or the director of development services. For purposes of this ordinance, a change is "minor" or "insignificant" if it has no discernible impact on neighboring properties, the general public, or those intended to live or work within the proposed subdivision. Such minor changes shall be documented in writing and reported to the appropriate plan-approving authority at their next regularly scheduled meeting and submitted for their records. All other amendments shall receive the approval of the appropriate board (i.e., planning and zoning board in the case of general plan approval).
- (b) In the case of changes deemed not to be "minor" associated with subdivision plans that are planned unit developments (PUDs), a sign shall be posted in the vicinity of the area where the proposed change is to take place indicating the nature of the change and the time and location of the plan-approving authority's consideration of said change. Said sign shall be posted no less than seven days prior to the regularly scheduled meeting of the plan-approving authority.
- (c) The zoning administrator or the director of development services shall determine whether changes or amendments to subdivision plans are "minor" or "insignificant" in nature.
- (d) A developer requesting approval of changes shall submit a written request for such approval to the zoning administrator and that request shall identify the changes. Approval of all changes must be given in writing."

SECTION 30. That Article IV. "Permits and Final Plat Approval" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-85 in its entirety and inserting in its stead the following:

"Section 15-85. Public notification requirements for subdivision plans.

The planning staff shall give notice of any major subdivision requiring general and final approval plan by the planning and zoning board as follows:

- (1) With respect to general subdivision plans (including planned unit developments (PUDs) and cluster subdivisions) that are reviewed by the planning and zoning board, notice shall be given to those persons who own property within 100 feet of the lot/tract that is the subject of the subdivision by mailing a written notice no later than seven calendar days before the meeting of the planning and zoning board. Addresses shall be derived from Craven County GIS and tax records, and address lists shall not be compiled more than 14 days prior to the meeting date.
- (2) In addition, in the case of a general subdivision plan that is also a planned unit development, the city shall cause signs to be posted on the property indicating the planning and zoning board's review of the proposed PUD. Said sign posting shall be made at least seven calendar days prior to the meeting of the planning and zoning board. Notice shall also be published one time in a newspaper of general circulation in the community at least ten and not more than 25 days prior to the said meeting."

SECTION 31. That Article V. "Appeals, Variances, Interpretations" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-91 in its entirety and inserting in its stead the following:

"Section 15-91. Appeals of administrative decisions.

- (a) Applicability. Appeals of decisions made by the land use administrator or his/her deputy or staff under this ordinance shall be made to the board of adjustment. Appeals shall be heard by the board of adjustment, in compliance with the quasi-judicial processes set forth herein.
- (c) Standing. Any person who has standing N.C.G.S. §160D-1402(c), or the city may appeal an administrative decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the clerk to the board. The notice of appeal shall state the grounds for the appeal.
- (d) Time to Appeal. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- (e) Record of Decision. The official who made the decision shall transmit to the board of adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (f) Stays. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may

file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or Town may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

- (g) Appeals of Decisions. Any appeal from the decision of the board of adjustment shall be made to Superior Court of Craven County, in accordance with the provisions of N.C.G.S. §160D-1402."
- SECTION 32. That Article V. "Appeals, Variances, Interpretations" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-92(b) in its entirety and inserting in its stead the following:
- "(b) When unnecessary hardships would result from carrying out the strict letter of the land use ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:
- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved."

SECTION 33. That Article VI. "Quasi-Judicial Procedure" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Article VI in its entirety and inserting in its stead the following:

"ARTICLE VI. QUASI-JUDICIAL PROCEDURE

Section 15-101. Process Required.

All boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

Section 15-102. Notice of hearing.

The zoning administrator shall give notice of any hearing required by section 15-101 as follows:

- (a) Notice of evidentiary hearings shall be mailed to:
- (1) The person or entity whose appeal, application, or request is the subject of the hearing;
- (2) The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
- (3) The owners of all parcels of land abutting the parcel of land this is the subject of the hearing, and to all owners of parcels of land within 100 feet of the lot or parcel of land that is the subject of the hearing; and
 - (4) To any other person who makes a written request for such notice.
- (b) In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (c) If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- (d) The notice required by this section shall state the date, time and place of the hearing, reasonably identify the lot or parcel of land that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

Section 15-103. Administrative materials.

The zoning administrator shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

Section 15-104. Presentation of evidence.

- (a) The applicant, the city, and any person who would have standing to appeal the decision under G.S. §160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.
- (b) Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to N.C.G.S. §160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

Section 15-105. Appearance of official new issues.

The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the city, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

Section 15-106, Oaths.

The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

Section 15-107. Modification of application at hearing.

- (a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the planning and zoning board or board of adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.
- (b) Unless such modifications are so substantial or extensive that the board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the planning staff.

Section 15-108. Subpoenas.

The board making a quasi-judicial decision under this ordinance through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the city, and any person with standing under G.S. §160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena

issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Section 15-109. Voting.

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under section 15-12(d) of this ordinance shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Section 15-110. Decisions.

- (a) The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the city that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.
- (b) A record of all hearings required under this article shall be made by a court reporter or by electronic means. Accurate minutes shall also be kept of all such proceedings.
- (c) All documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings. With the approval of the parties, copies may be submitted for the originals. Such evidence shall be kept by the city for at least five years; provided, however, such evidence shall be disposed of by agreement of the parties or by the rendering of a final decision by the court.

Section 15-111. Judicial review.

Every quasi-judicial decision shall be subject to review by the superior court in the nature of certiorari pursuant to N.C.G.S. §160D-1402. Appeals shall be filed within the time frame specified in N.C.G.S. §160D-1405(d)."

SECTION 34. That Article VII. "Enforcement and Review" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Article VII in its entirety and inserting in its stead the following:

"ARTICLE VII. ENFORCEMENT AND REVIEW

Section 15-112. Complaints regarding violations.

Whenever the zoning administrator receives a verbal or written signed complaint alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant verbally or in writing what actions have been or will be taken.

Section 15-113. Persons liable.

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

Section 15-114. General remedies.

This Ordinance may be enforced by any remedy provided by G.S. §160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this ordinance, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

Section 15-115. Notice of violation.

When the zoning administrator determines work or activity has been undertaken in violation of this Ordinance or any approval issued hereunder, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the approval and to the landowner of the property involved, if the landowner is not the holder of the approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the city that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. A notice of violation may be appealed to the board of adjustment, and the board of adjustment shall follow quasi-judicial processes as set forth in this ordinance.

Section 15-116. Stop work order.

Whenever any work or activity subject to regulation pursuant to this ordinance is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, the zoning administrator may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the

reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the approval and to the owner of the property involved (if that person is not the holder of the approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the city that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. A stop work order may be appealed to the board of adjustment, and the board shall follow quasi-judicial processes as set forth in this ordinance. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

Section 15-117. Revocation.

Development approvals may be revoked by the city by notifying the holder in writing stating the reason for the revocation. The city shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the city for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to Article 5 herein. If an appeal is filed regarding a development regulation adopted by the city pursuant to Chapter 160D, the provisions herein regarding stays apply.

Section 15-118. Inspections.

The zoning administrator and his/her staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the city at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

Section 15-119. Additional remedies for violations of subdivision provisions.

- (a) In addition to the foregoing, any person who, being the owner or agent of the owner of any land located within the planning and development regulation jurisdiction of the city, thereafter subdivides the land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the Craven County Register of Deeds, is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty.
- (b) The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulation. Building permits required pursuant to G.S. §160D-1110 may be denied for lots that have been illegally subdivided.

In addition to other remedies, the city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

Section 15-120. Penalties and remedies for violations.

- (a) In accordance with G.S. §160A-175, where no specific penalty is provision of this provided in any Appendix A, any act constituting a violation of the provisions of Appendix A or a failure to comply with any of its requirements including violations of any conditions and safeguards established in connection with the granting of variances or special use permits, shall subject the offender to a civil penalty as follows:
 - The sum of \$500.00 for failure to correct said violation within 31 days of notice;
- An additional sum of \$1,000.00 (for a total sum of \$1,500.00) for failure to correct said violation within 61 days of notice;
- An additional sum of \$1,500.00 (for a total sum of \$3,000.00) for failure to correct said violation within 91 days of notice;
- An additional sum of \$2,000.00 (for a total sum of \$5,000.00) for failure to correct said violation within 121 days of notice; and
- An additional sum of \$2,000.00 (\$5,000.00 plus \$2,000.00 per month) for each additional 30-days or fraction thereof for continuing failure to correct said violation as required in the initial notice after 121 days of notice, which includes administrative fees. If the offender fails to correct the violation within 31 days after being cited for said violation, the penalty may be recovered by the city in a civil action in the nature of a debt. In addition, should the offender commit the same violation within a 12-month period from the date of the initial violation and fail to correct said violation after due notice, the penalty shall be double the amounts established herein. A civil penalty may not be appealed to the board of adjustment if the offender was sent final notice of violation in accordance with section 15-113 and did not take an appeal to the board of adjustment within the prescribed time.
- (b) The provisions of this Appendix A may also be enforced by any appropriate equitable action authorized by law, including injunctive relief, whether or not there is an adequate remedy at law.
- (c) Each day that any violation continues, regardless of the date of notice, shall be considered a separate offense for purposes of the accruing penalties and remedies specified in this section. In such an event, civil penalties begin to accrue from the date of the first notice of violation. For continuing violations, the initial citation and requirement that the civil penalty be paid within the time prescribed there in shall be the only notice required to be given; and shall be deemed to be an ongoing citation and notice for continuing violation after the date of the citation.
- (d) Any one, or any combination of the foregoing penalties and to remedies may be used enforce the provisions of this Appendix A.
- (e) Violation of the provisions of this Appendix A or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances, or special use permits, shall not constitute a misdemeanor as provided in G.S. §14-4, unless any specific penalty provision in Appendix A provides to the contrary."

SECTION 35. That Article IX. "Zoning Districts and Zoning Map" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-136(b)(8) in its entirety and inserting in its stead the following:

- "(8) The R-6 residential district is designed to accommodate single-, two-, and multifamily dwellings with 6,000 square feet minimum lots for one dwelling unit and 2,000 square feet required for each additional unit. For the R-6 residential district, in promoting the general purposes of this ordinance, the specific intent of this district is:
- (a) To encourage continued use of the land for residential purposes and certain compatible nonresidential uses;
- (b) To prohibit commercial and industrial use of the land; to prohibit any other use which would substantially interfere with the development or continuation of residential structures in the district;
- (c) To encourage the discontinuance of existing uses that would not be permitted as new uses in the district; and
- (d) To discourage any use which because of its character or size would generate traffic or require municipal services substantially in excess of traffic and services that would exist if the district were developed solely for residential uses."

SECTION 36. That Article IX. "Zoning Districts and Zoning Map" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-142 in its entirety and inserting in its stead the following:

"Section 15-142. Zoning map.

- (a) There shall be a map known and designated as the zoning map, which shall show the boundaries of all zoning and overlay districts within the city's planning jurisdiction. This map shall be drawn on acetate or other durable material from which prints can be made, shall be dated, and shall be kept and maintained for public inspection in the office of the land use administrator. Copies of the zoning map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the city clerk in accordance with N.C.G.S. §160A-79, shall be admissible into evidence and shall have the same force and effect as would the original map.
- (b) The zoning map is the map which was adopted as a part of the zoning ordinance, which was adopted on March 5, 1968, as amended to date by ordinances adopted by the board of aldermen of the City of New Bern. The latest edition of said map bears the legend:

The City Of New Bern NC

Scale 1" = 800 ft. ZONING

The map includes a table in its upper lefthand corner, which reflects revision nos. 1—68 caused by ordinances adopted 2/8/83 through 8/1/91. Amendments to the map shall be made and posted in accordance with section 15-143 of this ordinance.

(c) Should the zoning map be lost, destroyed, or damaged, the director of planning and inspections may have a new map drawn on acetate or other durable material from which prints can be made. No further board authorization or action is required so long as district boundaries are not changed in this process."

SECTION 37. That Article IX. "Zoning Districts and Zoning Map" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-143 in its entirety and inserting in its stead the following:

"Section 15-143. Amendments to zoning map.

- (a) Amendments to the zoning map are accomplished using the same procedures that apply to other amendments to this ordinance, as set forth in article XX.
- (b) The land use administrator or his or her designee shall update the zoning map as soon as possible after amendments to it are adopted by the board of aldermen. Upon entering any such amendment on the map, the land use administrator or his or her designee shall change the date of the map to indicate its latest revision. New prints of the updated map may then be issued.
- (c) No unauthorized person may alter or modify the zoning map.
- (d) The development services department shall keep copies of superseded prints of the zoning map for historical reference. Additional copies of current and superseded zoning maps shall be kept in the Development Services offices.

SECTION 38. That Article XI. "Supplementary Use Regulations" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting sub-Section 15-164(a) in its entirety and inserting in its stead the following:

"Section 15-164. Rules and regulations relative to manufactured homes located both inside and outside of manufactured home parks within the zoning jurisdiction of the city.

- (a) Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated below when used in this section:
- (i) Manufactured home. A dwelling unit, designed for use as a permanent residence, that is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed for installation and/or assembly on the building site.
 - (ii) Manufactured home, Class A. A dwelling unit that:

- (1) Is not constructed in accordance with the requirements of the North Carolina Uniform Residential Building Code as amended;
- (2) Is composed of two or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site;
- (3) Meets or exceeds the construction standards of the US Department of Housing and Urban Development, and
 - (4) Conforms to the following appearance criteria:
 - (1) The manufactured home has a minimum width, as assembled on the site, of 20 feet;
 - (2) The pitch of the manufactured home's roof has a minimum nominal vertical rise of three inches for each 12 inches of horizontal run and the roof is finished with asphalt or fiberglass shingles;
 - (3) A continuous, permanent masonry curtain wall, unpierced except for required ventilation and access, is installed under the manufactured home;
 - (4) The primary entrance has a landing which is no smaller than three feet by three feet in size; and
 - (5) The tongue, axles, transporting lights, and towing apparatus are removed after placement on the lot and before occupancy.

Class A manufactured homes are only permitted in manufactured home parks and the A-5, R-6 and-R-20 zoning districts.

- (iii) Manufactured home, Class B. A manufactured home constructed after July 1, 1996 that meets or exceeds the construction standards by the US Department of Housing and Urban Development. A Class B may not satisfy all the criteria necessary to qualify as a Class A manufactured home, but a Class B manufactured home must have a continuous, permanent masonry curtain wall, unpierced except for required ventilation and access. Class B manufactured homes are only permitted in manufactured home parks and the A-5 and R-20 zoning districts.
- (iv) Manufactured home, Class C. Any manufactured home that does not meet the definitional criteria of a Class A manufactured home, a Class B manufactured home, a modular home, or a travel trailer. Class C manufactured homes are permitted only in manufactured home parks.
- (v) Manufactured home park. A residential use in which three or more Class A, B or C manufactured homes are located on a single lot or tract. See section 15-165 for specific provisions related to manufactured home parks. Manufactured home parks are only permitted in A-5 zoning districts, and by special use permit in the R-20 and C-3/C-3H zoning districts.
- (vi) Modular home. A dwelling unit constructed in accordance with the standards set forth in the NC State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Modular homes are allowed in all zoning districts except 1-2.
- (vii) Travel trailer. A mobile structure with self-contained utilities, except for electricity, designed to be used for camping purposes only rather than as a permanent abode."
- SECTION 39. That Article XX. "Amendments" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Article XX in its entirety and inserting in its stead the following:

"ARTICLE XX. AMENDMENTS

Section 15-396. Amendments in general.

- (a) Amendments to the text of this land use ordinance, specifically including zoning map amendments, shall be made in accordance with the provisions of this article.
- (b) The term "zoning map amendment" shall refer to an amendment that addresses a zoning regulation, or the boundaries of a zoning district.

Section 15-397. Initiation of amendments.

- (a) Whenever a request to amend this ordinance is initiated by the board of aldermen, the planning staff shall review the request and forward it to the planning and zoning board for its review and recommendations. Such recommendations, along with a draft of an appropriate ordinance prepared by the city attorney in consultation with the planning staff, shall then be forwarded to the board of aldermen and considered by that board in a public hearing on a date established in accordance with the board of aldermen's submission consideration schedule.
- (b) Whenever a request to amend this ordinance is initiated by a city department head, board, or commission, other than the board of aldermen, the planning staff shall review the request and forward it to the board of aldermen for their review and consideration in accordance with the procedures outlined in subsection (a) of this section.
- (c) A petition for a zoning map amendment may be initiated by the board of aldermen, the planning and zoning board, a city department head, or the owner or authorized agent of the subject property. The petition shall be filed with the zoning administrator and shall include, among the information deemed relevant by the development services department:
 - (1) The name, address, and phone number of the applicant;
- (2) The name, address, and phone number of the property owner, if different from applicant, along with written confirmation of owner consent to the rezoning request;
- (3) A metes and bounds description of the land affected by the amendment if a change in zoning district classification is proposed;
- (4) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance; and
- (5) A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest.

The applicant shall pay the filing fee as established from time to time by the board of aldermen and set forth and maintained in the City of New Bern Schedule of Fees and Charges to the zoning administrator or his designee at the time the application is submitted to city staff.

(d) Upon receipt of a petition as provided in subsection (c), the zoning administrator or his designee shall ensure that the application is complete and shall proceed with the notification of the property owners within 100 feet and the scheduling of the zoning amendment request with the

planning and zoning board. In cases involving planning and zoning board review, the completed application must be received by the zoning administrator no less than 14 days prior to the scheduled meeting of the planning and zoning board.

Section 15-398. Planning and zoning board consideration of proposed amendments.

- (a) Amendments. All proposed amendments to this ordinance shall be submitted to the planning and zoning board for review and comment. If no written report is received from the planning and zoning board within 45 days of referral of the amendment to that board, the board of aldermen may act on the amendment without the planning and zoning board report. The board of aldermen is not bound by the recommendations, if any, of the planning and zoning board.
- (b) Plan Consistency. When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning and zoning board shall advise and comment on whether the proposed action is consistent with the city's land use plan that has been adopted and any other officially adopted plan that is applicable. The planning and zoning board shall provide a written recommendation to the board of aldermen that addresses plan consistency and other matters as deemed appropriate by the planning and zoning board, but a comment by the planning and zoning board that a proposed amendment is inconsistent with the city's land use plan shall not preclude consideration or approval of the proposed amendment by the board of aldermen. If a zoning amendment qualifies as a "large-scale rezoning" under section 15-400(b), the planning and zoning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.
- (c) Separate Board Required. Notwithstanding the authority to assign duties of the planning and zoning board to the board of aldermen as provided by Chapter 160D, the review and comment required by this section shall not be assigned to the board of aldermen and must be performed by a separate board.

Section 15-399. Hearing with public notice.

Before adopting, amending, or repealing any provision of this ordinance, the board of aldermen shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Section 15-400. Notice of legislative hearing on proposed zoning amendments.

In addition to the published notice requirements of section 15-399, the following shall apply to zoning amendments:

(a) Mailed Notice. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

- (b) Optional notice for large-scale zoning amendments. The first-class mail notice required under subsection (a) of this section shall not be required if the zoning amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, the city may elect to make the mailed notice provided for in subsection (a) of this section or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.
- (c) Posted Notice. When a zoning map amendment is proposed, the city shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning amendment, a posting on each individual parcel is not required but the city shall post sufficient notices to provide reasonable notice to interested persons.

Section 15-401. Citizen comments.

If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to the city clerk at least two business days prior to the proposed vote on such change, the city clerk shall deliver such written statement to the board of aldermen. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the city clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board of aldermen shall not disqualify any member of the board of aldermen from voting.

State law reference - G.S. 160D-603

Section 15-402. Board of aldermen action on amendments.

- (a) At the conclusion of the public hearing on a proposed amendment, the board of aldermen may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- (b) The board of aldermen is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

- (c) In deciding whether to adopt a proposed amendment to this ordinance, the central issue before the board of aldermen is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and excluded. In particular, when considering proposed minor map amendments:
- (1) The board of aldermen shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the board of aldermen shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- (2) The board of aldermen shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

Section 15-403. Board of aldermen statement.

- (a) Plan consistency. When adopting or rejecting any zoning text or map amendment, the board of aldermen shall approve a brief statement describing whether its action is consistent or inconsistent with the city's land use plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the board of aldermen that at the time of action on the amendment the board of aldermen was aware of and considered the planning board's recommendations and any relevant portions of the city's land use plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment has the effect of also amending any future land use map in the approved plan, and no additional request or application for a plan amendment is required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the board of aldermen statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.
- (b) Additional reasonableness statement for rezonings. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the board of aldermen. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S.160D-602(b), the board of aldermen statement on reasonableness may address the overall rezoning.

(c) Single statement permissible. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement."

SECTION 40. That Article XX. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Article XXI in its entirety and inserting in its stead the following:

"ARTICLE XXI. NEW BERN HISTORIC DISTRICT

Section 15-411. Purpose and authority.

The historical heritage of the city is one of its most valued and important assets. The conservation and preservation of historic districts and landmarks stabilizes and increases property values in their areas and strengthens the overall economy of the city, county and state. The city is authorized by the North Carolina General Statutes, by means of listing, regulation, and acquisition, within its zoning jurisdiction, to:

- (1) Safeguard the heritage of the city by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory; and
- (2) Promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city and state as a whole.

The purpose of these regulations is to facilitate the preservation and conservation of historic districts and landmarks within the city's zoning jurisdiction, to review construction design to ensure compatibility with the character of the district, and to promote the use and conservation of historic districts and landmarks therein for the education, pleasure and enrichment of the residents of the city and state as a whole.

State law reference(s)-G.S. 160D-940.

Section 15-412. Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this ordinance shall have the meaning indicated below:

- (1) Administrator: All references to the administrator shall mean the city planner, or in his or her absence, that person designated by the director of development services.
- (2) Alteration: Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, or removal of any structure.
- (3) Character of historic district, or character: All references to character in the context of the character of an historic district shall mean an area having special significance in terms of its

history, prehistory, architecture and culture, and possessing integrity of design, setting, materials, feeling and association, all as referenced in section 15-413(c).

- (4) Commission: All references to the commission shall mean the city historic preservation commission as established in section 15-419.
- (5) Construction: The act of adding an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property.
- (6) Contributing structure: Those late 18th, 19th, and early to mid-20th century buildings and structures located in the historic district that generally have historic, architectural, or cultural significance as determined by the commission with consultation and input from the state historic preservation office. In determining whether a building or structure is a contributing structure, age, intactness, and historic, architectural, and cultural significance are considered more than condition.
- (7) Demolition: An act or process that destroys in part or in whole a building, structure, or archaeological resource that is designated an historic landmark or is located within an historic district. Removal of architectural elements and details such as, but not limited to, cornices, windows, decorative detailing, porches, and porte-cocheres shall not constitute demolition in part of the said building or structure, but shall be considered alterations which require a certificate of appropriateness
- (8) Design standards: All references to design standards shall mean those principles and standards prepared and adopted by the commission pursuant to section 15-420(b), further approved and adopted by the board of aldermen, and contained in the "Historic District Design Principles and Standards" maintained in the office of development services and available to the public on the city's official website.
- (9) Exterior feature: Includes the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs.
- (10) Historic district(s) or district(s): Those areas established and identified in section 15-413(c).
- (11) Historic landmark: A property, structure, or site designated as a "landmark" by ordinance of the board of aldermen, pursuant to procedures described herein, that is worthy of rehabilitation, restoration, and preservation because of its historic, architectural, and/or archaeological significance to the city.
- (12) Major works: Alterations, modifications, or additions to existing buildings or sites in a district that significantly alter the appearance of the structure or site, and that do not constitute minor works.

- (13) Minor works: Changes to a property that are considered not to have a significant adverse impact on the property, and are consistent with the commission's standards and guidelines. A full listing of minor work items is available from the administrator, and on the city's official website.
- (14) Preservation: The act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.
- (15) Reconstruction or restoration, authentic: The act or process of reproducing or restoring by construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.
- (16) Rehabilitation: The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.
- (17) Removal: Any relocation of a structure on its site or to another site.
- (18) Repair: Any change that is not construction, removal, demolition, or alteration.
- (19) Stabilization: The act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of unsafe or deteriorated property while maintaining the essential form as it exists at present.

Section 15-413. Authority to designate historic districts; historic districts established.

- (a) The board of aldermen may, as a part of a zoning ordinance enacted or amended pursuant to this article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance shall treat the historic district as a district which overlays other zoning districts.
- (b) No additional historic district or districts shall be designated until:
- (1) An investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in any such proposed district, and a description of the boundaries of such district, has been prepared; and
- (2) The N.C. Department of Cultural Resources, acting through the state historic preservation officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the board of aldermen within 30 calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board of aldermen may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

- (c) With respect to any changes in the boundaries of a district, subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (b)(1) of this section shall be prepared by the commission and shall be referred to the planning board for its review and comment according to procedures set forth in the zoning regulation. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Natural and Cultural Resources in accordance with the provisions of subsection (b)(2) of this section. On receipt of these reports and recommendations, the board of aldermen may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning regulation.
- (d) The creation of an historic district in no way affects the permitted uses established for each of the zoning classifications found in the city's zoning ordinances.

State law reference-G.S. 160D-944

Section 15-414. Designation of landmarks; adoption of an ordinance; criteria for designation.

- (a) Upon complying with section 15-415, the board of aldermen may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling, and/or association.
- (b) The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistoric value, including the land area of the property so designated, and any other information the board of aldermen deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this article be observed prior to its demolition, and in the case of contributing structures, subject to the provisions of section 15-426(b). For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way

State law reference(s)—G.S. 160D-945; Session Law 2007-32.

Section 15-415. Required landmark designation procedures.

(a) As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the N.C. Division of Archives and History. No ordinance designating a historic building, structure, site, area, or object as a landmark nor any amendment thereto may

be adopted, nor may any property be accepted or acquired by the historic preservation commission or the board of aldermen, until all of the following procedural steps have been taken:

- (1) The commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this article, for altering, restoring, moving, or demolishing properties designated as landmarks.
- (2) The commission shall make or cause to be made an investigation and report on the historic, architectural, archaeological, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Office of Archives and History, N.C. Department of cultural resources.
- (3) The N.C. Department of Cultural Resources, acting through the state historic preservation officer shall either upon request of the department or at the initiative of the commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this article. Any comments shall be provided in writing. If the department of cultural resources does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the department of the investigation and report of the commission, the commission and the board of aldermen shall be relieved of any responsibility to consider such comments.
- (4) The commission and the board of aldermen shall hold a joint public hearing or separate public hearings on the proposed ordinance. Notice of the hearing shall be made as provided by G.S. §160D-601.
- (5) Following the public hearing process, the board of aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
- (6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation within 30 days of such designation. One copy of the ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of Craven County. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city zoning administrator and building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.
- (7) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax department of Craven County. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

Section 15-418. Authentic restoration or reconstruction.

- (a) An authentic restoration or reconstruction in the same location as the original, and in the original conformation of the structure, of a structure of historic and/or architectural significance to the historic district, may, with the concurrence of the board of adjustment, be approved by the commission, although the restoration or reconstruction does not comply with the dimensional regulations of the district or the underlying zoning classification.
- (b) The commission, in approving such authentic reconstruction or restoration, may attach reasonable and appropriate conditions to the approval, such that the public health, safety, and general welfare shall be protected; provided, however, the commission may not approve a use of property which is not a use permitted within the zoning classification in which the property is located, or approve any alteration that does not meet the city's established zoning requirements. All such zoning determinations shall be made by the zoning administrator pursuant to section 15-416(e).
- (c) The commission shall apply the Secretary of the Interior's Standards to applications for a certificate of appropriateness for an authentic restoration or reconstruction.

Section 15-419. Historic preservation commission; creation; membership tenure; public body.

- (a) There is hereby established the New Bern Historic Preservation Commission, to consist of nine members appointed by the board of aldermen. Commission members shall reside within the city limits or the city's extraterritorial planning area, and a majority of the members shall have demonstrated special interest, experience, or education in history, architecture, archeology, or related fields.
- (b) Members of the commission shall serve staggered terms of three years. Initially, three members shall serve a term of three years, three members shall serve a term of two years, and three members shall serve a term of one year. A member may be reappointed for a second consecutive term, but after two consecutive terms a member shall be ineligible for reappointment until two calendar years have elapsed from the date of the termination of his or her second term. Terms shall expire on June 30, and new terms shall commence on July 1.
- (c) The commission shall establish a meeting time, and shall meet at least monthly and more often as it shall determine as required by section 15-41. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. 143-318.9 et seq. The commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations, and actions. The minutes of the commission shall be a public record.

State law reference(s)—G.S. 160D-941; G.S. 143-318,9 et seq.

Section 15-420. Rules of procedure; principles and standards for construction, alterations, additions, moving and demolition.

- (a) The commission shall adopt, publish and maintain rules of procedure for the conduct of its business. Such rules of procedure shall be maintained in the office of development services and available to the public on the city's official website.
- (b) The commission shall prepare, adopt and recommend principles and standards not inconsistent with G.S. 160D, Article 9, Part 4 to guide the commission in determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition for further consideration, approval and adoption by the board of aldermen. Such principles and standards shall be titled "Historic District Design Principles and Standards", and shall be maintained in the office of development services and available to the public on the city's official website. The adopted design standards are incorporated herein by reference.

State law reference—G.S. 160D-947(c)

Section 15-421. General powers of the commission.

The commission may, within the zoning jurisdiction of the city:

- Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
- (2) Recommend to the board of aldermen areas to be designated by ordinance as "historic districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "landmarks";
- (3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;
- (4) Restore, preserve, and operate historic properties;
- (5) Recommend to the board of aldermen that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;
- (6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;
- (7) Cooperate with the state, federal, and local governments in pursuance of the purposes of G.S. 160D, Article 9, Part 4. The board of aldermen, or commission when authorized by the board

of aldermen, may contract with the state, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;

- (8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;
- (9) Prepare and recommend the official adoption of a preservation element as part of the city's comprehensive plan;
- (10) Review and act upon proposals for alterations, demolitions, or construction within historic districts, or for the alteration or demolition of designated landmarks pursuant to G.S. 160D, Article 9, Part 4; and
- (11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

State law reference(s)-G.S. 160D-942

Section 15-422. Certificate of appropriateness required.

(a) No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor building site, nor aboveground utility structure, nor any type of outdoor advertising sign, nor any satellite receive-only earth station antennae, shall be erected, altered, restored, moved, or demolished within such district until after an application for a certificate of appropriateness has been submitted to and approved by the commission, or the administrator in the case of "minor works."

A certificate of appropriateness shall be issued by the commission, or by the administrator in the case of minor works, prior to the issuance of a building permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this article, and, in the case of satellite receive-only earth station antennae, such conditions may include regulation of location, height, and screening through the application of guidelines set forth in the historic district design guidelines. A certificate of appropriateness shall be required whether or not a building permit is required, but said certificate of appropriateness does not obviate the necessity of procuring a building permit or such other permit as may be required by law; provided, however, any building permit or other permit issued other than in conformity with this section shall be invalid. Only the commission may deny an application for a certificate of appropriateness. No application for a certificate of appropriateness through the minor works process may be denied by the administrator.

Except as provided in subsection (b), the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant

fixtures, outdoor advertising signs, or other significant features in the district or on a landmark which would be incongruous with the special character of the landmark or district.

- (b) Notwithstanding subsection (a), jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been granted in writing by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.
- (c) All public utility companies shall be required to obtain certificates of appropriateness prior to initiating any changes in utility installations or structures on easements or streets located in the historic district or on landmark property; provided, however, a certificate of appropriateness is not required in order to conduct ordinary maintenance or repair of utility lines and supporting structures, and/or replacement of street fixtures in the event of equipment failure or damage due to accident or natural occurrences, such as electrical storms, tornadoes, and ice storms.
- (d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the commission's rules of procedure. Nothing herein shall prohibit an extension of time where mutual consent is given. Failure to take final action on an application within the prescribed time limit, or extensions thereof, shall result in approval of the application submitted. As part of its review procedure, the commission may view the premises and seek the advice of the division of archives and history or such other expert advice as it may deem necessary under the circumstances.

(e) Appeals.

- Appeals of administrative decisions may be taken to the commission.
- (2) All decisions of the commission in granting or denying a certificate of appropriateness may be appealed to the board of adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in G.S. 160D-405(d). To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the board of adjustment.
 - (3) Appeals from the board of adjustment may be made pursuant to G.S. 160D-1402.
- (4) Petitions for judicial review shall be taken within times prescribed for appeal of quasi-judicial decisions in G.S. 160D-1405. Appeals in any such case shall be heard by the superior court of the county in which the local government is located.
- (f) All of the provisions of this section are hereby made applicable to construction, alteration, moving, and demolition by the state, its political subdivisions, agencies and instrumentalities,

provided, however, they shall not apply to interiors of buildings or structures owned by the state. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of the commission. The North Carolina Historical Commission shall render its decision within 30 days from the date that the notice of appeal by the state is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the state for certificates of appropriateness. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the commission.

State law reference(s)-G.S. 160D-947

Section 15-423. Application procedures.

- (a) Preapplication review. Prior to the submission of an application for a certificate of appropriateness, a preapplication review is available to any prospective applicant, and is required for any project that constitutes a major works. A preapplication review allows the applicant to become familiar with the commission's standards and guidelines and is intended to facilitate the certificate of appropriateness application process. An applicant seeking a certificate of appropriateness for a major works shall prepare and submit such information deemed relevant by the administrator or commission, which may include, but is not limited to the following:
 - 1. Plot plans;
 - 2. Preliminary drawings;
 - Samples of materials;
 - 4. Photographs.

The preapplication review does not require a formal application, detailed architectural plans, drawings and specifications, or proposals from contractors. Applicants seeking or requiring a preapplication review shall notify the administrator before the date of the anticipated preapplication review to ensure that all relevant information is provided to the commission.

- (b) Application submitted to appropriate administrative official. An application for a certificate of appropriateness shall be obtained from and, when completed, filed with the city's development services department where it shall be reviewed by the zoning administrator for compliance with applicable zoning requirements, and then forwarded to the administrator. Applications for certificates of appropriateness must be filed with the written consent the property owner. Applications for certificates of appropriateness shall be considered by the commission at its next regular meeting which is held at least 14 days after the completed application shall have been filed.
- (c) Contents of application. The commission shall, by uniform rule in its rules of procedure, determine the form of the application which is to be filed for a certificate of appropriateness, and may require such data as is reasonably necessary to determine the nature of the application. An application shall not be considered complete until all the required data shall have been submitted. Nothing shall prevent the applicant from filing with the application additional relevant information

bearing on the application. An applicant may amend or supplement an application at any time prior to a final decision by the commission.

- (d) Quasi-judicial procedures. Other than administrative decisions on minor works, decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures of G.S. 170D-406.
- (e) Commission action on application. Prior to the issuance or denial of a certificate of appropriateness, the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. After the applicant and other property owners likely to be materially affected by the application have been given an opportunity to be heard, the commission shall take action on the application and in doing so shall apply the review criteria contained in the design standards, or the Secretary of the Interior's Standards in the case of authentic restorations or reconstructions, and this ordinance. The commission's action on the application shall be approval, approval with conditions, or denial. The commission shall not refuse to issue a certificate of appropriateness except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features or other significant features in the historic district which would be incongruous with the special character of the district. In cases where the commission deems it necessary, it may hold a public hearing concerning an application for a certificate of appropriateness for major works.

As part of its review procedure, the commission may view the premises, and seek the advice of the department of cultural resources, or such other expert advice as it may deem necessary under the circumstances.

- (f) Reasons for commission's actions to appear in minutes. The commission shall cause to be entered into the minutes of its meeting the reasons for its actions, whether it be approval with conditions, or denial.
- (g) Submission of new application. If the commission determines that a certificate of appropriateness should not be issued, a new application affecting the same property may be submitted to the administrator immediately, provided such new application reflects such changes in the proposal as are necessary to address the reasons for the prior denial.
- (h) Waiver of filing schedules and notice in cases of disaster-related repairs. Notwithstanding any other provision of this section, in cases in which a state of emergency or disaster has been declared by the city or its authorized elected officials as a result of natural or manmade events, the commission may, in its sole discretion, waive all application deadline requirements and requirements of notice to neighboring property owners in an effort to expedite the review of applications for certificates of appropriateness addressing disaster-related repairs to buildings and structures within the historic district. Waiver of said filing deadline and notice requirements shall not relieve the applicant/property owner of making permanent repairs that meet the established guidelines and standards for improvements in the historic districts which require a certificate of appropriateness. The commission may, in its sole discretion, authorize temporary repairs to be made which may be left in place during a period not to exceed six months so that the applicant/property owner may attempt to weatherproof or stabilize a damaged building/structure.

State law reference(s)—G.S. 160D-947(c).

Section 15-424. Review criteria.

- (a) Intent. It is the intention of these regulations to insure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings, or prohibit the demolition of the same other than as provided in section 15-426, or to impose architectural styles from particular historic periods. In considering construction, the commission shall encourage architectural design that is harmonious with the character of the district or individually designated landmark.
- (b) Exterior form and appearance. In reviewing applications for a certificate of appropriateness, the commission shall apply the design standards in determining whether a proposed project is congruous with the special character of the district, unless the application for a certificate of appropriateness is for an authentic restoration or reconstruction, in which case the commission shall apply the Secretary of the Interior's Standards.

Section 15-425. Certain changes not prohibited.

- (a) Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material, or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any feature which the building inspector or similar official shall certify in writing to the commission is required by the public safety because of unsafe or dangerous condition, and no certificate of appropriateness is required in order to do the things permitted by this subsection 15-425(a).
- (b) Nothing in this article shall be construed to prevent a property owner from making any use of his property that is not prohibited by law.
- (c) Nothing in this article shall be construed to prevent (i) the maintenance, or (b) in the event of an emergency the immediate restoration, of any existing above-ground utility structure without approval by the commission.

State law reference - G.S. 160D-948.

Section 15-426. Demolition of landmarks and buildings within historic district.

- (a) An application for a certificate of appropriateness authorizing the demolition or destruction of a non-contributing structure may not be denied.
- (b) An application for a certificate of appropriateness authorizing the demolition or destruction of a contributing structure may be denied consistent with the provisions of the design standards,

except where the commission finds that the owner would be permanently deprived of all beneficial use or return by virtue of the denial.

- (c) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.
- (d) A certificate of appropriateness issued pursuant to this section may contain reasonable conditions related to the demolition or destruction of the building or structure.
- (e) If the commission has voted to recommend designation of a property as a landmark or designation of an area as an historic district, and final designation has not been made by the board of aldermen, the demolition or destruction of any contributing structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 365 days, or until the board of aldermen takes final action on the designation, whichever occurs first. Should the board of aldermen designate a property as a landmark or designate an area as an historic district, the demolition of any contributing structure delayed by the commission shall be subject to the requirements of subsection (b).

State law reference - G.S. 160D-949; Session Law 2007-32.

Section 15-427. Remedies.

In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated pursuant to this article is about to be demolished, whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with this article or other provisions of this ordinance, the city, the commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by G.S. Chapter 160A for violation of the city code.

Section 15-428. Compliance and duration.

- (a) Compliance with the terms of the certificate of appropriateness shall be enforced by the administrator. Failure to comply with a certificate of appropriateness shall constitute a violation of the ordinance.
- (b) The certificate of appropriateness shall be valid for a period of one year from the date of issuance. In the event of an appeal of a certificate of appropriateness, the certificate shall be valid for a period of one year from the date of expiration of any rights of appeal.
- (c) Failure to procure a building permit within a one-year period shall be considered as a failure to comply with the certificate of appropriateness and the certificate shall become null and void. If

a building permit is not required, the approved work shall be commenced within a one-year period from the date of issuance unless the certificate of appropriateness is extended as provided in subsection (d).

- (d) The certificate of appropriateness may be extended by the administrator for a period not to exceed one year upon written request of the applicant if the written request is submitted prior to the expiration of the original certificate. The administrator shall inform the commission of any extension of time for a certificate of appropriateness. No extension of a certificate shall be denied by the administrator without formal action of the commission. Notwithstanding the administrator's authority under this section, the commission is also empowered to grant an extension of a certificate of appropriateness for any length of time deemed appropriate provided an application for such extension is submitted in writing to the commission prior to the expiration of the original certificate or any extension thereof. If the applicant fails to extend a certificate, then the project must be resubmitted to the commission. No notice shall be required to extend a certificate of appropriateness.
- (e) A certificate of appropriateness is transferable provided the new property owner signs a written statement acknowledging his understanding and acceptance of the terms of the approved certificate of appropriateness.

State law reference - G.S. 160D-947(c).

Section 15-429. Prevention of demolition by neglect of buildings and structures within locally designated historic districts.

- (a) Standards. The exterior features of any building or structure located within an historic district shall be preserved by the owner or such other person who may have legal possession, custody, and control thereof against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody, and control, shall upon written request by the city repair such exterior features if they are found to be deteriorating, including but not limited to any of the following defects:
- (1) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.
- (2) Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
- (3) Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
- (4) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
 - (5) Deterioration or crumbling of exterior plasters or mortars.
- (6) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- (7) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
 - (8) Rotting, holes, and other forms of decay.

- (9) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
 - (10) Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
- (b) Boarded up windows and doors prohibited; exceptions. Boarded-up windows and doors in areas zoned C-1 and C-2 of the historic district are prohibited except as provided herein. Temporary exceptions to this standard can only be authorized by a certificate of appropriateness that is approved by the administrator or by order of the chief building inspector for a specific limited time period in order to protect the structure against further deterioration pending replacement windows, doors, or storefronts. All temporary boarded up windows which will remain for more than 30 days must be painted as specified and authorized by the certificate of appropriateness.
- (c) Petition and action. The commission may file a petition listing specific defects with the chief building inspector requesting that he act under the following procedures to require the correction of deterioration or making of repairs to any historic landmark or contributing structure located within the historic district so that such structure shall be preserved and protected in accordance with the purposes of section 15-411.
- (1) Whenever a petition is filed with the chief building inspector charging that a structure is undergoing demolition by neglect, the chief building inspector (or a designated agent) shall, if his or her preliminary investigation discloses a basis for such charges, within 15 days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the chief building inspector at a place within the city in which the property is located therein fixed not less than 30 nor more than 45 days after the serving of such complaint; that the owner and/or parties in interest shall be given a right to answer to give testimony at the place and time fixed in the complaint; that the commission with jurisdiction shall also be given notice of the hearing; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the chief building inspector. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and/or other parties in interest wishes to petition the commission for a claim of undue economic hardship.
- (2) If after such notice and hearing, the chief building inspector determines that the structure is undergoing demolition by neglect because it is deteriorating according to the standards of this section, the chief building inspector shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. In the event that the owner and/or other parties in interest wish to petition for a claim of undue economic hardship, the chief building inspector's order shall be stayed until after the commission's determination in accordance with the procedures of subsections 15-429(e) and 15-429(f).
- (d) Methods of service. Complaints or orders issued by the chief building inspector shall be served upon persons either personally or by registered or certified mail; but if the whereabouts of such persons are unknown and the same cannot be ascertained by the chief building inspector in

the exercise of reasonable diligence, and the chief building inspector shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order may be made by publishing the same once each week for two successive weeks in a newspaper generally circulated within the city. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(e) Safeguards from undue economic hardship.

- (1) When a claim of undue economic hardship is made owing to the effects of this article, the chief building inspector shall notify the commission within ten days following the hearing on the complaint. The commission shall schedule a hearing on the claim at its next regular meeting, within the limitations of its procedures for application deadlines. The petitioner shall present the information provided under subsection [(e)](2) to the commission. The commission may require that an owner and/or parties in interest furnish such additional information that is relevant to its determination of undue economic hardship. The commission may direct its staff to furnish additional information as the commission believes is relevant. The commission shall also state which form of financial proof it deems relevant and necessary to a particular case. In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained.
- (2) When a claim of undue economic hardship is made owing to the effects of this article, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of hardship. The minimum evidence shall include for all property:
- (aa) Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
 - (bb) Financial resources of the owner and/or parties in interest.
 - (cc) Cost of repairs.
 - (dd) Assessed value of the land and improvements.
 - (ee) Real estate taxes for the previous two years.
- (ff) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
 - (gg) Annual debt service, if any, for previous two years.
- (hh) Any listing of the property for sale or rent, price asked, and offers received, if any.

For income producing property;

- Annual gross income from the property for the previous two years.
- (jj) Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
 - (kk) Annual cash flow, if any, for the previous two years.

- (3) Within 60 days of the commission's hearing on the claim, the commission shall cause to be made a finding regarding the claim of undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the commission shall report such a finding to the chief building inspector. The chief building inspector shall then cause to be issued an order for such property to be repaired within the time specified.
- (4) In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under the state law, loans or grants from the city, the county, or other public, private, or non-profit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The commission shall report such finding and plan to the chief building inspector. The chief building inspector shall cause to be issued an order for such property to be repaired within the time specified, and in accordance with the provisions of the recommended plan.
- (f) Appeals. Findings made by the chief building inspector or by the commission may be appealed to the board of adjustment. Any such appeal shall be in the nature of certiorari pursuant to the provisions of G.S. 160A-388(b1) and G.S. 160A-393. Any appeal from the board of adjustment's decision in any such case shall be heard by the superior court of the county.
- (g) Other city powers. Nothing contained within this article shall diminish the city's power to declare a building as unsafe or a violation of the minimum housing code.
- (h) Penalties and remedies. Enforcement of this article may be by either one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil proceeding prescribed for violations and prohibitions.
- (1) Equitable remedy. The city may apply for any appropriate equitable remedy to enforce the provisions of this article.
- (2) Order of abatement. The city may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this article. Whenever the party is cited for contempt by the court and the city executes the order of abatement, the city shall have a lien, in the nature of a mechanic's and materialman's lien, on the property for the cost of executing the order of abatement.
- (3) Civil penalty. No civil penalty shall be levied unless and until the chief building inspector, or his or her designee shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for each violation indicating the nature of the violation and ordering corrective action. The notice shall also set forth the time period when corrective measures must be completed. The notice shall state that failure to correct the violation within the specified time period will result in the assessment of civil penalties and other enforcement action. If after the allotted time period has expired and after the hearing of any appeal by the board of adjustment, and no corrective action has been completed, a civil penalty shall be assessed as provided by section 15-114.

State law reference- G.S. 160D-949(b); 160D-406.

SECTION 41. This ordinance shall be effective from and after the date of its adoption.

ADOPTED THIS 13th DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

JEFFRET T. ODHAM, MATOR

BRENDA E. BLANCO, CITY CLERK

APPENDIX A LAND USE

ARTICLE I. GENERAL PROVISION

Section 15-2. Authority.

This ordinance is adopted pursuant to the authority granted by G.S. 160D-103. 160A-360 et seq.

Section 15-3. Jurisdiction.

- (a) This ordinance is effective throughout the city's planning and development regulation jurisdiction, which consists of the area within the corporate boundaries of the city and the area beyond the city limits within which the extraterritorial jurisdiction of the city has been extended, in accordance with Chapter 160D pursuant to G.S.160A-360 et seq., as both may be amended from time to time.
- (b) In addition to other locations required by law, a copy of a map showing the boundaries of the city's planning jurisdiction shall be available for public inspection in the planning and inspections department and the engineering department.

Section 15-4. Effective dates.

- (a) The original subdivision ordinance of the City of New Bern was adopted by the board of aldermen on February 7, 1956 and became effective immediately thereafter, and has been subsequently amended most recently as November 22, 2022.
- (b) The original zoning ordinance of the City of New Bern was adopted by the board of aldermen on June 2/3, 1953. No effective date was stated. The existing zoning ordinance was adopted on March 5, 1968, effective on March 15, 1968.
- (c) The original flood damage prevention ordinance was adopted by the board of aldermen of the City of New Bern on May 24, 1978. The current flood damage prevention ordinance was adopted on April 28, 1987, and became effective upon adoption.

Section 15-5. Relationship to existing zoning, subdivision and flood control ordinance.

- (a) To the extent that the provisions of this ordinance are the same in substance as the previously adopted provisions that they replace in the city's zoning, subdivision, or flood control ordinances, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this ordinance merely by the reenactment of the zoning ordinance.
- (b) Chapter 160D of the North Carolina General Statutes applies to this Ordinance. In the event of any conflict between this Ordinance and Chapter 160D, the provisions of Chapter 160D shall control.

Section 15-7. No use or subdivision of land or building except in conformity with ordinance provisions.

- (a) Subject to article VIII of this ordinance, Nonconforming Situations, no person may use or occupy any land or buildings, or authorize or permit the use or occupancy of any land or buildings under his control, except in accordance with the applicable provisions of this ordinance; no person may subdivide land for sale except in accordance with the applicable provisions of this ordinance. No person shall commence or proceed with development as defined in Section 15-15 without first securing approval from the city as herein provided.
- (b) For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

Section 15-10. Computation of time.

- (a) Unless otherwise specifically provided, the time within which an action is to be taken shall be computed by excluding the first and including the last day. If the last day is Saturday, Sunday, or a legal holiday, that day shall be the next regular working day.
- (b) Unless otherwise specifically provided, whenever a person has the right or is required to take some action within some prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall be added to the prescribed period. Specified otherwise, in the absence of evidence to the contrary, delivery by first-class mail shall be deemed received on the third business day following deposit of the item for mailing with the United States Postal Service, and delivery by electronic mail shall be deemed received on the date sent.

Section 15-12. Conflicts of Interest.

- (a) Board of Aldermen. A Board of Aldermen member shall not vote on any legislative decision regarding a development regulation under this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board of Aldermen member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- (b) Appointed Boards. Members appointed to board by the Board of Aldermen shall not vote on any advisory or legislative decision regarding a development regulation under this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member appointed to the Planning and Zoning Board by the Board of Aldermen shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) Administrative Staff. – No staff member shall make a final decision on an administrative decision under this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city.

- (d) Quasi-Judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- (e) Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
- (f) Familial Relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

ARTICLE II. DEFINITIONS

Section 15-15. Basic definitions and interpretations.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated below when used in this ordinance. If a word or phrase used in this Ordinance is not defined by this Article or elsewhere in the Ordinance, to the extent such word or phrase is defined in Chapter 160D, that definition shall control.

(29) Developer: A person who is responsible for undertaking any activity involving changes to improved or unimproved real estate, including, but not limited to, the division of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure or building; the mining, dredging, filling, grading, paving, drilling, or excavation of any land; and other land disturbing activities. As defined in N.C.G.S. §160D-

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- 102(11), "developer" means a person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
- (30) Development: That which is to be done pursuant to a zoning, special use, conditional use, or sign permit. [The term includes] any manmade change to improved or unimproved real estate, including, but not limited to, the division of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or structure; the mining, dredging, filling, grading, paving, excavation, or drilling of land; and other land disturbing activities. As defined in N.C.G.S. §160D-102(12), "development" means any of the following:
- (a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
 - (b) The excavation, grading, filling, clearing, or alteration of land.
 - (c) The subdivision of land as defined in N.C.G.S. §160D-802.
- (d) The initiation or substantial change in the use of land or the intensity of use of land.

(35.5) Dwelling: Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

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(69) Manufactured home: A dwelling unit, designed for use as a permanent residence, that is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed for installation and/or assembly on the building site. (See section 15-164) As defined in N.C.G.S. §143-145(7), a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation

having a measurement of over 32 feet in length and over eight feet in width. The term "manufactured home" does not include a "recreational vehicle."

...

(75) Mobile home: See Manufactured Home. Any Class A, B or C manufactured home. (See section 15-164)

...

- (88) Planning and development regulation jurisdiction: The area within the city limits as well as the area beyond the city limits within which the city is authorized to plan for and regulate development pursuant to the authority granted in G.S. 160A-360 et seq. The geographic area defined in Section 15-3(a).
- (88.5) Property: All real property subject to land-use regulation by the city. The term includes any improvements or structures customarily regarded as a part of real property.

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(111) Site specific development plan: A plan which has been submitted to the city by a property owner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan shall generally include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, driveways, and, if applicable, sidewalks. For purposes of this ordinance, such plan shall be limited to the following plans or approvals: a subdivision general plan, a special use permit, or a conditional use permit.

Site plan: A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision.

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(113) Special use permit: A permit issued by the board of adjustment to authorize development or land uses in a particular zoning district upon presentation or competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits

previously referred to as conditional use permits, that authorizes the recipient to make use of property in accordance with the requirements of this ordinance as well as any additional requirements imposed by the board of adjustment.

...

- (127) Subdivision: A division of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this ordinance applicable strictly to subdivisions: (i) the combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this ordinance; (ii) the division of land into parcels greater than ten acres where no street rightof way dedication is involved; (iii) the public acquisition by purchase of strips of land for the widening or opening of streets; and (iv) the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the minimum standards set forth in this ordinance. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the subdivision regulations contained in this Ordinance:
- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the Town, as shown in its subdivision regulations.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the North Carolina General Statutes.

...

(142) Vested right: The right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in N.C.G.S. §160D-108 or

under common law. approved site-specific development plan, subdivision general plan, or special use or conditional use permit.

ARTICLE III. ADMINISTRATIVE MECHANISMS

PART II. PLANNING AND ZONING BOARD

Section 15-24. Appointment and terms of planning and zoning board members.

(a) There shall be a planning and zoning board consisting of eight members. Seven members, appointed by the board of aldermen, shall reside within the city. One member, appointed by the Craven County Board of Commissioners, shall reside within the city's extraterritorial planning area. If the Craven County Board of Commissioners fails to make the appointment within 90 days after receiving a resolution from the board of aldermen requesting that they be made, the board of aldermen may make the appointment. Members may be removed by the board of aldermen at any time for failure to attend three consecutive meetings without excuse, or for failure to attend thirty percent (30%) or more of the meetings within any 12-month period or, after a hearing, for other good cause related to performance of duties. All members shall have demonstrated special interest, experience, or education in banking, economics, environmental and land use policy, housing, or industry.

...

(e) All members appointed to the planning and zoning board shall, before entering their duties, qualify by taking an oath of office as required by N.C.G.S. §160A-61.

Section 15-26. Meetings of the planning and zoning board.

- (d) ...
- (e) Rules of procedure that are consistent with the provisions of Chapter 160D may be adopted by the board of aldermen for the planning and zoning board. In the absence of action by the board of aldermen, the planning and zoning board is authorized to adopt its own rules of procedure that are consistent with the provisions of Chapter 160D. A copy of any adopted rules of procedure shall be maintained by the city clerk and shall be posted on the city's website.

PART III. BOARD OF ADJUSTMENT

Section 15-31. Appointment and terms of board of adjustment.

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(e) All members appointed to the board of adjustment shall, before entering their duties, qualify by taking an oath of office as required by N.C.G.S. §160A-61.

(f) The board of adjustment shall follow the procedures set forth in this ordinance if making a decision or determination for which a quasi-judicial hearing is required.

Section 15-33. Meetings of the board of adjustment.

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(d) Rules of procedure that are consistent with the provisions of Chapter 160D may be adopted by the board of aldermen for the board of adjustment. In the absence of action by the board of aldermen, the board of adjustment is authorized to adopt its own rules of procedure that are consistent with the provisions of Chapter 160D. A copy of any adopted rules of procedure shall be maintained by the city clerk and shall be posted on the city's website.

Section 15-36. Voting

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(d) A member of the board or any other body exercising quasi-judicial functions pursuant to this article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, a financial interest in the outcome of the matter, or having standing under G.S. 160A-393(d) to appeal the decision upon which he or she is voting. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

PART V. BOARD OF ALDERMEN

Section 15-40. Board of aldermen.

(a) The board of aldermen, in considering conditional use permit applications, acts in a quasijudicial capacity and, accordingly, is required to observe the procedural requirements set forth in articles IV and VI of this ordinance.

...

PART VI. NOTIFICATION OF OFFICIAL MEETINGS AND PUBLIC HEARINGS OF PUBLIC BODIES

Section 15.41. Notification requirements.

The following shall be considered the official minimum requirements for notification of public meetings and public hearings for all City of New Bern public bodies. As used in this section, "public body" means any elected or appointed board commission or committee that exercises or is

authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function created by the board of aldermen or this Code of Ordinances, and shall specifically include the board of aldermen.

- (f) Notice of public hearings to adopt, amend or repeal any section of the City of New Bern Land Use Ordinance. Before adopting, amending, or repealing any section of the land use ordinance, including zoning amendments, the board of aldermen shall hold a public hearing on it. A notice of the public hearing, including subject matter of the of the public hearing, shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten days or more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
- (g) Notification of applicants, appellants, owners, and interested parties. Notice shall be given to applicants, appellants, owners of property that is the subject of a public hearing, and any other person who makes a written request for such notice of the date, time, and place of the official meeting at which their application or case is to be heard, by mailing to such persons a written notice, postmarked no later than seven calendar days prior to the date of the public hearing. In the case of zoning map amendments, written notice of the public hearing on the proposed amendment shall be sent by first class mail, postmarked at least ten but not more than 25 days prior to the date of the public hearing.
- (h) Notification of affected property owners. All property owners within 100 feet of any property that is the subject of a public hearing shall be given written notice of subject matter of the of the public hearing, postmarked no later than seven calendar days prior to the date of the public hearing. In the case of zoning map amendments, written notice of the public hearing on the proposed amendment shall be sent by first class mail, postmarked at least ten but not more than 25 days prior to the date of the public hearing. Addresses of such owners shall be derived from Craven County GIS and tax records, and address lists shall not be compiled more than 14 days prior to the date of the public hearing. In the event that more than 50 properties, owned by no less than 50 different property owners, are to be affected and notified by mail as part of an application for zoning amendment, certificate of appropriateness, subdivision, or other regulated matter, the clerk or secretary for such public body may, alternatively, elect to run half page newspaper adds according to the requirements of newspaper notification for a land use ordinance change as provided in subsection (f).
- (i) Subject property posting. When a zoning map amendment or planned unit development is proposed, the city shall prominently post a notice of the public hearing on the site proposed for a planed unit development or rezoning or on an adjacent street or highway right of way at least seven days prior to the scheduled hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.
- (j) Failure to give proper notice of public hearings. Failure to adhere to the notice requirements established for any public hearing will result in the postponement of such public

hearing until the next regular meeting of the public body unless the public body calls a special meeting such that the notice requirements for the public hearing are met.

(k) Precedence of notification section. In the event of notification a conflict between the requirements established in section 15-41 and any public body rule, regulation, or policy, the notice requirements of section 15-41 shall control.

ARTICLE IV. PERMITS AND FINAL PLAT APPROVAL

PART I. PERMIT REQUIREMENTS

Section 15-46. Permits required.

- (a) Subject to section 15-322, No person shall commence or proceed with development without first securing approval from the city as herein provided. The use made of property may not be substantially changed (see section 15-152), clearing, grading, or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:
- (1) A zoning and/or building permit issued by the city zoning administrator; and
- (2) A special use permit issued by the board of adjustment.

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- (c) A zoning permit, special use permit, or sign permit shall be issued in the name of the applicant (as defined in section 15-48), and shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the city permit-issuing authority.
- (d) An approval under this ordinance shall be in writing and shall attach to and run with the land. A development approval shall a provision requiring the development to comply with all applicable state and local laws. The city may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.
- (e) When this ordinance specifies that a matter may or shall be approved or disapproved, such approvals and disapprovals shall be communicated by the officer or board making the determination who shall in turn give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

Section 15-48. Who may submit permit applications.

- (a) Applications for zoning, special use, or sign permits, or minor subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit or the minor subdivision plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this ordinance and have the owner's consent, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees) the landowner, lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
- (b) The permit issuing authority city may require an applicant to submit evidence of his authority to submit the application in accordance with subsection (a) whenever there appears to be a reasonable basis for questioning this authority.

Section 15-49. Applications to be complete.

- (a) All applications for zoning, special use, or sign permits must be completed before the <u>city</u> permit-issuing authority is required to consider the application.
- (b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the <u>city</u> permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance.
- (c) In this ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices to this ordinance. It may not be necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the <u>city permit issuing authority</u> to evaluate the application in the light of the substantive requirements set forth in this text of this ordinance. However, whenever the <u>city permit issuing authority</u> under this ordinance requires a certain element of a development to be constructed in accordance with the detail requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings shall have been submitted to and approved by the zoning administrator and/or the chief building inspector or his designee. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in article VII (Enforcement and Review).
- (d) The presumption established by this ordinance is that all of the information set forth in this ordinance is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the city permit-issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the board of adjustment, the applicant may rely in the first instance on the recommendations of the zoning administrator as to whether more or less information than that set forth in this ordinance should be submitted.

Section 15-50. Staff consultation before formal application.

- (a) To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this ordinance, preapplication consultation between the applicant developer and the planning staff is encouraged or required as provided in this section.
- (b) Before submitting an application for any other permit, <u>applicants</u> developers are strongly encouraged to consult with the planning staff concerning the application of this ordinance to the proposed development.

Section 15-51. Staff consultation after application submitted.

(a) Upon receipt of a formal application for a zoning, building or special use permit, or minor plat approval, the zoning administrator shall review the application and confer with the applicant to ensure that he understands the city staff's interpretation of the applicable provisions of this ordinance, that he has submitted all of the information that he intends to submit and that the application represents what he proposes to do.

Section 15-52. Zoning permits.

(a) A complete application form for a zoning permit shall be submitted to the zoning administrator by filing a copy of the application with the zoning administrator in the planning and inspections development services department.

Section 15-59. Authorizing use, occupancy, or sale before completion of development under special use or conditional use permits.

(b) With respect to subdivisions in which the developer is selling only undeveloped lots, the board of aldermen may authorize final plat approval and the sale of lots before all the requirements of this ordinance are fulfilled if the subdivider provides a performance bond, eash funds, letter of credit, real estate of equal value, or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within not more than 12 months after final plat approval. In general, satisfactory security shall be reasonably liquid and shall equal 120 percent of the value of the improvements.

Section 15-61. Expiration of permits.

- (a) <u>Unless a different period is provided by a special use permit, a zoning, special use, or and sign permits shall expire automatically one year two years after the issuance of such permits, if the work authorized by the permit has not been substantially commenced. ÷</u>
- (1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
- (2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see section 15-60), this requirement shall apply only to the first phase of the development in which the permit applies.
- (b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire, unless the permittee has acquired a vested right under section 15-67 et seq. However, expiration of the permit shall not affect the provisions of section 15-62. If after commencement the work or activity is discontinued for a period of twelve months after commencement, the permit shall immediately expire.
- (c) The permit issuing authority may extend for a period up to six months the date when a permit would otherwise expire pursuant to subsections (a) or (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.
- (db) For purposes of this section, the a permit within the jurisdiction of the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when a copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant.

Section 15-62. Effect of permit on successors and assigns.

- (a) Zoning, special use, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable run with the land. However Accordingly, so long as the land or structures or any portion thereof covered under a permit continue to be used for the purposes for which the permit was granted, then:
- (1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

(2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice of the existence of the permit at the time they acquired their interest.

Section 15-63. Amendments to and minor modifications of permits.

- (a) Insignificant Minor deviations from the permit (including approved plans) issued by the board of aldermen, the board of adjustment, or the zoning administrator are permissible and the zoning administrator may authorize such insignificant minor deviations. A deviation is insignificant minor if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. Such deviation shall be documented in writing and submitted to the appropriate permit-issuing authority.
- (b) Minor design modifications or minor changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (c) All other requests for changes in approved plans, including increases in density or intensity of use shall be considered major changes and be processed as new applications. If such requests are required to be acted upon by the board of aldermen or board of adjustment, new conditions may be imposed in accordance with section 15-58, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

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Section 15-67. Establishment of vested right Vested rights.

A vested right, as defined in Article II of this ordinance and as further explained in G.S. 160A-385, shall be deemed established with respect to any property upon the valid issuance of a special use permit or approval of a general plan in the case of subdivision, following notice and public hearing by the board of adjustment, or the planning and zoning board, as the case may be. Such vested right shall confer upon the property owner the right to undertake and complete the development and use of said property under the terms and conditions of the special use permit, or general plan, including any amendments thereto. The city may approve a special use permit, or general plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. The city shall not require a property owner to waive his vested rights as a condition of development approval. A

special use permit, or general plan shall be deemed approved upon the effective date of the city's action or ordinance relating thereto.

Unless otherwise specified in this ordinance, by the planning and zoning board, or other statute, development approvals, except site-specific vesting plans, expire one year after issuance unless work authorized by the development approval has substantially commenced.

Section 15-68. Duration and termination of vested right Site-specific vesting plan.

- (a) A right which has been vested as provided for in this article shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a special use permit, or general plan, unless expressly provided by the city.
- (b) Notwithstanding subsection (a), the city, in the case of special use permits or general plans, may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic eyeles, and market conditions. These determinations shall be in the sound discretion of the city. In extending the established two year vesting period, the city may require the property owner to submit a site-specific development plan, or general plan in the case of subdivision, for approval by the permit issuing authority with respect to each additional phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification(s).
- (c) Following approval or conditional approval of a special use permit, or general plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the city to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the city from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.
- (d) Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this ordinance is outstanding.
- (e) A right which has been vested, as provided in this section, shall terminate at the end of the applicable vesting period with respect to buildings or uses for which no valid building permit applications have been filed.
- (a) A statutory vested right shall be deemed established upon the valid approval, by the planning and zoning board, of a site-specific vesting plan. Pursuant to G.S. §160D-108(d), the statutory vesting granted by this ordinance, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.
- (b) An approved site-specific vesting plan precludes any zoning action by the city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan and in accordance with applicable limitations and exceptions.

- (c) A vested right established pursuant to this section shall run for a period of two years from the effective date of the approval of the development application.
- (d) Limits of site-specific vesting plans.
- 1. Nothing in this ordinance shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this ordinance. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable regulations.
- 2. The establishment of a vested right pursuant to this ordinance shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the city including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
- 3. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right shall become effective upon the expiration or termination of the vested rights period provided for in this appendix.
- 4. Any vested rights for a site-specific vesting plan are subject to the exceptions specified in G.S. \$160D-108.1.

Section 15-69. Subsequent changes prohibited after establishment of vested right; exceptions Multi-phase development.

- (a) A vested right, once established, as provided for in this article, precludes any zoning action by the city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of property as set forth in a special use permit, or an approved general plan, except:
- With the written consent of the affected property owner; or
- (2) Upon findings, by ordinance after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the special use permit, or general plan; or
- (3) To the extent that the affected property owner receives compensation for all costs, expenses, and other losses incurred by the property owner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action; or
- (4) Upon findings, by ordinance after notice and a hearing, that the property owner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the board of adjustment in the case of special use permits, or the planning and zoning board in the case of general plans; or

- (5) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as authorized by a special use permit, or as contemplated in the subdivision general plan, in which case the board of adjustment, or planning and zoning board, as the case may be, may modify, by ordinance after notice and a public hearing, the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan.
- (b) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances, or regulations which are general in nature and are applicable to all property subject to land use regulation by the city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new regulations shall become effective with respect to property which is subject to a special use permit, or general plan upon the expiration or termination of the vesting period provided for in this section.
- (c) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the city to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.

Pursuant to G.S. §160D-108(d)(4), multi-phase development that meets the following criteria shall have vested rights for a period of seven years from the time of approval of the development plan for the initial phase of the multi-phase development:

- Development shall contain at least 100 acres;
- (2) Development shall occur in more than one phase; and,
- (3) Development is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

Section 15-70. Miscellaneous provisions pertaining to vested rights.

- (a) A vested right obtained under this ordinance is not a personal right, but shall attach to and run with the applicable property. After approval of the special use permit or subdivision general plan, all successors to the original property owner shall be entitled to exercise such rights.
- (b) Nothing in this article shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.
- (a) All decisions and determinations of the zoning administrator pertaining to vested rights may be appealed to the board of adjustment pursuant to section 15-91.
- (b) A site-specific development plan shall be deemed approved upon the effective date of the planning board's action relating thereto.

- (c) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.
- (d) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "The planning and zoning board has granted a zoning vested right under G.S. §160D-108 on valid for two (2) years from this date." The site-specific development plan shall not be valid unless signed by the director.
- (e) Nothing in this chapter shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this ordinance.
- (f) Nothing in this ordinance is intended or shall be deemed to create any vested right other than those established pursuant to G.S. §160D-108.
- (g) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The board of aldermen hereby declares that it would have passed this ordinance and each section, subsection, clause and phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences or clauses be declared invalid.

PART II. MAJOR AND MINOR SUBDIVISIONS

Section 15-77. No subdivision without plat approval.

- (a) As provided in G.S. 160A-375, no person may subdivide his land except in accordance with the provisions of this ordinance. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of section 15-78 or section 15-79 and recorded in the register of deeds office of Craven County.
- (b) As provided in G.S. 160A-373, the register of deeds office of Craven County shall not record a plat of any subdivision within the city's planning jurisdiction unless the plat has been approved in accordance with the provisions of this ordinance.
- (a) No person shall commence or proceed with a subdivision of land without first securing approval under this ordinance from the city.
- (b) No subdivision within the city's planning and development regulation jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the city as herein provided, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city.

- (c) The review officer, pursuant to G.S. 47-30.2, shall not certify a subdivision plat that has not been approved in accordance with this ordinance nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this ordinance.
- (d) A plat shall be prepared, approved and recorded pursuant to this ordinance whenever a subdivision of land takes place.
- (e) Building permits may be denied for lots that have been illegally subdivided.

Section 15-78. Minor subdivision approval.

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(g) If the subdivision is disapproved, the director of planning and inspections shall furnish the applicant within 14 calendar days with a written statement of the reasons for disapproval the applicant may submit a revised preliminary plat, or appeal the decision as provided in Article V.

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Section 15-79. Major subdivision approval process.

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- (a) General plan. In filing a general plan, the applicant desiring to subdivide within the City of New Bern shall comply with the requirements herein below set forth.
 - (1) The general plan shall contain the following information:
 - (a) Existing and platted property lines, streets, buildings, watercourses, sewers, water mains (existing and proposed), transmission lines, bridges, culverts, drain pipes, city and county lines, and any public utility easements.
 - (b) Boundaries of tract, showing bearings and distances.
 - (c) Site plan of existing conditions including wooded areas, marshes, and wetlands, if applicable.
 - (d) Names of all adjoining property owners.
 - (e) Zoning classifications both on land to be subdivided and adjoining land.
 - (f) Plans for proposed utilities, including water, gas, sanitary sewer, storm drainage, electric, telephone, and cable.
 - (g) Other proposed rights-of-way, easements.
 - (h) Proposed lot lines, lot numbers, building envelopes in the case of PUDs, and approximate dimensions.
 - Proposed minimum setback lines.
 - (j) Contour map: one-foot intervals based on sea level datum.
 - (k) Proposed mini-parks, school sites, public open space, if applicable.
 - Provisions for the preservation and maintenance of mini-parks and open space, including draft of conservation easement; if applicable.
 - (m) Proposed planting plan, including type and details of required screening, if applicable.

- (n) Sketch vicinity plan.
- (o) Name of owner, surveyor, and planner.
- (p) Title, date, north point, and graphic scale.
- (q) Verification of submission of stormwater management and sedimentation control plans, if applicable.
- (r) Site data including acreage in total tract, mini-parks, open space, school sites, etc.; average lot size; total number of lots; lineal feet in streets.
 - (s) Profiles showing grades of streets, sewers, water lines, etc.
 - (t) Postal enumeration of each lot in the subdivision.
- (u) Statement by developer/subdivider that wetlands are not present on the site or that appropriate permits have been sought.
- (2) The applicant shall submit two print and one digital (in a format deemed acceptable by the Zoning Administrator) set of copies of the general plan and any supplementary material to the secretary of the planning and zoning board at least two weeks prior to the regularly scheduled meeting of the planning and zoning board of the City of New Bern. One set, consisting of 14 copies, shall be used for department review purposes. The second set, consisting of 14 copies, shall be provided for members of the planning and zoning board. The general plan shall be of a scale of one inch equals 100 feet or larger and shall be of a sheet size of 18 inches by 24 inches or larger.
 - (a) If the proposal of the subdivider/developer is a planned unit development (PUD), then and in that event the city shall cause signs to be placed on property proposed to be developed as a PUD at least seven days prior to the meeting of the planning and zoning board at which it will be considered. Notice shall be published one time in a newspaper of general circulation in the community at least ten and not more than 25 days prior to the meeting of the planning and zoning board.
- (3) The planning staff shall distribute copies of the proposed subdivision to: (1) appropriate departments for review; (2) the district highway engineer as to proposed State streets, State highways, and related drainage systems; (3) the county health director or local public utility, as appropriate, as to proposed water or sewerage systems; and (4) any governmental agency or agencies having a specific interest in the subdivision for their recommendations. The planning staff shall consolidate such recommendations and present them, together with its own, to the planning and zoning board.
- (4) The general plan shall be reviewed by the planning and zoning board. During this review:
 - (a) The subdivider presents his plan and answers questions of the planning and zoning board and planning staff.
 - (b) The planning staff shall make recommendations to the planning and zoning board,
 - (c) The planning and zoning board makes its recommendations and may recommend additional conditions to its approval in writing if deemed advisable to protect the public health, safety, and welfare.
- (5) The planning and zoning board shall approve, approve conditionally, or disapprove the general plan.

- (a) Approval of the general plan is authorization for the subdivider to proceed with the construction of the necessary improvements in preparation for the final plat.
 - (b) If approved conditionally, the conditions and reasons thereof shall be noted in the minutes and, if necessary, the planning and zoning board shall require the applicant to submit a revised plan.
 - (c) If the planning and zoning board should disapprove the general plan, the reasons for such action shall be noted in the minutes and recommendations made on the basis of which the proposed subdivision could be approved. The applicant may make such changes as will bring the proposed subdivision into compliance with the provisions of this ordinance and resubmit the plat for reconsideration by the planning and zoning board, or appeal the decision as provided in Article V.
 - (d) Failure on the part of the planning and zoning board to act within 60 days after a completed general plan is submitted shall be deemed approval.
- (e) The action of the planning and zoning board shall be noted on one copy of the general plan. This copy shall be retained in the permanent files of development services department.
- (f) Approval of the general plan by the planning and zoning board establishes a vested right as provided in sections 15-67 through 15-70 of this ordinance.

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Section 15-80. Endorsements on major subdivision plats.

All major subdivision plats shall contain the endorsements listed in subsections (1), (2), and (3) herein. The endorsements listed in subsection (4) shall appear on plats of all major subdivisions located outside the corporate limits of the city but within the planning jurisdiction.

Certificate of approval.

I hereby certify that all streets shown on this plat are within the City of New Bern's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within 12 months after the date below) has been ensured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with the New Bern City Code, and therefore this plat has been approved by the New Bern Board of Aldermen Planning and Zoning Board subject to its being recorded in the Register of Deeds Office of Craven County within one year of the date below.

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Section 15-82. Protection against defects Performance guarantees.

(a) Whenever pursuant to section 15-59 (Authorizing use, occupancy or sale before completion of development under special use permits), occupancy, use or sale is allowed before the completion of all publicly dedicated facilities and improvements, then the performance bond or the surety that is posted pursuant to section 15-59 shall guarantee that any defects in

improvements or facilities dedicated to the public that appear within one year after the occupancy, use, or sale of the property involved shall be corrected by the developer.

- (b) Whenever all publicly dedicated facilities and improvements are installed before occupancy, use, or sale is authorized, then the developer shall provide a written one-year warranty, in a manner and form satisfactory to the city attorney, covering all improvements which he shall have installed, or which he shall have agreed to install. If the improvements have been installed by the subdivider, the warranty shall run from the subdivider to the city. If the improvements have been installed by a contractor or contractors, the warranty or warranties shall run from the installing contractors to the city. If it is anticipated that the improvements shall be done by contract at a later date, the subdivider having submitted satisfactory guarantees in lieu of completed improvements. this requirement may be satisfied by an agreement between the subdivider and the city, in a manner and form satisfactory to the city attorney, by which the subdivider warrants all such improvements, and agrees to provide the contractor's warranties at such time as the improvements are completed. The warranties shall include a specific provision that any defects in improvements subject to the warranty which occur during the period of the warranty shall be corrected by the warrantor within 60 days of receipt of written notice of the defect from the city. Such warranties shall also provide that, if the defect is not corrected within the stated period, the city may, at its option, cause the defect to be corrected and bill the warrantor for the same. In addition, failure to comply with the notice to correct herein provided for shall subject the offender to a civil penalty in the sum of \$100.00 per day, for each day after the expiration of the 60-day period that the warrantor permits the condition to go uncorrected. This civil penalty may be recovered by the city in a civil action in the nature of a debt if the offender does not pay the penalty within 30 days after the offender has been notified of its imposition for violation of this ordinance.
- (c) An architect or engineer retained by the developer shall certify to the city that all facilities and improvements to be dedicated to the city have been constructed in accordance with the requirements of this ordinance. This certification shall be a condition precedent to acceptance by the city of the offer of dedication of such facilities or improvements.
- (d) For purposes of this section, the term "defects" refers to any condition in publicly dedicated facilities or improvements that requires the city to make repairs in such facilities over and above the normal amount of maintenance that they would require.
- In lieu of requiring the completion, installation, and dedication of all public improvements prior to final plat approval, the city may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements. Once said agreement is signed by both parties and the security required herein is provided, the final plat may be approved by the planning and zoning board if all other requirements of this ordinance are met. To secure this agreement, the developer shall provide, subject to approval of the city manager.

For purposes of this section, all of the following apply with respect to performance guarantees:

- (1) Type. The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee:
 - (a) Surety bond issued by any company authorized to do business in this State.

- (b) Letter of credit issued by any financial institution licensed to do business in this State.
- (c) Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- (2) Duration. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.
- (3) Extension. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the city, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (5) of this subsection and shall include the total cost of all incomplete improvements.
- (4) Release. The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city that the improvements for which the performance guarantee is being required are complete. The city shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to city acceptance. When required improvements that are secured by a bond are completed to the specifications of the city, or are accepted by the city, if subject to its acceptance, upon request by the developer, the city shall timely provide written acknowledgement that the required improvements have been completed.
- (5) Amount. The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The Town may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.
- (6) <u>Timing.</u> A performance guarantee required under this section shall be posted at the time the plat is recorded.

- (7) Coverage. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- (8) <u>Legal responsibilities.</u> No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
 - (a) The city.
- (b) The developer at whose request or for whose benefit the performance guarantee is given.
- (c) The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.

Section 15-84. Amendments to previously approved subdivision plans.

- (a) As referenced in section 15-84 [15-63] (Amendments to and modifications of permits), minor changes or amendments to previously approved subdivision plans may be authorized by the zoning administrator or the director of <u>development services planning and inspections</u>. For purposes of this ordinance, a change is "minor" or "insignificant" if it has no discernible impact on neighboring properties, the general public, or those intended to live or work within the proposed subdivision. Such minor changes shall be documented in writing and reported to the appropriate plan-approving authority at their next regularly scheduled meeting and submitted for their records. All other amendments shall receive the approval of the appropriate board (i.e., planning and zoning board in the case of general plan approval and the board of aldermen in the case of final plan approval).
- (c) The zoning administrator or the director of <u>development services planning and inspections</u> shall determine whether changes or amendments to subdivision plans are "minor" or "insignificant" in nature.

Section 15-85. Public notification requirements for subdivision plans.

The planning staff shall give notice of any major subdivision requiring general and final approval plan by the planning and zoning board and final plan approval by the board of aldermen as follows:

(1) With respect to general subdivision plans (including planned unit developments (PUDs) and cluster subdivisions) that are reviewed by the planning and zoning board, notice shall be given to those persons who own property within 100 feet of the lot/tract that is the subject of the subdivision by mailing a written notice no later than seven calendar days before the meeting of the

planning and zoning board. Addresses shall be derived from Craven County GIS and tax records, and address lists shall not be compiled more than 14 days prior to the meeting date.

(2) In addition, in the case of a general subdivision plan that is also a planned unit development, the city shall cause signs to be posted on the property indicating the planning and zoning board's review of the proposed PUD. Said sign posting shall be made at least seven calendar days prior to the meeting of the planning and zoning board. Notice shall also be published one time in a newspaper of general circulation in the community at least ten and not more than 25 days prior to the said meeting.

ARTICLE V. APPEALS, VARIANCES, INTERPRETATIONS

Section 15-91. Appeals of administrative decisions.

The board of adjustment shall hear and decide upon appeals from, and shall review any final, written decision or order made by the zoning administrator, or his or her designee, and shall hear and decide upon appeals as provided in section 15-32. The appeal request shall be subject to all of the following:

- (a) Any person who has standing under G.S. 160A-393(d), or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- (b) The zoning administrator, or his or her designee, or board making the decision shall give written notice of such decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting of signs is not the only form of constructive notice. Any such posting may be done at the landowner's or applicant's discretion, and shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official or board who made the decision.
- (d) The zoning administrator, or his or her designee, or the board who made the decision shall transmit to the board of adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official or board shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

- (e) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the zoning administrator, or his or her designee, certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board of adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- (f) Subject to the provisions of subsection (e), the board of adjustment shall hear and decide the appeal within a reasonable time.
- (g) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board of adjustment shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
- (h) When hearing an appeal pursuant section 15 428(k), or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A 393(k).
- (a) Applicability. Appeals of decisions made by the land use administrator or his/her deputy or staff under this ordinance shall be made to the board of adjustment. Appeals shall be heard by the board of adjustment, in compliance with the quasi-judicial processes set forth herein.
- (b) Standing. Any person who has standing N.C.G.S. §160D-1402(c), or the city may appeal an administrative decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the clerk to the board. The notice of appeal shall state the grounds for the appeal.
- (c) Time to Appeal. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- (d) Record of Decision. The official who made the decision shall transmit to the board of adjustment all documents and exhibits constituting the record upon which the decision appealed

from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

- (e) Stays. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or Town may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
- (f) Appeals of Decisions. Any appeal from the decision of the board of adjustment shall be made to Superior Court of Craven County, in accordance with the provisions of N.C.G.S. §160D-1402.

Section 15-92. Variances.

- (b) When unnecessary hardships would result from carrying out the strict letter of the land use ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:
- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

ARTICLE VI. HEARING PROCEDURES FOR APPEALS AND APPLICATIONS QUASI-JUDICIAL PROCEDURE

Section 15-101. Hearing required on appeals and applications Process Required.

- (a) Before making a decision on an appeal, or an application for a variance, special use permit, or a petition from the planning staff to revoke a special use permit, the board of adjustment shall hold a hearing on the appeal or application.
- (b) Subject to subsection (c), the hearing shall be subject to the provisions of G.S. 143-318.9-143-318.18. Any person who has standing, or would have standing under G.S. 160A-393(d), or the city shall be given an opportunity to participate in the appeal or application to present evidence and arguments and ask questions of persons who testify. Such persons may be represented by counsel.
- (e) The board of adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (d) The board of adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made.

 All boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

Section 15-102. Notice of hearing.

The zoning administrator shall give notice of any hearing required by section 15-101 as follows:

- (a) Notice of evidentiary hearings shall be mailed to:
- (1) The person or entity whose appeal, application, or request is the subject of the hearing;
- (2) The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
- (3) The owners of all parcels of land abutting the parcel of land this is the subject of the hearing, and to all owners of parcels of land within 100 feet of the lot or parcel of land that is the subject of the hearing; and
 - (4) To any other person who makes a written request for such notice.
- (b) In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

- (c) If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- (d) The notice required by this section shall state the date, time and place of the hearing, reasonably identify the lot or parcel of land that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

Section 15-103. Administrative materials.

The zoning administrator shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

Section 15-104. Presentation of evidence, findings, and written decision.

- (a) The provisions of this, section apply to all hearings for which a notice is required by section 15-102.
- (b) All persons who intend to present evidence in relation to appeals, variances, or permits shall be sworn. The chair of the board or any member acting as chair, and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a class 1 misdemeanor.
- (c) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.
- (d) Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (a) The applicant, the city, and any person who would have standing to appeal the decision under G.S. §160D-1402(c) shall have the right to participate as a party at the evidentiary hearing.

Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

(b) Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to N.C.G.S. §160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

Section 15-105. Appearance of official new issues.

The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the city, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

Section 15-106. Oaths.

The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

Section 15-107. Modification of application at hearing.

(a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the board of aldermen, planning and zoning board, or board of adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

Section 15-105, Record.

- (a) A record of all hearings required by section 15-101 shall be made by a court reporter or by electronic means. Accurate minutes shall also be kept of all such proceedings.
- (b) All documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings. With the approval of the parties, copies may be submitted for the originals. Such evidence shall be kept by the city for at least five years; provided, however, such evidence shall be disposed of by agreement of the parties or by the rendering of a final decision by the court.

Section 15-108. Subpoenas.

The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining

why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the general court of justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

The board making a quasi-judicial decision under this ordinance through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the city, and any person with standing under G.S. §160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Section 15-109. Voting.

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under section 15-12(d) of this ordinance shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Section 15-110. Decisions.

(a) The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the city that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

Section 15-111. Appeals of quasi-judicial decisions Judicial review.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 15-103. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Every quasi-judicial decision shall be subject to review by the superior court in the nature of certiorari pursuant to N.C.G.S. §160D-1402. Appeals shall be filed within the time frame specified in N.C.G.S. §160D-1405(d).

(Ord. No. 2014-262, § 3, 7-8-14)

Sections 15-108 15-110. Reserved.

ARTICLE VII. ENFORCEMENT AND REVIEW

200

Section 15-114. Procedures upon discovery of violations General remedies.

- (a) If the zoning administrator finds that any provision of this ordinance is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the zoning administrator's discretion.
- (b) The final written notice (and the initial written notice may be the final notice) shall state what action the zoning administrator intends to take if the violation is not corrected and shall advise that the zoning administrator's decision or order may be appealed to the board of adjustment as provided in section 15-91.
- (c) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the zoning administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in section 15-114.

This Ordinance may be enforced by any remedy provided by G.S. §160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this ordinance, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

Section 15-115. Notice of violation.

When the zoning administrator determines work or activity has been undertaken in violation of this Ordinance or any approval issued hereunder, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the approval and to the landowner of the property involved, if the landowner is not the holder of the approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the city that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. A notice of violation may be appealed to the board of adjustment, and the aoard of adjustment shall follow quasi-judicial processes as set forth in this ordinance.

Section 15-116. Stop work order.

Whenever any work or activity subject to regulation pursuant to this ordinance is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, the zoning administrator may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the approval and to the owner of the property involved (if that person is not the holder of the approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the city that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. A stop work order may be appealed to the board of adjustment, and the board shall follow quasi-judicial processes as set forth in this ordinance. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

Section 15-117. Revocation.

Development approvals may be revoked by the city by notifying the holder in writing stating the reason for the revocation. The city shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the city for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to Article 5 herein. If an appeal is filed regarding a development regulation adopted by the city pursuant to Chapter 160D, the provisions herein regarding stays apply.

Section 15-118. Inspections.

The zoning administrator and his/her staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the city at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

Section 15-119. Additional remedies for violations of subdivision provisions.

- (a) In addition to the foregoing, any person who, being the owner or agent of the owner of any land located within the planning and development regulation jurisdiction of the city, thereafter subdivides the land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the Craven County Register of Deeds, is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty.
- (b) The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulation. Building permits required pursuant to G.S. \$160D-1110 may be denied for lots that have been illegally subdivided. In addition to other remedies, the city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

Section 15-120. Penalties and remedies for violations.

Section 15-116. Permit revocation.

- (a) A zoning, sign, or special use permit may be revoked by the permit-issuing authority in accordance with the provisions of this section if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this ordinance, or any additional requirements lawfully imposed by the permit-issuing authority.
- (b) Before a special use permit may be revoked, all of the notice, hearing and other requirements of article VI shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.
- (1) The burden of presenting evidence sufficient to authorize the permit issuing authority to conclude that a permit should be revoked for any of the reasons set forth in subsection (a) shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
- (2) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- (c) Before a zoning or sign permit may be revoked, the zoning administrator shall give the permit recipient a ten calendar day notice of intent to revoke the permit and shall inform the

recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the zoning administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

(d) No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, or special use permit after such permit has been revoked in accordance with this section.

ARTICLE IX. ZONING DISTRICTS AND ZONING MAP

PART I. ZONING DISTRICTS

Section 15-136. Residential districts established.

...

- (b) The A-5, A-5F, R-20, R-15, R-10, R-10A, R-10S, R-8, and R-6 districts differ primarily in the density and dimensional requirements as contained in article XII (Density and Dimensional Regulations) and in uses allowed as contained in article X (Table of Permissible Uses):
- (1) The A-5 agriculture district is designed to secure the agricultural integrity of the areas so classified and to allow for low-density single-family development on five acre minimum lots. The uses encouraged in this district are primarily agricultural or forestry related. Residential developments of five units or more shall comply with the cluster subdivision provision outlined in article XII of this ordinance. For the A-5 agriculture district, in promoting the general purposes of this ordinance, the specific intent of this district is:
 - (a) To encourage the conservation of the area's existing agricultural and forestry resources and to promote the further expansion of these land-related resources;
 - (b) To prohibit non-agricultural and non-forestry-related commercial and industrial use of the land and to prohibit any other influx of uses likely to render it undesirable for farms and low-density development;
 - (c) To encourage the sensitive incorporation of low-density single-family or multifamily development into an agricultural and forested area in an effort to maintain rural character and conserve valuable lands; and
 - (d) To discourage any use which, because of its character or size, would create requirements and cost for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and cost if the district were developed solely for single-family purposes.
- (1a) The A-5F agriculture forestry district is designed to promote forestry operations, low-density residential uses, recreational uses, and certain agricultural uses. Landfill, quarry, livestock, and similar uses that may negatively impact nearby residential uses with excessive noise, odor, or traffic are prohibited. It is specifically intended that the A-5F agricultural/forestry district:
 - (a) Encourage the conservation of the areas existing agricultural and forestry resources and promote low-density development;
 - (b) Prohibit non-agricultural and non-forestry related commercial and industrial use of the land and prohibit any other influx of uses likely to render the area

bearing such zoning classification undesirable for forestry, non-livestock farms, and low-density housing.

- (2) The R-20 rural residential district is designed to accommodate low-density single-family dwellings with 20,000 square feet minimum lots that may not be serviced with city sewer service or multifamily dwellings that are serviced with city sewer. For the R-20 residential district, in promoting the general purposes of this ordinance, the specific intent of this district is:
 - (a) To encourage the construction of and the continued use of the land for low density single-family or multifamily dwellings;
 - (b) To encourage the preservation of the rural character of the land;
 - (c) To prohibit commercial and industrial use of the land and to prohibit any other influx of uses likely to render it undesirable for low density development;
 - (d) To discourage any use which, because of its character or size, would create requirements and cost for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and cost if the district were developed solely for single-family dwellings;
 - (e) To encourage the discontinuance of existing uses that would not be permitted as new uses in this district; and
 - (f) To encourage development to take place in a manner that promotes a healthy environment.
- (3) The R-15 residential district is designed to accommodate low-density single-family dwellings with 15,000 square feet minimum lots. For the R-15 residential district, in promoting the general purposes of this ordinance, the specific intent of this district is:
 - (a) To encourage the construction of and the continued use of the land for single-family dwellings;
 - (b) To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of singlefamily dwellings in the district;
 - (c) To encourage the discontinuance of existing uses that would not be permitted as new uses in this district;
 - (d) To discourage any use which would generate traffic on minor streets other than normal traffic to serve residences on those streets; and
 - (e) To discourage any use which, because of its character or size, would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for residential purposes.
- (4) The R-10 residential district is designed to accommodate single- and two-family homes with 10,000 square feet lots required for one-family dwellings and an additional 5,000 square feet required for each additional unit. For the R-10 residential district, in promoting the general purposes of this ordinance, the specific intent of this district is:
 - (a) To encourage the continued use of the land for residential purposes;
 - (b) To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of singleand two-family dwellings in the district;

- (c) To encourage the discontinuance of existing uses that would not be permitted as new uses in this district;
- (d) To discourage any use which would generate traffic on minor streets other than normal traffic to serve residences on those streets; and
- (e) To discourage any use which because of its character and size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for residential purposes.
- (5) The R-10A residential district is designed to accommodate single-, two-, and multifamily dwellings with the same lot sizes and density as allowed in the R-10 residential district. In promoting the general purposes of this ordinance, the general intent of this district is the same as the R-10 residential district.
- (6) The R-10S residential district is established as a district in which the principal use of land is for single-family dwellings. Two-family and multifamily dwellings are prohibited. Lot sizes and density are the same as those allowed in the R-10 residential district. In promoting the general purposes of this ordinance, the general intent of this district is the same as the R-10 residential district.
- (7) The R-8 residential district is designed to accommodate single-, two-, and multifamily dwellings with a minimum 8,000 square feet lot for one unit and 4,000 square feet for each additional unit; multifamily density maximum is approximately 10.6 units per acre (based on a five-acre tract). For the R-8 residential district, in promoting the general purposes of this ordinance, the specific intent of this district is:
 - (a) To encourage the continued use of the land for residential purposes;
 - (b) To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of residential uses in the district;
 - (c) To encourage the discontinuance of existing uses that would not be permitted as new uses in this district;
 - (d) To discourage any use which would generate traffic on minor streets other than normal traffic to serve residences on those streets; and
 - (e) To discourage any use which because of its character or size would create requirements and costs for public services such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for residential purposes.
- (8) The R-6 residential district is designed to accommodate single-, two-, and multifamily dwellings with 6,000 square feet minimum lots for one dwelling unit and 2,000 square feet required for each additional unit. Mobile homes and mobile home parks are also permitted and shall be subject to the standards described in sections 15-164 and 15-165. For the R-6 residential district, in promoting the general purposes of this ordinance, the specific intent of this district is:
 - (a) To encourage continued use of the land for residential purposes and certain compatible nonresidential uses;

- (b) To prohibit commercial and industrial use of the land; to prohibit any other use which would substantially interfere with the development or continuation of residential structures in the district;
- (c) To encourage the discontinuance of existing uses that would not be permitted as new uses in the district; and
- (d) To discourage any use which because of its character or size would generate traffic or require municipal services substantially in excess of traffic and services that would exist if the district were developed solely for residential uses.

PART II. ZONING MAP

Section 15-142. Official Zoning map.

- (a) There shall be a map known and designated as the official zoning map, which shall show the boundaries of all zoning and overlay districts within the city's planning jurisdiction. This map shall be drawn on acetate or other durable material from which prints can be made, shall be dated, and shall be kept in the engineering department and maintained for public inspection in the office of the land use administrator. Copies of the zoning map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the city clerk in accordance with N.C.G.S. §160A-79, shall be admissible into evidence and shall have the same force and effect as would the original map.
- (b) The official zoning map is the map which was adopted as a part of the zoning ordinance, which was adopted on March 5, 1968, as amended to date by ordinances adopted by the board of aldermen of the City of New Bern. The latest edition of said map bears the legend:

The City
Of
New Bern
NC
Scale 1" = 800 ft.
ZONING

The map includes a table in its upper lefthand corner, which reflects revision nos. 1—68 caused by ordinances adopted 2/8/83 through 8/1/91. Amendments to the map shall be made and posted in accordance with section 15-143 of this ordinance.

(c) Should the official zoning map be lost, destroyed, or damaged, the director of planning and inspections may have a new map drawn on acetate or other durable material from which prints can be made. No further board authorization or action is required so long as district boundaries are not changed in this process.

Section 15-143. Amendments to official zoning map.

(a) Amendments to the official zoning map are accomplished using the same procedures that apply to other amendments to this ordinance, as set forth in article XX.

- (b) The eity engineer or land use administrator or his or her designee shall update the official zoning map as soon as possible after amendments to it are adopted by the board of aldermen. Upon entering any such amendment on the map, the engineer land use administrator or his or her designee shall change the date of the map to indicate its latest revision. New prints of the updated map may then be issued.
- (c) No unauthorized person may alter or modify the official zoning map.
- (d) The <u>engineering development services</u> department shall keep copies of superseded prints of the zoning map for historical reference. Additional copies of current and superseded zoning maps shall be kept in the city vault.

ARTICLE XI, SUPPLEMENTARY USE REGULATIONS

Section 15-164. Rules and regulations relative to manufactured homes located both inside and outside of manufactured home parks within the zoning jurisdiction of the city.

- (a) Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated below when used in this section:
- (i) Manufactured home. A dwelling unit, designed for use as a permanent residence, that is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed for installation and/or assembly on the building site.
 - (ii) Manufactured home, Class A. A dwelling unit that:
 - Is not constructed in accordance with the requirements of the North Carolina Uniform Residential Building Code as amended;
 - (2) Is composed of two or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site:
 - (3) Meets or exceeds the construction standards of the US Department of Housing and Urban Development, and
 - (4) Conforms to the following appearance criteria:
 - (1) The manufactured home has a minimum width, as assembled on the site, of 20 feet;
 - (2) The pitch of the manufactured home's roof has a minimum nominal vertical rise of three inches for each 12 inches of horizontal run and the roof is finished with asphalt or fiberglass shingles;
 - (3) A continuous, permanent masonry curtain wall, unpierced except for required ventilation and access, is installed under the manufactured home;
 - (4) The primary entrance has a landing which is no smaller than three feet by three feet in size; and
 - (5) The tongue, axles, transporting lights, and towing apparatus are removed after placement on the lot and before occupancy.

Class A manufactured homes are only permitted in manufactured home parks and the A-5, R-6 and-R-20 zoning districts.

- (iii) Manufactured home, Class B. A manufactured home constructed after July 1, 1996 that meets or exceeds the construction standards by the US Department of Housing and Urban Development. A Class B may not satisfy all the criteria necessary to qualify as a Class A manufactured home, but a Class B manufactured home must have a continuous, permanent masonry curtain wall, unpierced except for required ventilation and access. Class B manufactured homes are only permitted in manufactured home parks and the A-5 and R-20 zoning districts.
- (iv) Manufactured home, Class C. Any manufactured home that does not meet the definitional criteria of a Class A manufactured home, a Class B manufactured home, a modular home, or a travel trailer. Class C manufactured homes are permitted only in manufactured home parks.
- (v) Manufactured home park. A residential use in which three or more Class A, B or C manufactured homes are located on a single lot or tract. See section 15-165 for specific provisions related to manufactured home parks. Manufactured home parks are only permitted in A-5 zoning districts, and by special use permit, in the R-20, C-3, C-4 and A-5 C-3/H zoning districts.
- (vi) Modular home. A dwelling unit constructed in accordance with the standards set forth in the NC State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Modular homes are allowed in all zoning districts except I-2.
- (vii) Travel trailer. A mobile structure with self-contained utilities, except for electricity, designed to be used for camping purposes only rather than as a permanent abode.

ARTICLE XX. AMENDMENTS

Section 15-396. Amendments in general.

- (a) Amendments to the text of this <u>land use</u> ordinance or to the zoning map may, specifically including zoning map amendments, shall be made in accordance with the provisions of this article.
- (b) The term "zoning <u>map</u> amendment" shall refer to an amendment that addresses a zoning district classification change regulation, or the boundaries of a zoning district.

Section 15-397. Initiation of amendments.

- (a) Whenever a request to amend this ordinance [appendix] is initiated by the board of aldermen, the planning staff shall review the request and forward it to the planning and zoning board for its review and recommendations. Such recommendations, along with a draft of an appropriate ordinance prepared by the city attorney in consultation with the planning staff, shall then be forwarded to the board of aldermen and considered by that board in a public hearing on a date established in accordance with the board of aldermen's submission consideration schedule.
- (b) Whenever a request to amend this ordinance [appendix] is initiated by a city department head, board, or commission, other than the board of aldermen, the planning staff shall review the

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request and forward it to the board of aldermen for their review and consideration in accordance with the procedures outlined in subsection (a) of this section.

- (c) Any other person may also petition the board of aldermen to amend for a zoning amendment to this ordinance [appendix]. A petition for a zoning map amendment may be initiated by the board of aldermen, the planning and zoning board, a city department head, or the owner or authorized agent of the subject property. The petition shall be filed with the zoning administrator and shall include, among the information deemed relevant by the development services department:
 - (1) The name, address, and phone number of the applicant;
- (2) The name, address, and phone number of the property owner, if different from applicant, along with written confirmation of owner consent to the rezoning request;
- (3) A metes and bounds description of the land affected by the amendment if a change in zoning district classification is proposed;
- (4) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance [appendix]; and
- (5) A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest.

The applicant shall pay the filing fee as established from time to time by the board of aldermen and set forth and maintained in the City of New Bern Schedule of Fees and Charges to the zoning administrator or his designee at the time the application is submitted to city staff.

(d) Upon receipt of a petition as provided in subsection (c), the zoning administrator or his designee shall ensure that the application is complete and shall proceed with the notification of the property owners within 100 feet and the scheduling of the zoning amendment request with the planning and zoning board. In cases involving planning and zoning board review, the completed application must be received by the zoning administrator no less than 14 days prior to the scheduled meeting of the planning and zoning board.

Section 15-398. Planning and zoning board consideration of proposed amendments.

- (a) The planning and zoning board shall endeavor to review the proposed amendment in such a timely fashion that any recommendations it may have can be presented to the board of aldermen at the public hearing on the amendment. However, if the planning and zoning board is not prepared to make recommendations at the public hearing, it may request the board of aldermen to delay final action on the amendment until such time as the planning and zoning board can present its recommendations.
- (b) The board of aldermen need not await the recommendations of the planning and zoning board before taking action on a proposed amendment, nor is the board of aldermen bound by any recommendations of the planning and zoning board that are before it at the time it takes action on a proposed amendment.
- (a) Amendments. All proposed amendments to this ordinance shall be submitted to the planning and zoning board for review and comment. If no written report is received from the

planning and zoning board within 45 days of referral of the amendment to that board, the board of aldermen may act on the amendment without the planning and zoning board report. The board of aldermen is not bound by the recommendations, if any, of the planning and zoning board.

- (b) Plan Consistency. When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning and zoning board shall advise and comment on whether the proposed action is consistent with the city's land use plan that has been adopted and any other officially adopted plan that is applicable. The planning and zoning board shall provide a written recommendation to the board of aldermen that addresses plan consistency and other matters as deemed appropriate by the planning and zoning board, but a comment by the planning and zoning board that a proposed amendment is inconsistent with the city's land use plan shall not preclude consideration or approval of the proposed amendment by the board of aldermen. If a zoning amendment qualifies as a "large-scale rezoning" under section 15-400(b), the planning and zoning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.
- (c) Separate Board Required. Notwithstanding the authority to assign duties of the planning and zoning board to the board of aldermen as provided by Chapter 160D, the review and comment required by this section shall not be assigned to the board of aldermen and must be performed by a separate board.

Section 15-399. Hearing required; with public notice.

(a) The city clerk shall publish a notice of the public hearing on any ordinance that amends the provisions of this ordinance once a week for two successive weeks in a local newspaper having the greatest general circulation. The notice shall be published for the first time not less than ten calendar days nor more than 25 calendar days before the date fixed for the hearing as provided by the North Carolina General Statutes. In determining the time period for publication of such notice, the date of publication is not counted, but the date of the hearing is. Before adopting, amending, or repealing any provision of this ordinance, the board of aldermen shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Section 15-400. Notice of legislative hearing on proposed zoning amendments.

(a) With respect to zoning map amendments, the owners of those parcels of land as shown on the county tax listing whose zoning classification is changed by the proposed amendment, and the owners of all parcels of land situated within 100 feet of that parcel as shown on the county tax listing shall be mailed a notice of the public hearing on the proposed amendment by first class mail at the last address listed for such owners on the county tax abstracts. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the board of aldermen that fact, and such certificate

shall be deemed conclusive in the absence of fraud. All notices required under this subsection shall comply with North Carolina General Statutes.

- (b) The department of public works shall also post notices of the public hearing in the vicinity of the property to be rezoned by the proposed amendment and take any other action deemed by the planning staff to be useful or appropriate to give notice of the public hearing on any proposed amendment.
- (c) The notice required or authorized by this section shall:
 - (1) State the date, time, and place of the public hearing; and
 - (2) Summarize the nature and character of the proposed change.

In addition to the published notice requirements of section 15-399, the following shall apply to zoning amendments:

- (a) Mailed Notice. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.
- (b) Optional notice for large-scale zoning amendments. The first-class mail notice required under subsection (a) of this section shall not be required if the zoning amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, the city may elect to make the mailed notice provided for in subsection (a) of this section or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.
- (c) Posted Notice. When a zoning map amendment is proposed, the city shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning amendment, a posting on each individual parcel is not required but the city shall post sufficient notices to provide reasonable notice to interested persons.

Section 15-401. Citizen comments.

If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to

the city clerk at least two business days prior to the proposed vote on such change, the city clerk shall deliver such written statement to the board of aldermen. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the city clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board of aldermen shall not disqualify any member of the board of aldermen from voting.

State law reference - G.S. 160D-603

Section 15-402. Board of aldermen action on amendments.

- (a) At the conclusion of the public hearing on a proposed amendment, the board of aldermen may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- (b) The board of aldermen is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- (c) Voting on amendments to this ordinance shall proceed in the same manner as other ordinances, subject to section 15-402.

Section 15-401. Ultimate issue before board of aldermen on amendments.

In deciding whether to adopt a proposed amendment to this ordinance, the central issue before the board of aldermen is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and excluded. In particular, when considering proposed minor map amendments:

- (1) The board of aldermen shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the board of aldermen shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- (2) The board of aldermen shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

Section 15-403. Board of aldermen statement.

(a) Plan consistency. When adopting or rejecting any zoning text or map amendment, the board of aldermen shall approve a brief statement describing whether its action is consistent or inconsistent with the city's land use plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the board of aldermen that at the time of action

on the amendment the board of aldermen was aware of and considered the planning board's recommendations and any relevant portions of the city's land use plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment has the effect of also amending any future land use map in the approved plan, and no additional request or application for a plan amendment is required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the board of aldermen statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

- (b) Additional reasonableness statement for rezonings. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the board of aldermen. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S.160D-602(b), the board of aldermen statement on reasonableness may address the overall rezoning.
- (c) Single statement permissible. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

Section 15-402. Protests to zoning district changes.

- (a) If a petition opposing a change in the zoning classification is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of all the members of the board of aldermen as provided in G.S 160A 385.
- (b) To trigger the three-fourths vote requirement, the petition must:
- (1) Be signed by the owners of 20 percent or more, either of the area of the lots included in the proposed change, or those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending 100 feet therefrom, or those directly opposite thereto extending 100 feet from the street frontage of the opposite lots.
- (2) Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
- (3) Be received by the city clerk in sufficient time to allow at least two full working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition, as provided in G.S. 160A-386.
- (4) Be on a form provided by the city clerk and contain all the information requested on this form, as provided in G.S. 160A-386.

ARTICLE XXI. NEW BERN HISTORIC DISTRICT

Section 15-411. Purpose and authority.

Add State law reference(s)—G.S. 160D-940.

Section 15-412. Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this ordinance shall have the meaning indicated below:

.

(8) Design guidelines standards: All references to design guidelines standards shall mean those principles and guidelines standards prepared and adopted by the commission pursuant to section 15-420(b), further approved and adopted by the board of aldermen, and contained in the "Historic District Guidelines Design Principles and Standards" maintained in the office of development services and available to the public on the city's official website.

Section 15-413. Authority to designate historic districts; historic districts established.

...

(c) With respect to any changes in the boundaries of a district, subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (b)(1) of this section shall be prepared by the commission and shall be referred to the planning board for its review and comment according to procedures set forth in the zoning regulation. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Natural and Cultural Resources in accordance with the provisions of subsection (b)(2) of this section. On receipt of these reports and recommendations, the board of aldermen may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning regulation.

cici

Add State law reference—G.S. 160D-944

Section 15-414. Designation of landmarks; adoption of an ordinance; criteria for designation.

Add State law reference(s)—G.S. 160D-945; Session Law 2007-32.

Section 15-415. Required landmark designation procedures.

(a) As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the N.C. Division of Archives and History. No ordinance designating a historic building, structure, site, area, or object as a landmark nor any amendment thereto may

be adopted, nor may any property be accepted or acquired by the historic preservation commission or the board of aldermen, until all of the following procedural steps have been taken:

- (1) The commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this article, for altering, restoring, moving, or demolishing properties designated as landmarks.
- (2) The commission shall make or cause to be made an investigation and report on the historic, architectural, archaeological, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Office of Archives and History, N.C. Department of cultural resources, division of archives and history.
- (3) The N.C. Department of Cultural Resources, acting through the state historic preservation officer shall either upon request of the department or at the initiative of the historic preservation commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this article. Any comments shall be provided in writing. If the department of cultural resources does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the department of the investigation and report of the commission, the commission and the board of aldermen shall be relieved of any responsibility to consider such comments.
- (4) The commission and the board of aldermen shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. Notice of the hearing shall be made as provided by G.S. §160D-601.
- (5) Following the public hearing process, the board of aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
- landmark shall be given written notification of such designation within 30 days of such designation. One copy of the ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of the Craven County. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city zoning administrator and building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.
- (7) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax department of the <u>Craven County</u>. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

State law reference-G.S. 160D-946

Section 15-418. Authentic restoration or reconstruction.

Delete State law reference—G.S. 160A-400.9(a).

Section 15-419. Historic preservation commission; creation; membership tenure; public body.

Add State law reference(s)—G.S. 160D-941; G.S. 143-318.9 et seq.

Section 15-420. Rules of procedure; principles and guidelines principles and standards for construction, alterations, additions, moving and demolition.

- (a) The commission shall adopt, publish and maintain rules of procedure for the conduct of its business. Such rules of procedure shall be maintained in the office of development services and available to the public on the city's official website.
- (b) The commission shall prepare, adopt and recommend principles and <u>guidelines standards</u> not inconsistent with G.S. <u>eh. 160A</u>, <u>art. 19</u>, <u>pt. 3C 160D</u>, <u>Article 9</u>, <u>Part 4 to guide the commission in determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition for further <u>consideration</u>, approval and adoption by the board of aldermen. Such principles and <u>guidelines standards</u> shall be titled "Historic District <u>Guidelines Design Principles and Standards</u>", and shall be maintained in the office of development services and available to the public on the city's official website. The adopted <u>guidelines design standards</u> are incorporated herein by reference.</u>

State law reference—G.S. 160D-947(c)

Section 15-421. General powers of the commission.

The commission may, within the zoning jurisdiction of the city:

(7) Cooperate with the state, federal, and local governments in pursuance of the purposes of G.S. 160D, Article 9, Part 4. The board of aldermen, or commission when authorized by the board of aldermen, may contract with the state, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;

. . .

(10) Review and act upon proposals for alterations, demolitions, or construction within historic districts, or for the alteration or demolition of designated landmarks pursuant to <u>G.S. 160D</u>, <u>Article 9</u>, <u>Part 4</u>; and

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State law reference(s)—G.S. 160D-942

Section 15-422. Certificate of appropriateness required.

...

- (e) Appeals. An appeal may be taken to the board of adjustment from the commission's action in granting or denying any certificate, which appeals shall be in the nature of certiorari pursuant to the provisions of G.S. 160A-388(b1) and G.S. 160A-393. Any appeal from the board of adjustment's decision in any such case shall be heard by the superior court of the county.
 - (1) Appeals of administrative decisions may be taken to the commission.
- (2) All decisions of the commission in granting or denying a certificate of appropriateness may be appealed to the board of adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in G.S. 160D-405(d). To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the board of adjustment.
 - (3) Appeals from the board of adjustment may be made pursuant to G.S. 160D-1402.
- (4) Petitions for judicial review shall be taken within times prescribed for appeal of quasi-judicial decisions in G.S. 160D-1405. Appeals in any such case shall be heard by the superior court of the county in which the local government is located.

. . .

Add State law reference(s)-G.S. 160D-947

Section 15-423. Application procedures.

. . .

- (d) Notification of affected property owners Ouasi-judicial procedures. Other than administrative decisions on minor works, decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures of G.S. 170D-406. Prior to the commission's consideration of certificates of appropriateness for major works, the administrator shall notify the applicant, the owner of subject property if the owner is not the applicant, and the owners of any property within 100 feet of the subject property at least seven days prior to scheduled hearing, and shall give both the applicant and such owners an opportunity to be heard at the meeting at which the application is considered. Addresses of the aforementioned property owners shall be derived from the county GIS and tax records and address lists shall not be compiled more than 14 days prior to the meeting date.
- (e) Commission action on application. Prior to the issuance or denial of a certificate of appropriateness, the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. After the applicant and other property owners likely to be materially affected by the application have been given an opportunity to be heard, the commission shall take action on the application and in doing so shall apply the review criteria contained in the design standards guidelines, or the Secretary of the Interior's Standards in the case of authentic restorations or reconstructions, and this ordinance. The commission's action on the

application shall be approval, approval with conditions, or denial. The commission shall not refuse to issue a certificate of appropriateness except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features or other significant features in the historic district which would be incongruous with the special character of the district. In cases where the commission deems it necessary, it may hold a public hearing concerning an application for a certificate of appropriateness for major works.

0.00

State law reference(s)—G.S. 160D-947(c).

Section 15-424. Review criteria.

. . .

(b) Exterior form and appearance. In reviewing applications for a certificate of appropriateness, the commission shall apply the design standards guidelines in determining whether a proposed project is congruous with the special character of the district, unless the application for a certificate of appropriateness is for an authentic restoration or reconstruction, in which case the commission shall apply the Secretary of the Interior's Standards.

Section 15-425. Certain changes not prohibited.

Add State law reference - G.S. 160D-948.

Section 15-426. Demolition of landmarks and buildings within historic district.

(b) An application for a certificate of appropriateness authorizing the demolition or destruction of a contributing structure may be denied consistent with the provisions of the design guidelines standards, except where the commission finds that the owner would be permanently deprived of all beneficial use or return by virtue of the denial.

Add State law reference - G.S. 160D-949; Session Law 2007-32.

Section 15-428. Compliance and duration.

Add State law reference - G.S. 160D-947(c).

Section 15-429. Prevention of demolition by neglect of buildings and structures within locally designated historic districts.

Add State law reference- G.S. 160D-949(b); 160D-406.

North Carolina Craven County

OATH OF OFFICE OF MAYOR PRO TEMPORE

l,, do so Constitution of the United States; so help me C	olemnly swear that I will support the God.
l,, do so maintain the Constitution and Laws of the Uni	plemnly swear that I will support and
maintain the Constitution and Laws of the Uni of North Carolina, not inconsistent therewith; a of my office as Mayor Pro Tempore; so help m	nd that I will faithfully discharge the duties
I,, do sole faithful and bear true allegiance to the State of powers and authorities which are or may be est that I will endeavor to support, maintain and of inconsistent with the Constitution of the United ability; so help me, God.	stablished for the government thereof; and defend the Constitution of said State, not
The foregoing oaths were administered by methis the 13 th day of December, 2022.	e and sworn to and subscribed before me
	BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET



Agenda Item Title: Resolution to Amend Classification Pay Plan For Fiscal Year 2022-2023

Date of Meeting: 12/13	/2022	Ward # if applicable:	
Department: Human Res	sources	Person Submitting Item: Sonya Hayes	
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:	
Explanation of Item:	Resolution to A 2022-2023	mend Classification Pay Plan for Fiscal Year	
Actions Needed by Board:	Approve Resolu Year 2022-2023	ation to Amend Classification Pay Plan for Fiscal	
Backup Attached:	Memo from Director of Human Resources; Classification Pay Plan with recommended grade adjustments and variances; Recommended Classification Pay Plan; Market Pay Study Report submitted by Piedmont Triad Regional Council		
Is item time sensitive?			
Will there be advocates	/opponents at t	he meeting? Yes No	
Cost of Agenda Item:			
If this requires an expeanant certified by the Fin		een budgeted and are funds available Yes No	

Additional Notes:



303 First Street, P.O. Box 1129 New Bern, NC 28563 (252) 639-7571

TO: Mayor and Board of Aldermen

FROM: Sonya H. Hayes, Director of Human Resources

DATE: December 13, 2022

RE: Market Pay Study

Background Information

Piedmont Triad Regional Council (PTRC) conducted a Market Pay Study for the City of New Bern. The Study represents a comprehensive review and comparable analysis of the City's present position classification system and pay plan to specific local government entities.

The analysis provides the data necessary to ensure the competitiveness of City of New Bern salaries with comparable employers in relevant labor markets, which is imperative for effective recruitment and retention efforts. In addition, the analysis ensures external competitiveness and internal equity and consistency among similar positions.

PTRC was provided with the City's current Classification Pay Plan, classification descriptions and other relevant information. This information was analyzed and evaluated by PTRC prior to conducting a customized market salary survey focusing on identified benchmark positions within the workforce.

The following local government entities were identified, agreed upon and surveyed:

Clayton	Jacksonville	Statesville	Wilson
Goldsboro	Kinston	Wake Forest	Craven County
Greenville	Morehead City	Washington	Pitt County
Havelock	Rocky Mount	Wilmington	Greenville Utilities Commission

PTRC studied City of New Bern position classifications to determine correct placement within the Classification Pay Plan. Findings are as follows:

- 55 classifications are recommended to advance one (1) pay grade
- 122 classifications are recommended to advance two (2) pay grades
- 24 classifications are recommended to advance three (3) pay grades
- 2 positions are recommended to decrease one (1) pay grade

PTRC Implementation Recommendations:

- Adopt the proposed pay plan and assign each classification to the pay grade commensurate with, and supported by, the comparable market data.
- Set employee salaries in their new pay grade range at the same Compa-ratio they have in their current pay grade range. This will maintain relative positioning of employee salaries to the midpoint of their pay grade range.
- Refer to the Market Pay Study Report (Section V. Implementation Recommendations) for the total cost to implement the recommended option.
- Refer to the Market Pay Study Report for alternative implementation recommendations (Section V. Implementation Recommendations).

City of New Bern Implementation Recommendations:

After review and consideration of PTRC's recommendations along with City of New Bern internal data and budgetary constraints, we recommend implementation as follows:

- Adopt the proposed pay plan and assign each classification to the pay grade commensurate with, and supported by, the comparable market data.
- Employees will receive salary increases based on the number of grades their position classification will advance as reflected below;
 - ➤ 1 Grade Advance 3% annual salary increase
 - ➤ 2 Grade Advance 6% annual salary increase
 - 3 Grade Advance 10% annual salary increase
- Employees who are assigned to a position that will decrease by one (1) grade will receive a 1% bonus.
- Once all percentage increases have been applied, employee salaries that still fall below the minimum of the new range will be increased to the minimum of the new range.
- The total implementation cost is approximately \$1,154,668 for six months. The estimated annual implementation cost is approximately \$2,309,336.
- Address additional compensation measures related to the Market Pay Study findings during the FY 23-24 budget process. Recommended increases, if any, will depend upon budgetary constraints.

Please do not hesitate to contact Foster Hughes or me if you have any questions.

ce: Foster Hughes, City Manager

Enclosures

RESOLUTION TO AMEND CLASSIFICATION PAY PLAN ADOPTED FOR FISCAL YEAR 2022-2023

THAT WHEREAS, pursuant to Section 54-40 of the Code of Ordinances of the City of New Bern, the City Manager may recommend, and the Board of Aldermen may approve that certain classes of positions be added to and deleted from the Classification Pay Plan adopted for fiscal year 2022-2023; and

WHEREAS, the City Manager recommends that certain amendments be made to the Classification Pay Plan adopted for fiscal year 2022-2023; and

WHEREAS, the Board of Aldermen desires to approve such recommendation.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

Section 1. That the Classification Pay Plan adopted for fiscal year 2022-2023 be and the same is hereby amended by deleting the same in its entirety and adopting in its stead the Classification and Pay Plan dated December 25, 2022, a copy of which is attached hereto and incorporated herein by reference.

Section 2. That this resolution shall be effective as of 12:01 a.m. on December 25, 2022.

ADOPTED THIS 13th DAY OF DECEMBER, 2022.

THE T. ODITANI, WATER	JEFFREY T. ODHAM, MAYOR
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BRENDA E. BLANCO, CITY CLERK

City of New Bern Classification Pay Plan Fiscal Year 2022 - 23 Amended December 13, 2022 Effective December 25, 2022

Grade	Title	Minimum	Midpoint	Maximum
1		20,687	27,178	33,668
2		21,722	28,537	35,352
3		22,808	29,965	37,119
4		23,948	31,463	38,976
5		25,146	33,035	40,924
6		26,403	34,686	42,971
7	Custodian	27,723	36,421	45,120
8	Accounting Clerk Inventory Control Clerk Lead Custodian Office Assistant II	29,109	38,243	47,375
9	Hydrant/Meter Maintenance Worker Parks Maintenance Technician Police Service Technician Senior Maintenance Worker Utility Maintenance Worker Utility Service Specialist	30,565	40,154	49,744
10	Billing Services Representative Equipment Operator I Maintenance Construction Worker Office Assistant III Parks Maintenance Specialist Payment Services Representative Tree Trim Groundworker Utility Service Technician Warehouse Assistant	32,093	42,162	52,231
11	Accounting Technician I Bio-Solids Operator Customer Service Representative Engineering Assistant Fire Trainee	33,698	44,271	54,843

Hydrant/Meter Maintenance Worker II Irrigation Operator Lead Equipment Operator I Lead Maintenance Worker Maintenance Technician Police Service Technician (Animal Control) Police Service Technician (Property & Evidence) Senior Billing Services Representative Senior Payment Services Representative Tree Trimmer Trainee Utility Control System Operator Utility Maintenance Worker II 12 Administrative Assistant 35,383 46,484 57,585 Electric Groundworker Electric Meter Technician Equipment Operator II **Human Resources Assistant** Senior Customer Service Representative Wastewater Treatment Plant Operator I Water Treatment Plant Operator I 37,152 48,808 13 Fire Specialist 60,464 Hydrant/Meter Maintenance Lead Worker Police Officer Trainee Police Service Technician/Telecommunicator I Tree Trimmer **Utility Locator** Utility Maintenance Lead Worker Accounting Technician II 39,010 51,248 63,487 Cross Connection Coordinator Fire Specialist I Laboratory Technician Lead Equipment Operator II Lead Maintenance Technician Metering and Billing Coordinator Parks Crew Leader Police Service Technician/Telecommunicator II Pump Station Mechanic Wastewater Treatment Plant Operator II Water Treatment Plant Operator II 15 Auto Mechanic 40,959 53,810 66,662 Billing Services Supervisor Customer Service Supervisor Electric Line Worker 3rd Class Fire Specialist II Human Resources Technician Inflow and Infiltration Technician Load Management Systems Technician Payment Services Supervisor

Police Service Technician/Telecommunicator III
Utility Locate Coordinator

16	Electric Svc. Representative Fire Specialist III Nuisance Abatement Officer Substation Technician I Tree Trim Crew Leader Wastewater Treatment Plant Operator III Water Treatment Plant Operator III	43,008	56,502	69,994
17	Account Services Supervisor Athletic Coordinator Biosolids Supervisor Building and Grounds Maintenance Supervisor Building Inspector I Electrical Engineer Technician Electrician Facilities Maintenance Crew Supervisor Field Service and Metering Supervisor GIS Technician Hydrant/Meter Crew Supervisor IT Technician Lead Auto Mechanic Police Officer Pretreatment Coordinator Recreation Program Coordinator Special Events Coordinator Special Projects Coordinator Water/Sewer Crew Supervisor	45,158	59,326	73,495
18	Accountant Administrative Support Supervisor Civilian Unit Supervisor Electric Line Worker 2nd Class Fire Prevention Inspector MPO Planner Planner I Substation Technician II Wastewater Treatment Plant Oper. IV Water Treatment Plant Operator IV	47,415	62,292	77,169
19	Assistant Fire Marshal Athletic Supervisor Building Inspector II Center Supervisor Energy Management Specialist Financial and Budget Analyst Fire Engineer Heavy Equipment Manager Master Police Officer I Senior IT Technician	49,787	65,407	81,028

Utility Control Room Supervisor

20	Business Assistant/Analyst Chief Treatment Plant Operator Deputy Fire Marshal Electric Line Worker 1st Class Fiber Systems Technician Fire Captain IT Infrastructure Analyst IT Systems Analyst Key Accounts Analyst Laboratory Supervisor Master Police Officer II Planner II Project Coordinator Safety Officer Telemetry and Control Technician Treatment Plants Maint. Supervisor Water Resources Service Coordinator	52,275	68,678	85,079
21	Building & Grounds Maintenance Superintendent Building Inspector III Community Development Coordinator Facilities Maintenance Superintendent Fleet Maintenance Superintendent Master Police Officer III Parks Superintendent Purchasing and Warehouse Manager Recreation Superintendent Senior Accountant Stormwater Superintendent Waste Collection Superintendent Water Facilities Maintenance Superintendent Water/Sewer Construction Superintendent	54,890	72,111	89,333
22	City Clerk Planner III Police Sergeant Public Information Officer Utility Coordinator (Electric)	57,635	75,717	93,800
23	Electric Line Crew Leader Land & Community Development Administrator Metropolitan Planning Organization Administrator SCADA/Control Systems Supervisor Senior Financial and Budget Analyst Senior IT Analyst Streets Superintendent	60,516	79,502	98,489
24	Chief Building Inspector City Planner Fire Battalion Chief	63,541	83,477	103,414

Fire Division Chief of Training
Fire Marshal/Division Chief of Fire Prevention
GIS Programmer Analyst
Staff Engineer
Support Services Division Chief
Utility Business Office Manager
Utility Maintenance Superintendent
Wastewater Treatment Plant Manager
Water Treatment Plant Manager

25	Accounting Manager Assistant Director of Human Resources Assistant Director of Public Works Community & Economic Development Manager Electric Substation Superintendent GIS Manager Police Lieutenant Utility Business Operations Manager	66,719	87,652	108,584
26	Electric Engineering Manager	70,054	92,034	114,014
27	Deputy Fire Chief/Operations Commander Police Captain	73,557	96,636	119,715
28	Executive Director Redevelopment Commission	77.235	101,467	125,700
29	Deputy Chief of Police Electric Distribution Superintendent	81,096	106,541	131,985
30		85,152	111,868	138,584
31	Transmission and Distribution Manager	89,409	117,461	145,513
32	Director of Human Resources Director of Information Technology Director of Parks & Recreation	93,880	123,334	152,789
33	City Engineer Director of Development Services Director of Public Works Fire Chief	98,575	129,501	160,429
34	Chief of Police Director of Finance Director of Utilities	103,504	135,976	168,450
35	Assistant City Manager	108,679	142,775	176,873



1398 CARROLLTON CROSSING DRIVE KERNERSVILLE, NC 27284 (336) 904-0300 MATTHEW L. DOLGE • EXECUTIVE DIRECTOR

Market Pay Study Report



December 5, 2022

Prepared and Presented By

Piedmont Triad Regional Council 1398 Carrollton Crossing Drive Kernersville, NC 27284

1398 CARROLITON CROSSING DRIVE KERNERSVILLE, NC 27284 (336) 904-0300

MATTHEW L. DOLGE . EXECUTIVE DIRECTOR.

Mr. Foster Hughes, City Manager City of New Bern 300 Pollock Street New Bern, North Carolina 28560 December 5, 2022

RE: Market Pay Study

Dear Mr. Hughes,

On behalf of Piedmont Triad Regional Council, thank you for the opportunity to conduct the Market Pay Study for the City of New Bern (the City). The report which follows represents an analysis of the City's present position classification system and pay plan and includes:

- · Our methodology with respect to pay comparisons with competing labor markets
- Updates to existing classifications and recommendations on amending the City's current Pay Plan, and
- Recommendations for changes in the grade assignments of individual position classifications and/or proposed employee pay changes.

The information contained in this report is based on a comprehensive review and comparable analysis of New Bern's classification system with previously identified local government entities in the City's relevant labor market. The analysis provides the data to ensure the City's salary grade structure remains competitive with other employers in the relevant market area. These recommendations are designed to ensure both salary grades and salary ranges are sufficient for the City to attract well qualified candidates as well as retain existing staff necessary to meet the City's varied service delivery requirements.

I very much appreciate the hospitality and cooperation extended to me by everyone assisting with the study.

Respectively Submitted,

David Hill

Management Analyst Piedmont Triad Regional Council

Table of Contents

Section	Description	Page
I.	Overview	4
II.	Methodology	6
III.	Initial Workforce Analysis and Charts	8
IV.	General Recommendations	18
V.	Implementation Recommendations	22
VI.	Recommended Pay Plan	24
VII.	Definitions of Salary Survey Terms	30
VIII.	Compa-ratio Factor Model	31

I. Overview

In November 2021, Piedmont Triad Regional Council (PTRC) was contracted to conduct a Market Comparative Pay study for each approved and budgeted position to determine the effectiveness of the City's pay plan and to analyze each position for correct placement within the pay plan to ensure market competitiveness. The initial market analysis concluded on April 5, 2022 with a presentation to New Bern's Management Team of the findings and recommendations. Discussions regarding implementation options and strategies continued after April 2022 into the beginning of Fiscal Year 2022-2023. Knowing that discussions and decisions would extend into Fiscal Year 2022-2023, PTRC utilized a 3%, 4% and 5% increase model to the market data collected in early 2022. From those models, a 5% forecast increase in the market data was chosen. In August 2022, updated market data was collected and benchmark comparisons confirmed the 5% forecast model was supported. Discussion regarding this approach continues later in this report.

A pay and classification system establishes the basis by which employees are compensated and periodic studies will ensure external competitiveness and internal equity. The external competitive analysis of this study focused on those peer entities that were identified as being:

- · Geographic competitors for talent
- · Similar in size and/or services provided
- Similar in job functions

Those identified and surveyed entities are:

Clayton	Jacksonville	Statesville	Wilson
Goldsboro	Kinston	Wake Forest	Craven County
Greenville	Morehead City	Washington	Pitt County
Havelock	Rocky Mount	Wilmington	Greenville Util Com

In addition to the above, relevant private sector data from the Bureau of Labor Statistics was utilized.

The relevancy of an effective market-based pay plan lies within the administration and methodology of establishing starting salaries for new employees and the systematic means by which experienced employees may advance across the salary range. Without an approved Pay Plan and salary administration methodology there will typically be a lack of consistency in salary administration as it relates to the establishment of new employee salaries as well as the systematic advancement of experienced employees. To that end, a recommended Pay Plan with established pay grades and pay ranges is included in this report.

As New Bern continues to grow and change, it will be imperative for the City to offer competitive salaries to attract the best possible talent to serve her citizens. In order to remain competitive geographically and ensure all positions are properly classified and compensated, the pay and classification system must be properly maintained. To ensure this proper maintenance, a periodic and ongoing process is needed to review job responsibilities and each individual job has a proper pay grade assignment which are both internally and externally competitive. This, in combination with an effective employee performance evaluation system, will provide overall performance management for the City, for each City Department, and for each individual employee.

II. Methodology

The following methodology was established and utilized to arrive at the stated and recommended outcomes contained herein:

Methodology for Position Classification:

- Initial meetings and communications included discussions with the Human Resources
 Director and Assistant Human Resources Director to discuss the methodology of the
 study, potential issues regarding the full scope of work as well as discussing the study
 schedule, procedures, goals and project deliverables.
- The Human Resources Director and Assistant Human Resources Director provided current job descriptions as well as necessary and timely pay plan and workforce reports and documentation to assist in developing a full understanding of the City's present position classification structure.
- PTRC utilizes the whole job comparison method of job evaluation. The duties and
 responsibilities of individual positions are evaluated to determine their relative level of
 difficulty and responsibility. The factors used are generally accepted principles in human
 resources position analysis. The following are among the classification factors used in
 determining the level of each position:
 - · Knowledge, skills, and abilities required
 - · Difficulty, complexity, and variety of work performed
 - Decision making and judgment
 - Consequence of error
 - Nature, type, and significance of public contacts
 - Supervision given
 - · Supervision received
 - Working conditions
- Each classification was evaluated to ensure that content and titles were current, accurate, and consistent with Fair Labor Standards Act, Equal Employment Opportunity and Americans with Disabilities Act considerations.
- Follow up email and telephonic discussions were held with the Human Resources
 Director and Assistant Human Resources Director to review and discuss the preliminary
 study findings and recommendations to solicit review and comments.

 Study results and recommendations were finalized and are presented to the City Manager by way of this report.

Methodology for Pay Plan:

- Identified the relevant job market to base the comparative pay plan analysis. Primary
 emphasis was on those geographically located local governments identified as natural
 competitors for the local workforce.
- Conducted the customized market salary survey focusing on identified benchmark positions within the workforce.
- Analyzed survey data and recommended a pay plan structure including pay grades and pay grade ranges as well as placement of individual classifications within each pay grade.

III. Initial Workforce Analysis and Charts

Note: the following workforce analysis and chart information is based solely on the workforce demographics at the beginning of the market study and does not include any data associated with the market study. The market study data begins with Section V of this report.

The City of New Bern has a relatively mature workforce based on the 9.18 average years of employment with the City. Based on this initial workforce analysis, 26.3% of the workforce has been employed less than two years and 45% have been employed less than five years. While the City has a number of long serving employees, having 45% of the workforce employed within the past five years may be worth analyzing to determine the cause(s) of the trend.

With a relatively mature workforce an employee with 8 or more years' experience in their classification, and performing their duties with demonstrated proficiencies and competencies, could be expected to be earning between 30% - 32% above the minimum rate of their salary grade (based on the City's current 62.75% pay grade range as measured from minimum to maximum salary). The City's average percentage above salary grade minimum rate is 21.6%, placing the average salary approximately 10% below the midpoint (market value) for their classification. This low percentage below market may have several causes, including:

- · 26.3% of workforce was employed within the past two years; and,
- A significant number of employees have been assigned to their current positions for a relatively short period (average time in current position is 4.62 years).

Initial Workforce Summary

Total Service

Employees By Total Service	Percentage
Less than 2 years	26.3%
Less than 5 years	45%
Average number of years employed	9.18 Years

Compensation

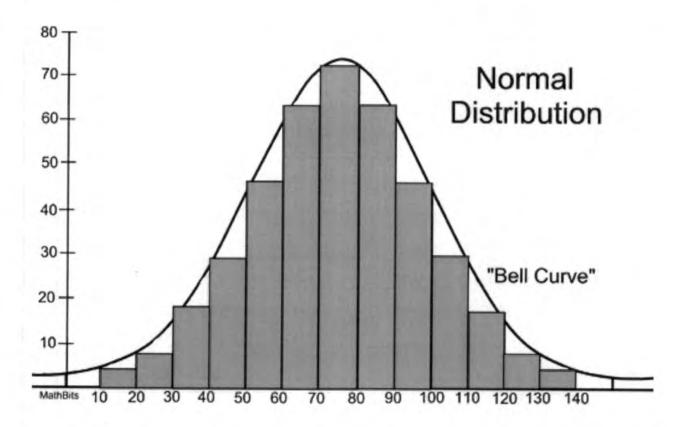
Salaries in Current Job	Percentage
Less than 5% above grade minimum	14.5%
Less than 10% above grade minimum	31.9%
Total employees below pay grade midpoint	72.5%
Total employees above pay grade midpoint	27.5%

Pay Plan

Pay Plan Structure	Data Points
Number of salary grades	33
Percent range spread (from min rate to max)	62.75%
Differential between midpoint values	5%
Average annual base salary	\$50,456

The "Bell Curve"

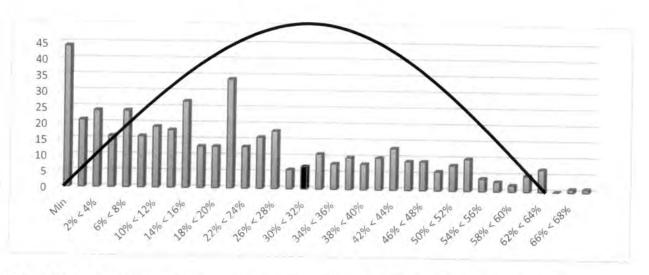
The following workforce charts should be viewed with the backdrop of the standard deviation "Bell Curve". All workforce measurements should be considered in relation to standard deviation (normal distribution) where a relatively few employees will be found on the extreme left and right sides of the scale while the majority of employees would be expected to appear at, or near, the midpoint of the scale, whether measuring length of employment, employee performance, salaries or any other workforce metric. Typically, within a mature workforce, two-thirds of the workforce should be found in the middle one-third of the bell curve.



We have a technical inability to produce an exact Bell Curve on the following charts and have substituted the Bell Curve with an arc to compare the City's workforce data to the normal distribution.

Chart One

Employee Salaries as Percent Above Salary Grade Minimum



<u>Chart One</u>: This chart illustrates employee annual base salaries as a percentage above the minimum salary for each employee's pay grade. The numbers on the vertical axis represent the number of employees in each 2% range. The percentages on the horizontal axis represent each 2% range above the pay grade minimum salary, for example, 6% but less than 8%.

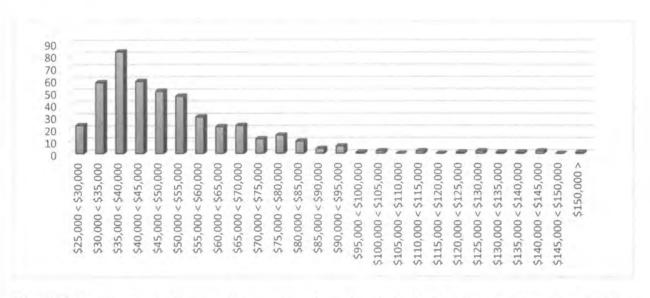
- The first bar reflects all salaries paid at the pay grade minimum salary (44 employees).
- The second bar reflects all salaries at least at .001% but less than 2% above minimum (21 employees).
- The third bar reflects all salaries at least 2% but less than 4% above minimum (24 employees), etc.

With New Bern's 62.75% salary range (the percentage increase from minimum to maximum salary of each pay grade) the midpoint for each pay grade is 31.38% above the minimum rate. The black bar in the center of the range, 30% but less than 32%, represents where salaries would be if at the midpoint (market value). There are 125 (27.5%) employees whose salaries are above the midpoint (market value) of their salary grade. There are seven (7) employees whose salaries are equal to or greater than their grade maximum. The graph shows that 31.94% of employees have salaries less than 10% above their salary grade minimum rate.

This chart demonstrates, that while the City's average length of employment is 9.18 years, the City is approaching approximately one-third of the workforce with salaries compressed with salaries less than 10% above the average grade minimum salary.

Chart Two

Employee Salaries in \$5,000 Increments



<u>Chart Two</u>: This chart identifies the number of employees by \$5,000 annual salary increments. The numbers on the vertical axis represent the number of employees while the salaries on the horizontal axis represent increments of five thousand dollars in annual base salary.

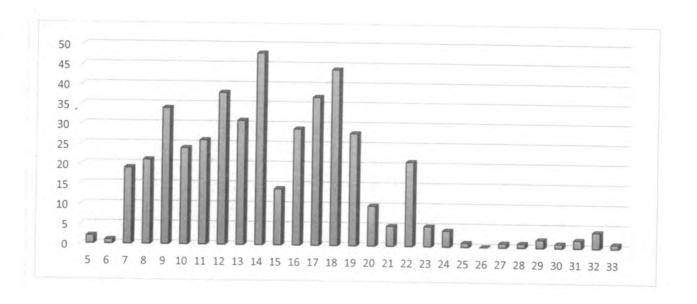
- The first bar represents the number of employees earning annual salaries of at least \$25,000, but less than \$30,000 (23 employees).
- The second bar represents the number of employees earning annual salaries of at least \$30,000, but less than \$35,000 (58 employees)
- The third bar represents the number of employees earning annual salaries of at least \$35,000 but less than \$40,000 (83 employees), etc.

The largest number of employees have annual salaries of at least \$35,000 but less than \$40,000 (as shown in the 3rd bar). The average base salary for all regular full-time employees is \$50,456

While not part of the scope-of-work of this study, a \$15.00 per hourly rate would, for an employee working a 40 hour per week schedule, result in an annual base salary of \$31,200. At the beginning of this study there were 33 employees, not including vacant positions, who had annual salaries below \$31,200. After updated salary data was received on September 9, 2022, there were 18 employees with annual salaries below \$31,200.

Chart Three

Distribution of Employees by Pay Grade

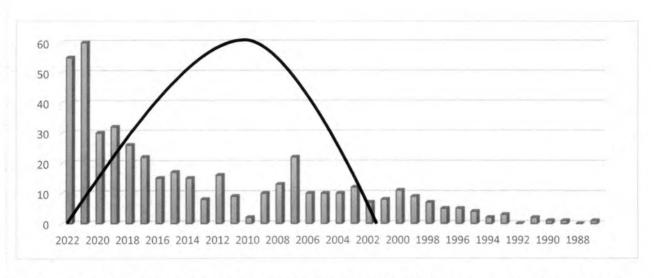


<u>Chart Three:</u> New Bern's current Salary Schedule consists of 33 pay grades with classifications being assigned to 28 of the grades.

This pay grade assignment chart reflects a typical distribution with less skilled classifications assigned to lower pay grades, technical and para professional classifications assigned to the middle grades and professional and management classifications assigned to higher pay grades.

Chart Four

Employee Distribution by Year of Employment

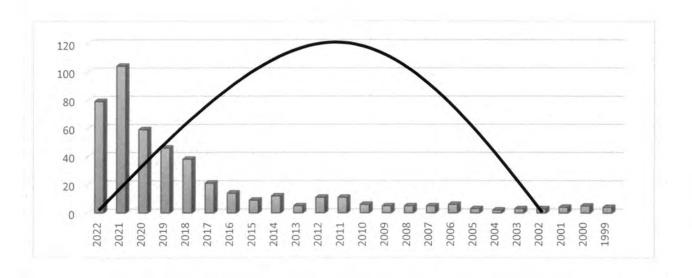


<u>Chart Four:</u> This chart shows the distribution of all regular full-time employees based on their year of employment. The average years of employment is 9.18 years. The arc represents a 20-year career.

This chart graphically shows that 26.3% of employees have been employed less than 2 years and 45% have been employed less than 5 years.

While this distribution of employees is based on their year of employment, not known are the number of employees hired during each of those years who are no longer employed.

Chart Five
Employee Distribution by Year in Current Position



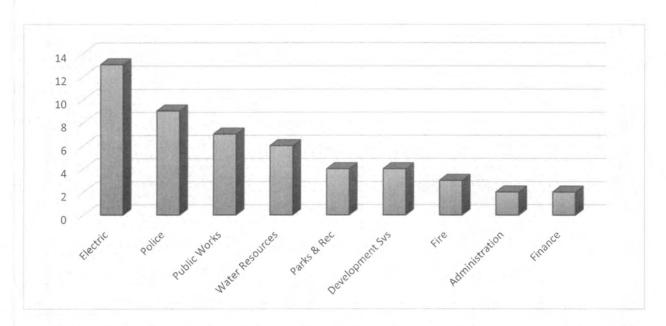
<u>Chart Five:</u> This chart shows the distribution of all regular full-time employees based on their year employed in their current position. The average years in current position is 4.62 years. The arc represents a 20-year career.

This chart graphically shows that 42.6% of employees have been in their current position less than 2 years and 71.9% have been in their current position less than 5 years.

While this distribution of employees is based on their year employed in their current position, not known are the number of employees hired during each of those years who are no longer employed.

Chart Six

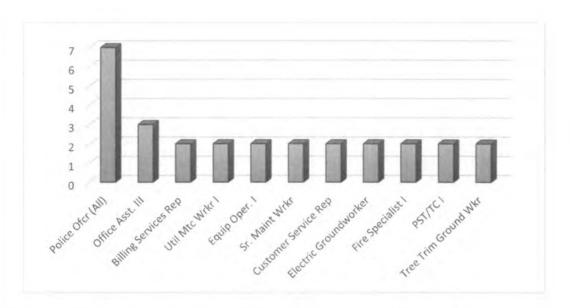
Most Recent 10% (50) of Employees Employed Sorted by Department



<u>Chart Six</u>: This chart provides a snap shot regarding the most recent 10% (50) employees hired prior to the start of the current market study, sorted by the department in which employed. These 50 employees represent approximately 11% of the total workforce. Of those last employed, the Electric Department had 26% of the sample size.

Chart Seven

Most Recent 10% (50) of Employees Employed Sorted by Position



<u>Chart Seven</u>: This chart provides a snap shot regarding the 10% (50) employees most recently employed prior to the start of the current market study, sorted by the specific classification in which employed. These most recently employed employees represent approximately 11% of the total workforce. Of those most recently employed, seven (7) were Police Officers (4 Trainees, 3 Police Officers), followed by Office Assistant III. Only those classification with 2 or more new hires are listed on this chart.

Reminder: The data presented in the preceding Workforce Analysis is a snap shot of New Bern's Workforce as of the beginning of the market pay study, and does not include any data, or interpretation of data, from the current market pay study. The data from the current market pay study is presented in the following sections of this report.

IV. General Recommendations

A. Adopt a Salary Administration Philosophy

The following *italicized* information was prepared by the Society for Human Resource Management (SHRM)

A Salary Administration/Compensation Philosophy is similar to a Mission and Vision Statement. It creates and supports a methodology of horizontal and vertical movement of employee compensation toward the Midpoint (Market Value) of an employee's salary range.

The philosophy is simply a formal statement documenting the employer's position about employee pay and total compensation. It essentially explains the "why" behind employee pay and creates a framework for consistency. Employers can benefit from being transparent about their compensation philosophy and having an official pay strategy.

The philosophy is based on many factors, including the employer's financial position, the size of the organization, the industry, business objectives, salary survey information, and the level of difficulty in finding qualified talent based on the economy, as well as the unique circumstances of the business. It is important for the compensation philosophy to be reviewed periodically and modified based on how well it is working and current factors affecting recruitment and retention. For example, market conditions may make it really difficult to find qualified talent in a particular specialization, and an employer may need to pay a premium for these candidates. If the employer's current compensation philosophy does not support this value, then the employer may need to change its philosophy to meet its current needs.

A well-designed compensation philosophy supports the employer's strategic plan and initiatives, business goals, competitive outlook, operating objectives, and compensation and total reward strategies.

As such, most compensation philosophies seek to:

- Identify the organization's pay programs and total reward strategies
- Identify how the pay programs and strategies support the organization's business strategy, competitive outlook, operating objectives and human capital needs
- Attract people to join the organization
- · Motivate employees to perform at the best of their competencies, abilities and skill sets
- · Retain key talent and reward high-performing employees
- Define the competitive market position of the organization in relation to base pay, variable compensation and benefits opportunities

 Define how the organization plans to pay and reward competitively, based on business conditions, competition and ability to pay

An effective compensation philosophy should pass the following quality test:

- Is the overall program equitable?
- Is the overall program defensible and perceived by employees as fair?
- Is the overall program fiscally sensitive?
- Are the programs included in the compensation philosophy and policy legally compliant?
- Can the organization effectively communicate the philosophy, policy and overall programs to employees?
- Are the programs the organization offers fair, competitive and in line with the compensation philosophy and policies?

While HR is clearly in the lead in developing an organization's compensation philosophy and policy, success lies in close collaboration with the leadership team to obtain valuable input, direction, concurrence, and continuous funding.

Following is a model to consider:

Example #1:

The philosophy behind New Bern's compensation program is to create a program that supports our mission and values. We believe our compensation program is a management tool that, when aligned with an effective communication plan, is designed to support, reinforce and align our values, service delivery strategy, operational and financial needs with a goal of superior customer service.

The City of New Bern's compensation program is designed to attract, motivate, and retain talented employees who drive our success. We strive to provide base salary that meets the market when employees are fully proficient and meeting expectations. We believe that employees consistently performing above expectations and who are proficient in their role should be rewarded with a higher base pay. Employees who are new to their role and/or not meeting expectations would be paid below the established market range. In addition to base salary, the City will utilize incentive, longevity or career development pay as a way to meet our strategic goals. Incentive pay will be available to employees with consideration for a number of factors and will be based on individual goals that relate to the City's objectives.

In alignment with our transparency culture and our vision statement, we will strive to communicate openly about the goals of the City and the design of the compensation program. The compensation process is intended to be fair and equitable and so that all employees and managers understand the

goals and the outcomes of the process. The City of New Bern will administer the compensation program in a manner that is consistent and free of discrimination.

B. Administer Market-Based Salary Administration Practices

- 1. The proposed Pay Plan:
 - a. Is recommended to maintain the current range of 62.75%% along with a consistent 5.0% differential between pay grades.
 - b. Should be adjusted when the entry level salaries (or market rate salaries) of a significant portion of the benchmark classifications are no longer competitive (ex, greater than 5% higher).
- 2. The City should use the recommended practice of reclassification (change in grade level) for individual classifications or specific job roles of employees (or job series) to ensure competitive salaries without the need to revise the entire Pay Plan. A full compensation plan review should be conducted every 3 4 years with interim adjustments in certain classes and/or class series every year (See paragraph C of this section).
- 3. The focus of salary administration should not only be the competitive minimum salaries, but, also, the midpoint (market value/job rate) of each job classification. With a 62.75% range, from Minimum to Maximum, the midpoint/market value is, typically, established at the 30% 32% mark of the range, measured from the minimum salary. The market rate can also be established as a plus/minus relationship to the midpoint salary. For example, the market rate can be identified as plus/minus 3% or 5% of the salary grade midpoint.
- 4. Pay Plan adjustments do not, necessarily, need to coincide with employee compensation and we recommend consideration of only amending them when the entry level salaries of a significant portion of the benchmark classifications are no longer competitive. For example, after the adoption and implementation of these market study recommendations the salary grade ranges could remain unchanged even though the City may implement a Cost-of-Living adjustment (COLA) in the following fiscal year. The City could adjust employee salaries by the amount of the COLA but not increase the salary grade ranges by the same COLA amount. This is effective in the first year after the adoption of the recommendations and assists in addressing salary compression. We do not recommend this strategy beyond the second year after implementation.

5. The focus of salary administration should be on advancing employees toward the mid-point (market value) of each pay grade with a market based compa-ratio established at, for example, .95 to 1.05 relative to the mid-point and also provide methodologies whereby employees may continue to advance across their salary grade range. We recommend the City consider establishing an effective objectively based Certification/License/Education Career Development program to support the advancement of employee salaries to/toward the mid-point (market value).

C. Consider Establishing a One-Third Annual Review

For the foreseeable future there will remain a shrinking labor pool of interested and qualified candidates for employment within local government, especially in the emergency services, i.e., Law Enforcement and Fire classifications as well as in Building Inspections and Electrical line work. The demand for the available number of interested and qualified candidates will remain extremely competitive, as evidence by several local governments recently making significant upward adjustments in the starting salaries for Law Enforcement Officers.

To better position the City to become and remain competitive in this difficult market, we recommend an increasingly popular strategy of reviewing approximately one-third of the City's classification each fiscal year. This strategy provides several beneficial approaches to salary administration by:

- 1. Ensuring each classification receives a market review no less than every third year
- 2. Maintaining market competitiveness of salary ranges and pay grade assignments
- 3. Assisting in better addressing salary compression, and
- 4. Providing funding stewardship

V. Implementation Recommendations

A. Adopt the Proposed Pay Plan (see VI. - Proposed Pay Plan)

Based on the market analysis of each classification our recommendation is to maintain the current pay plan with its 62.75% range and 5% differential between each advancing grade.

B. Adopt the recommendation of assigning each classification to the pay grade commensurate with, and supported by, the comparable market data.

The market study provided the necessary data to make sound judgements regarding the assignment of classifications to the pay grade range commensurate with those market comparisons. The recommended Pay Plan assigns each classification to the pay grade range commensurate with compared market data and internal equity.

Included is the recommendation to set employee salaries in their new pay grade range at the same Compa-ratio they have in their current pay grade range. The Compa-ratio Factor model is included at the end of this report.

As is demonstrated in Chart One, the City has moderate salary compression with approximately 32% of the workforce having salaries compressed within 10% of their pay grade minimum salaries. As covered in our several discussions, the Compa-ratio factor model provides an objectively created formula of specifically addressing salary compression and maintaining relative positioning by focusing on the relative position of an employee salaries as a factor, or measurement, to the midpoint (market value/market rate) of their pay grade range.

The adoption of this implementation strategy addresses market competitiveness and does not increase salary compression by maintaining employee current relative positioning to each other. An additional benefit of the Compa-ratio relative positioning model is the maintenance of separation of current employee salaries and salaries of new employees who come to work after implementation. This addresses the issue of new employees being employed with salaries equal to, or almost equal, the salaries of more senior employees.

C. Funding Recommendation

Adopt Recommendations in Paragraphs A and B (above)	\$2,804,292
25% FICA, Retirement, etc.	701,073
Funding Requirement	\$3,505,365

The preceding funding requirements are rounded and include salaries plus 25% for FICA, Retirement, 401(k), etc. The actual required funding requirement will fluctuate up to the time of approval and implementation as employees terminate, are employed, are promoted, etc. The required funding amount will also fluctuate slightly based on the specific percentage required for FICA, Retirement, 401(k), etc. For purposes of this report, we estimated that requirement at 25%

The recommendation for implementing changes for individual employees is provided in a separate spreadsheet which has been submitted to the Human Resources Director.

Alternative implementation could include:

- (1) 50% implementation in January 2023 and 50% in July 2023
- (2) 33.3% implementation in January 2023, 33.3% in July 2023 and the balance in January 2024.

If alternate #2 is chosen, we recommend a minimum of a 2% market adjustment increase on the one-third implementation in January 2024.

VI. Recommended Pay Plan

City of New Bern PROPOSED PAY PLAN 2022 - 2023

Grade	Position Titles	Minimum	Midpoint	Maximum
1		20,687	27,178	33,668
2		21,722	28,537	35,352
3		22,808	29,965	37,119
4		23,948	31,463	38,976
5		25,146	33,035	40,924
6		26,403	34,686	42,971
7	Custodian	27,723	36,421	45,120
8	Accounting Clerk	29,109	38,243	47,375
	Inventory Control Clerk Lead Custodian			
	Office Assistant II			
9	Hydrant/Meter Maintenance Worker I	30,565	40,154	49,744
	Parks Maintenance Technician	11 11 2 2 2 2 2		
	Police Service Technician			
	Senior Maintenance Worker Utility Maintenance Worker I			
	Utility Service Specialist			
10	Billing Services Representative	32,093	42,162	52,231
	Equipment Operator I			
	Maintenance Construction Worker			
	Office Assistant III			
	Parks Maintenance Specialist Payment Services Representative Tree Trim Groundworker			

	Utility Service Technician			
	Warehouse Assistant			
11	Accounting Technician I	33,698	44,271	54,843
	Bio-Solids Operator			
	Customer Service Representative			
	Engineering Assistant			
	Fire Trainee			
	Hydrant/Meter Maintenance Worker II			
	Irrigation Operator			
	Lead Equipment Operator I			
	Lead Maintenance Worker			
	Maintenance Technician			
	Police Service Technician (Animal Control)	-		
	Police Service Technician (Property & Evidence)			
	Senior Billing Services Representative			
	Senior Payment Services Representative			
	Tree Trimmer Trainee			
	Utility Control System Operator			
	Utility Maintenance Worker II			
12	Administrative Assistant	35,383	46,484	57,585
	Electric Groundworker			
	Electric Meter Technician			4
	Equipment Operator II			
	Human Resources Assistant			
	Senior Customer Service Representative			
	Wastewater Treatment Plant Operator I		44	
	Water Treatment Plant Operator I		4	
13	Fire Specialist	37,152	48,808	60,464
	Hydrant/Meter Maintenance Lead Worker			
	Police Officer Trainee			
	Police Service Technician/Telecommunicator I			
	Tree Trimmer		1 11	
	Utility Locator			
	Utility Maintenance Lead Worker			
14	Accounting Technician II	39,010	51,248	63,487
0 A	Cross Connection Control Coordinator			
	Fire Specialist I			
	Laboratory Technician			
	Lead Equipment Operator II			

	Lead Maintenance Technician			1
	Metering and Billing Coordinator			
	Parks Crew Leader			1
	Police Service Technician/Telecommunicator			
	Pump Station Mechanic			
	Wastewater Treatment Plant Operator II			-
	Water Treatment Plant Operator II			
15	Auto Mechanic	40,959	53,810	66,662
	Billing Services Supervisor	10,757	55,610	00,002
	Customer Service Supervisor			
	Electric Line Worker 3rd Class			
	Fire Specialist II			
	Human Resources Technician		1	+
	Inflow and Infiltration Technician			
	Load Management Systems Technician			+
	Payment Services Supervisor			-
	Police Service Technician/Telecommunicator			
	Utility Locate Coordinator			
16	Fire Specialist III	43,008	56,502	69,994
	Electric Svc. Representative	10,000	30,302	05,554
	Nuisance Abatement Officer			+
	Substation Technician I			-
	Tree Trim Crew Leader			
	Wastewater Treatment Plant Operator III			
	Water Treatment Plant Operator III			
17	Account Services Supervisor	45,158	59,326	73,495
	Athletic Coordinator	10,100	33,320	13,493
	Biosolids Supervisor			
	Building and Grounds Maintenance Supervisor			
	Building Inspector I			
	Electrical Engineering Technician			
	Electrician			
	Facilities Maintenance Crew Supervisor			
	Field Service and Metering Supervisor			-
	GIS Technician			-
	Hydrant/Meter Crew Supervisor			
	IT Technician	+		
	Lead Auto Mechanic		-	
	Police Officer	-		1

	Pretreatment Coordinator		1	
	Recreation Program Coordinator			
	Special Events Coordinator			
	Special Projects Coordinator			
	Water/Sewer Crew Supervisor			
18	Accountant	47,415	62,292	77,169
	Administrative Support Supervisor	17,115	02,272	77,109
	Civilian Unit Supervisor			
	Electric Line Worker 2nd Class		+	+
	Fire Prevention Inspector			
	MPO Planner			
	Planner I			
	Substation Technician II			
	Wastewater Treatment Plant Oper. IV			
	Water Treatment Plant Operator IV			
19	Assistant Fire Marshal	49,787	65,407	81,028
-	Athletic Supervisor	12,707	05,407	01,020
	Building Inspector II		-	+
	Center Supervisor			-
	Energy Management Specialist			+
	Financial and Budget Analyst			
	Fire Engineer			
	Heavy Equipment Manager			
	Master Police Officer I			
	Senior IT Technician			
	Utility Control Room Supervisor			
20	Business Assistant/Analyst	52,275	68,678	85,079
	Chief Treatment Plant Operator	32,273	00,070	05,079
	Deputy Fire Marshal			
	Electric Line Worker 1st Class		-	+
	Fiber Systems Technician			-
	Fire Captain			
	IT Infrastructure Analyst			
	IT Systems Analyst			
	Key Accounts Analyst			
	Laboratory Supervisor			
	Master Police Officer II			
	Planner II			
	Project Coordinator			
	Safety Officer		-	

	Telemetry and Control Technician			
	Treatment Plants Maint. Supervisor			
	Water Resources Service Coordinator			
21	Building and Grounds Maintenance	54,890	72,111	89,333
	Superintendent	42.1		
	Building Inspector III			
	Community Development Coordinator			
	Facilities Maintenance Superintendent			
	Fleet Maintenance Superintendent			
	Master Police Officer III			
	Parks Superintendent			
	Purchasing and Warehouse Manager			
	Recreation Superintendent			
	Senior Accountant			
	Stormwater Superintendent			
	Waste Collection Superintendent			
	Water Facilities Maintenance Superintendent			
	Water/Sewer Construction Superintendent			
22	City Clerk	57,635	75,717	93,800
	Planner III			
	Police Sergeant			
	Public Information Officer			
	Utility Coordinator (Electric)			
23	Electric Line Crew Leader	60,516	79,502	98,489
	Land & Community Development Administrator			
	Metropolitan Planning Organization Administrator			
	SCADA/Control Systems Supervisor			
	Senior Financial and Budget Analyst			
	Senior IT Analyst			
	Streets Superintendent			4
24	Chief Building Inspector	63,541	83,477	103,414
	City Planner			
	Fire Battalion Chief	7		
	Fire Division Chief of Training			
	Fire Marshal/Division Chief of Fire Prevention			
	GIS Programmer Analyst			
	Staff Engineer			
	Support Services Division Chief			

	Utility Business Office Manager			
	Utility Maintenance Superintendent			-
	Wastewater Treatment Plant Manager			
	Water Treatment Plant Manager			
25	Accounting Manager	66 710	07.650	100 504
	Asst. Director of Human Resources	66,719	87,652	108,584
	Assistant Director of Public Works			
	Community & Economic Development			
	Manager			
	Electric Substation Superintendent			
	GIS Manager			
	Police Lieutenant			
	Utility Business Operations Manager			
26	Electric Engineering Manager	70,054	92,034	114.014
		70,034	92,034	114,014
27	Deputy Fire Chief/Operations Commander	73,557	96,636	119,715
	Police Captain	10,001	50,030	119,713
	Evanutive Director Bodon 1			
	Executive Director Redevelopment Commission	77,235	101,467	125,700
29	Deputy Chief of Police	81,096	106,541	131,985
	Electric Distribution Superintendent		100,511	131,763
30		85,152	111,868	138,584
				174,64
31	Transmission and Distribution Manager	89,409	117,461	145,513
32	Director of Human Resources	93,880	123,334	152,789
	Director of Information Technology		120,001	132,707
	Director of Parks & Recreation			
33	City Engineer	98,575	129,501	160,429
	Director of Development Services		127,001	100,429
	Director of Public Works			
	Fire Chief			
34	Chief of Police	103,504	135,976	169 450
	Director of Finance	103,304	133,970	168,450
	Director of Utilities			
35	Assistant City Manager	108,679	142,775	176,873

VII. Definitions of Salary Survey Terms

Terms	Description
Average	The arithmetic mean of several reported salaries for a specific job classification (e.g., average salaries of all Firefighters as a class)
Median	The middle value (number) in a series of values in which half the values are above the middle number & half the values below the number
Compa-Ratio	The relationship (expressed as a decimal) between an employee's actual annual salary & the midpoint (market value) of the assigned pay grade (salary divided by the range's midpoint). The midpoint is represented as 1.00. Employee salaries below the midpoint are less than 1.0, & (e.g., .80, .95, etc.) & salaries above the midpoint are shown as 1.05, 1.10, etc., indicating a higher value to the midpoint (1.0)
Market Rate	The "market rate" for any job classification is determined by surveying other employer salaries of employees with similar skills & experience. This includes new and existing employees many of whom may have qualifications exceeding recent new hires. Market rates signify someone who is fully knowledgeable with the requisite experience, education, & years of consistent levels of performance with an employer. Salaries at this level should correspond to the Median (+/- 5%) or averages of competitors surveyed. Market rates vary by job classification, industry, location, size of employer, and the employer's competitive pay philosophy
Grade Differential	The percentage increase from one pay grade to the next highest pay grade, usually 5% or more depending on the design of a salary structure
<u>Minimum</u>	The beginning salary for each salary grade. With a 50% salary range (minimum to maximum), the value would be 25% less than the Midpoint
Midpoint	The arithmetic middle of the salary range for each salary grade. This value typically represents the "Market Value" (+/- 5%) for positions assigned to a salary grade
Maximum	The last or ending value for each salary grade. With a 50% salary range (minimum to maximum), this would be 20% greater than the Midpoint
Range	The arithmetic value of the difference between the minimum of a salary grade to the maximum of the salary grade represented as a percent. The City's current 50% range was used for this study

VIII. Compa-ratio Factor Model

Compa-ratio is the comparative relationship of an employee's salary to the midpoint of their pay grade range. In salary administration, the midpoint represents the "market value" or "market rate" of the positions assigned to each pay grade. For purposes of our studies, we define a mature workforce has one having an average years of employment between 8 and 10 years.

In a mature workforce and, for an employee employed for a period of 8 to 10 years, the employee's salary could be expected to be at or near the midpoint of their pay grade range. The following Compa-ratio Factor Model provides the formula for determining an employee's salary placement. For example, an employee with nine years of employment would have a Comparatio of 1.00, placing the employee's salary at the midpoint of the pay grade range. A new employee would have a Compa-ratio of 0.80 placing the employee's salary at the minimum of the pay grade range. The following model shows the relative positioning of an employee's salary for each year of employment and reaching the midpoint of their range in their 9th year of employment.

Yrs. Empd	CR	CR Increment
0	0.800	0.020
1	0.820	0.020
2	0.840	0.020
3	0.860	0.020
4	0.880	0.020
5	0.900	0.025
6	0.925	0.025
7	0.950	0.025
8	0.975	0.025
9	1,000	0.025
10	1.025	0.020
11	1.045	0.020
12	1.065	0.020
13	1.085	0.020
14	1.105	0.020
15	1.125	0.020
16	1.145	0.020

City of New Bern Classification Pay Plan Fiscal Year 2022 - 23 (Recommended Grade Adjustments)

Grade Grade	Proposed Grade	Variance	Title	Minimum	Midpoint	Maximum
	1			20,687	27,178	33,668
	2			21,722	28,537	35,352
	3			22,808	29,965	37,119
	4			23,948	31,463	38,976
	5			25,146	33,035	40,924
	6			26,403	34,686	42,971
5	7	2	Custodian	27,723	36,421	45,120
•					55,72	
7	8	1	Accounting Clerk	29,109	38,243	47,375
7	8	1	Inventory Control Clerk			
6	8	2	Lead Custodian			
7	8	1	Office Assistant II			
7	9	2	Hydrant/Meter Maintenance Worker I	30,565	40,154	49,744
7	9	2	Parks Maintenance Technician			
8	9	1	Police Service Technician			
7	9	2	Senior Maintenance Worker			
7	9	2	Utility Maintenance Worker I			
7	9	2	Utility Service Specialist			
8	10	2	Billing Services Representative	32,093	42,162	52,231
8	10	2	Equipment Operator I	02,000	42,102	02,201
8	10	2	Maintenance Construction Worker			
9	10	1	Office Assistant III			
9	10	1	Parks Maintenance Specialist			
	10	2	Payment Services Representative			
8	10	3	Tree Trim Groundworker			
8	10	2	Utility Service Technician			
9	10	1	Warehouse Assistant			
9	10	1	Warehouse Assistant			
10	11	1	Accounting Technician I	33,698	44,271	54.843
9	11	2	Bio-Solids Operator	00,000	44,27	04,040
9	11	2	Customer Service Representative			
10	11	1	Engineering Assistant			
9	11	2	Fire Trainee			
9	11	2	Hydrant/Meter Maintenance Worker II			
9	11	2	Irrigation Operator			
9	11	2	Lead Equipment Operator I			
9	11	2	Lead Maintenance Worker			
10	11	1	Maintenance Technician			
10	11	1	Police Service Technician (Animal Control)			
10	11	1	Police Service Technician (Animal Control) Police Service Technician (Property & Evidence)			
9	11	2	Senior Billing Services Representative			
	11	2	Senior Payment Services Representative			
9	11	2	Tree Trimmer Trainee			
9	1.1.	2	Tree Tilliller Traillee			

9	11	2	Utility Control System Operator			
9	11	2	Utility Maintenance Worker II			
9	- 11	2	Othity Maintenance Worker II			
11	12	1	Administrative Assistant	35,383	46,484	57,585
10	12	2	Electric Groundworker	55,565	40,404	37,303
	12	3	Electric Groundworker Electric Meter Technician			
9						
10	12	2	Equipment Operator II			
11	12	1	Human Resources Assistant			
10	12	2	Senior Customer Service Representative			
10	12	2	Wastewater Treatment Plant Operator I			
10	12	2	Water Treatment Plant Operator I			
	100	2	2727000		14.444	
11	13	2	Fire Specialist	37,152	48,808	60,464
11	13	2	Hydrant/Meter Maintenance Lead Worker			
10	13	3	Police Officer Trainee			
11	13	2	Police Service Technician/Telecommunicator I			
11	13	2	Tree Trimmer			
11	13	2	Utility Locator			
11	13	2	Utility Maintenance Lead Worker			
13	14	1	Accounting Technician II	39,010	51,248	63,487
13	14	1	Cross Connection Coordinator			
12	14	2	Fire Specialist I			
12	14	2	Laboratory Technician			
12	14	2	Lead Equipment Operator II			
12	14	2	Lead Maintenance Technician			
12	14	2	Metering and Billing Coordinator			
12	14	2	Parks Crew Leader			
12	14	2	Police Service Technician/Telecommunicator II			
12	14	2	Pump Station Mechanic			
		2				
12	14		Wastewater Treatment Plant Operator II			
12	14	2	Water Treatment Plant Operator II			
40	45		A. de Manhania	40.050	E2 010	66 660
12	15	3	Auto Mechanic	40,959	53,810	66,662
16	15	-1	Billing Services Supervisor			
13	15	2	Customer Service Supervisor			
13	15	2	Electric Line Worker 3rd Class			
13	15	2	Fire Specialist II			
14	15	1	Human Resources Technician			
13	15	2	Inflow and Infiltration Technician			
13	15	2	Load Management Systems Technician			
13	15	2	Payment Services Supervisor			
13	15	2	Police Service Technician/Telecommunicator III			
13	15	2	Utility Locate Coordinator			
14	16	2	Electric Svc. Representative	43,008	56,502	69,994
14	16	2	Fire Specialist III			
14	16	2	Nuisance Abatement Officer			
14	16	2	Substation Technician I			
14	16	2	Tree Trim Crew Leader			
14	16	2	Wastewater Treatment Plant Operator III			
14	16	2	Water Treatment Plant Operator III			
	,,,	-				
16	17	1	Account Services Supervisor	45,158	59,326	73,495
16	17	1	Athletic Coordinator	120.22	15.153	,
15	17	2	Biosolids Supervisor			
16	17	1	Building and Grounds Maintenance Supervisor			
14	17	3	Building Inspector I			
15	17	2	Electrical Engineer Technician			
15	17	2	Electrician			
	17	2	Facilities Maintenance Crew Supervisor			
15						
18	17	-1	Field Service and Metering Supervisor			

15	17	2	GIS Technician			
15	17	2	Hydrant/Meter Crew Supervisor			
16	17	1	IT Technician			
14	17	3	Lead Auto Mechanic			
14	17	3	Police Officer			
15	17	2	Pretreatment Coordinator			
16	17	1	Recreation Program Coordinator			
16	17	1	Special Events Coordinator			
16	17	1	Special Projects Coordinator			
15	17	2	Water/Sewer Crew Supervisor			
10		_	valer/oction of the output vision			
17	18	1	Accountant	47,415	62,292	77,169
17	18	1	Administrative Support Supervisor			
17	18	1	Civilian Unit Supervisor			
15	18	3	Electric Line Worker 2nd Class			
16	18	2	Fire Prevention Inspector			
17	18	1	MPO Planner			
16	18	2	Planner I			
16	18	2	Substation Technician II			
16	18	2	Wastewater Treatment Plant Oper. IV			
16	18	2	Water Treatment Plant Operator IV			
10	10	_	Traco Troductor and operator to			
17	19	2	Assistant Fire Marshal	49,787	65,407	81,028
18	19	1	Athletic Supervisor		100	
16	19	3	Building Inspector II			
18	19	1	Center Supervisor			
18	19	1	Energy Management Specialist			
18	19	1	Financial and Budget Analyst			
17	19	2	Fire Engineer			
16	19	3	Heavy Equipment Manager			
16	19	3	Master Police Officer I			
18	19	1	Senior IT Technician			
17	19	2	Utility Control Room Supervisor			
17	19	2	Other Control Room Supervisor			
19	20	1	Business Assistant/Analyst	52,275	68,678	85,079
18	20	2	Chief Treatment Plant Operator			
18	20	2	Deputy Fire Marshal			
17	20	3	Electric Line Worker 1st Class			
19	20	1	Fiber Systems Technician			
18	20	2	Fire Captain			
19	20	1	IT Infrastructure Analyst			
19	20	1	IT Systems Analyst			
19	20	1	Key Accounts Analyst			
18	20	2	Laboratory Supervisor			
		3	Master Police Officer II			
17	20	2	Planner II			
18	20					
18	20	2	Project Coordinator			
19	20	1	Safety Officer			
18	20	2	Telemetry and Control Technician			
17	20	3	Treatment Plants Maint. Supervisor			
18	20	2	Water Resources Service Coordinator			
19	21	2	Building & Grounds Maintenance Superintender	54,890	72,111	89,333
18	21	3	Building Inspector III	5.,,550	. =	-0,000
19	21	2	Community Development Coordinator			
18	21	3	Facilities Maintenance Superintendent			
	21	2	Fleet Maintenance Superintendent			
19	21	3	Master Police Officer III			
18	21	2	Parks Superintendent			
19	21	2	Purchasing and Warehouse Manager			
19	21	2	Recreation Superintendent			
19 20	21	1	Senior Accountant			
20	21	1	Jenior Accountant			

19 19	21 21	2 2	Stormwater Superintendent Waste Collection Superintendent			
18	21	3	Water Facilities Maintenance Superintendent			
19	21	2	Water/Sewer Construction Superintendent			
21	22	1	City Clerk	57,635	75,717	93,800
20	22	2	Planner III			
19	22	3	Police Sergeant			
21	22	1	Public Information Officer			
20	22	2	Utility Coordinator (Electric)			
20	23	3	Electric Line Crew Leader	60,516	79,502	98,489
21	23	2	Land & Community Development Administrator			
21	23	2	Metropolitan Planning Organization Administrator			
22	23	1	SCADA/Control Systems Supervisor			
22	23	1	Senior Financial and Budget Analyst			
22	23	1	Senior IT Analyst			
22	23	1	Streets Superintendent			
22	23		Streets Superintendent			
21	24	3	Chief Building Inspector	63,541	83,477	103,414
23	24	1	City Planner			
22	24	2	Fire Battalion Chief			
22	24	2	Fire Division Chief of Training			
22	24	2	Fire Marshal/Division Chief of Fire Prevention			
22	24	2	GIS Programmer Analyst			
22	24	2	Staff Engineer			
22	24	2	Support Services Division Chief			
23	24	1	Utility Business Office Manager			
22	24	2	Utility Maintenance Superintendent			
22	24	2	Wastewater Treatment Plant Manager			
22	24	2	Water Treatment Plant Manager			
24	25	1	Accounting Manager	66,719	87,652	108,584
23	25	2	Asst. Director of Human Resources			
23	25	2	Assistant Director of Public Works			
24	25	1	Community & Economic Development Manager			
23	25	2	Electric Substation Superintendent			
23	25	2	GIS Manager			
22	25	3	Police Lieutenant			
23	25	2	Utility Business Operations Manager			
25	26	1	Electric Engineering Manager	70,054	92,034	114,014
				70.557	00.000	440 745
24 24	27 27	3	Deputy Fire Chief/Operations Commander Police Captain	73,557	96,636	119,715
				77.005	104.407	105 700
27	28	1	Executive Director Redevelopment Commission	77,235	101,467	125,700
27	29	2	Deputy Chief of Police	81,096	106,541	131,985
28	29	1 1	Electric Distribution Superintendent			
	30			85,152	111,868	138,584
29	31	2	Transmission and Distribution Manager	89,409	117,461	145,513
		2				
30	32	2	Director of Human Resources	93,880	123,334	152,789
30	32	2	Director of Information Technology			
30	32	2	Director of Parks & Recreation			
31	33	2	City Engineer	98,575	129,501	160,429
32	33	1	Director of Development Services			
32	33	1	Director of Public Works			

31	33	2	Fire Chief			
32	34	2	Chief of Police	103,504	135,976	168,450
32	34	2	Director of Finance			
32	34	2	Director of Utilities			
33	35	2	Assistant City Manager	108,679	142,775	176,873

AGENDA ITEM COVER SHEET



Agenda Item Title:
Consider adopting an amendment to the FY 2022-23 annual adopted budget for pay increases effective for pay date 1/13/23.

Date of Meeting: 12/13	0/2022	Ward # if applicable:
Department: Finance	1	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:
Explanation of Item:		t based on salary study outcome and
Actions Needed by Board:	apadioa pay o	nacomoaton plan
Backup Attached:	Memo, Ordina	ance Amendment
	May Car	
Is item time sensitive?		
Will there be advocates	s/opponents at t	he meeting? □Yes ☒ No
Cost of Agenda Item:		

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: Kim Ostrom - Director of Finance

DATE: December 7, 2022

RE: Amendment to the FY 2022-23 Operating Budget

Background

Based on the outcome of the salary study and the updated pay classification plan, the budget will be amended to allocate funds for the increased costs of salaries and benefits for the period of January 1, 2023 through June 30, 2023 in the amount of \$1,154,668. Pay increases were calculated on positions that increased by 1 grade, 2 grades, and 3 or more grades with an increase of 3%, 6%, and 10%, respectively. Additionally, if the newly calculated salary did not meet the minimum of the respective pay grade, then the salary was automatically brought to the minimum of that grade. Cost for the employer portion of benefits (social security, Medicare, 401k and retirement contributions) are also reflected in the total budget amendment. There are 2 positions that were downgraded; however, those employees will receive a 1% bonus. Part-time employees are not included in the pay increase calculation. The estimated annual increase for salaries and benefits is \$2,309,336.

Calculation example:

Maintenance Construction Worker was a Pay Grade 8 and is now a Pay Grade 10, increasing 2 grades with a percentage increase of 6%.

The current pay for this employee is \$29,640 and with the 2 pay grades increase their pay will be calculated with a 6% increase: \$29,640 x 6% = \$1,778.40

The new annual salary is \$31,418.40 (\$29,640 + \$1,778.40) and the minimum pay for a Pay Grade 10 is \$32,093, which does not meet the minimum pay (\$31,418.40 - \$32,093 = \$674.60).

The employee will automatically be brought to the minimum of that pay grade, which is an annual increase of \$2,453 plus benefits = \$3,066.25, the cost for the remaining six months is \$1,533.13.

Requested Action

The Board considers adopting the enclosed budget amendment at its meeting on December 13, 2022.

CITY OF NEW BERN, NORTH CAROLINA REQUESTED AMENDMENT TO Fiscal Year 2022-2023

FROM: Kim Ostrom, Director of Finance	Meeting Date:	December 13, 2022	

EXPLANATION:

Based on the outcome of the salary study and the updated pay classification plan, the budget will be amended to allocate funds for the increased costs of salaries and benefits for the period of January 1, 2023 through June 30, 2023 in the amount of \$1,154,668. Pay increases were calculated on positions that increased by 1 grade, 2 grades, and 3 or more grades with an increase of 3%, 6%, and 10%, respectively. Additionally, if the newly calculated salary did not meet the minimum of the respective pay grade, then the salary was automatically brought to the minimum of that grade. Cost for the employer portion of benefits (social security, Medicare, 401k and retirement contributions) are also reflected in the total budget amendment. There are 2 positions that were downgraded; however, those employees will receive a 1% bonus. Part-time employees are not included in the pay increase calculation.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN THAT THE 2022-2023 ANNUAL BUDGET ORDINANCE IS AMENDED AS FOLLOWS:

Section 1 - Appropriations

Increase:	Administration		6,683
	Information Technology		26,800
	GIS		3,859
	Accounting		14,626
	Purchasing & Warehouse		6,572
	Human Resources		11,882
	Police		375,483
	E-911		2,070
	Fire		155,087
	Parks & Recreation Admin		15,188
	Parks & Grounds		16,577
	Parks & Recreation Facilities		11,452
	Planning		18,292
	Inspections		26,426
	Public Works Administration		12,117
	Garage		15,094
	Public Bldgs		7,888
	Streets		30,395
	Stormwater	2.5	9,528
		\$	766,019

	C - WATER FUND		40.000
Increase:	Water Resources Admin		19,228
	Water Treatment		21,482
	Water Distribution Maintenance	•	40,926
		\$	81,636
Schedule	D - SEWER FUND		
ncrease:	Sewer Treatment	\$	37,990
	Sewer Collection System Maintenance		36,009
		\$	73,999
Schedule	E - ELECTRIC FUND		
ncrease:	Electric Admin	\$	31,286
(44/2225)	Electric Distribution	\$	129,309
	Power Production	\$	10,954
	Communications Control	\$	9,642
	Utility Business Office	\$	22,337
	Customer and Payments Services	\$	12,715
	Sactified and Caymonic Co. 1150	\$	216,243
Schedule	Q - MPO PLAN GRANT		
Increase:	MPO Plan	S	3,494
Schedule	T - SOLID WASTE FUND		
ncrease:		\$	13,277
	Section 2 - Estimated	Revenues	
Schedule	A - GENERAL FUND		
	Fund Balance Appropriated	_\$	766,019
Schedule	C - WATER FUND		30.22
Increase:	Fund Balance Appropriated	\$	81,636
	D - SEWER FUND		20.02
Increase:	Fund Balance Appropriated	\$	73,999
	E - ELECTRIC FUND		240.040
Increase:	Fund Balance Appropriated	\$	216,243
	Q - MPO PLAN GRANT		0.40
Increase:	Fund Balance Appropriated	\$	3,494
	T - SOLID WASTE FUND		40.077
Increase:	Fund Balance Appropriated	S	13,277

	ADDITIO	NAL REVENUE AVAILABLE FOR APPROPRIATION
		ER WITHIN ACCOUNTS OF SAME FUND
X	OTHER:	FUND BALANCE APPROPRIATED
		APPROVED BY THE BOARD OF ALPERMENTAND
		APPROVED BY THE BOARD OF ALDERMEN AND
		ENTERED ON MINUTES DATED DECEMBER 13, 2022
		AGENDA ITEM NUMBER
		BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET



Agenda Item Title:

Consider adopting a resolution authorizing the City Manager to execute a change order for the City Hall Elevator Annex.

horizing the City er for the City Hall larm coverage to the \$70,708.51.			
horizing the City er for the City Hall larm coverage to the			
er for the City Hall larm coverage to the			
Adopt Resolution.			
Request and			
F			

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds
available and certified by the Finance Director? ⊠Yes ☐ No

Additional Notes:



Public Works Department

P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501

Fax: (252) 636-1848

December 7, 2022

Memo to: Mayor and Board of Aldermen

From: George Chiles, Interim Director of Public Works

Re: Consider adopting a resolution authorizing the City Manager to execute a

change order for the City Hall Elevator Annex.

Background Information:

After advertising and receiving bids for City Hall Elevator Annex, the Governing Board adopted a resolution on March 22, 2022, authorizing the City Manager to execute contract documents with Daniels and Daniels Construction Company, Inc., and any change orders within the budgeted amount of \$3,929,000.

It has become necessary to extend fire alarm coverage to the historic City Hall to meet current fire and building codes in order to connect the additional square footage of the City Hall Elevator Annex to the historic City Hall structure. A change order is requested to increase the prior approved contract with Daniels and Daniels Construction Company, Inc., in the amount of \$70,708.51 for this fire alarm work.

Recommendation:

The Interim Director of Public Works of the City of New Bern recommends the City Manager be authorized to execute a change order to the City Hall Elevator Annex with Daniels and Daniels Construction Company, Inc. in the amount of \$70,708.51 for extending fire alarm coverage to historic City Hall and install access control and security camera raceways.

If you have any questions concerning this matter, please feel free to contact me directly.

Enclosures

RESOLUTION

THAT WHEREAS, after advertising and receiving bids for City Hall Elevator Annex, the Governing Board adopted a resolution on March 22, 2022, authorizing the City Manager to execute contract documents with Daniels and Daniels Construction Company, Inc., and any change orders within the budgeted amount of \$3,929,000.

WHEREAS, the Board of Aldermen has since approved and allocated funds for the City Hall Elevator Annex.

WHEREAS, the Interim Director of Public Works of the City of New Bern recommends the City Manager be authorized to execute a change order to the City Hall Elevator Annex with Daniels and Daniels Construction Company, Inc. in the amount of \$70,708.51 for extending fire alarm coverage to historic City Hall and install access control and security camera raceways.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the City Manager is hereby authorized to execute on behalf of the City of New Bern a change orders to the contract with Daniels and Daniels Construction Company, Inc in the amount of \$70,708.51 for the City Hall Elevator Annex Contract for extending fire alarm coverage to historic City Hall and install access control and security camera raceways, a copy of which is attached hereto and incorporated herein by reference.

ADOPTED THIS 13TH DAY OF DECEMBER 2022.

	JEFFREY T. ODHAM, MAYOR	
BRENDA E. BLANCO, CITY CLERK		



November 15, 2022

Mr. Foster Hughes City Manager City of New Bern 300 Pollock Street (28560) PO Box 1129 New Bern, NC 28563

hughesf@newbernnc.gov

RE: City Hall Elevator Annex

City of New Bern New Bern, Craven County MBFA No: 2009

Dear Foster:

We have received a proposal dated October 31, 2022 from Daniels and Daniels Construction Company, Incorporated in regard to RFQ G-4 issued October 6, 2022. Substantiation of costs are attached hereto.

Contractor Quote: Additional Cost of \$70,708.51 and additional time of 0 Days. Specifically, reference Sheets CA106, CA107, FA101 revised and FA201 revised for extending fire alarm coverage to historic City Hall. Also included are access control and security camera raceway locations for work provided by the Owner's vendor.

We have reviewed the proposed costs and find them to be in order. We will issue authorization to proceed with the changes.

Sincerety

Darden L Eure, III, AIA, NCARB

eure@mbfarchitects.com

MBF Architects, P.A.

Daniels & Daniels Construction Co

P.O. Box 10337 Goldsboro, NC 27532-0337 Ph: (919)778-4525

Change Request

To: MBF Architects, P.A.

Number: PCR - 07 Date: 10/31/22

Job: 22-110 New Bern Elevator Annex

Phone:

Description: Fire Alarm Revision Per RFQ G-2

Daniels & Daniels Const Co

We are pleased to offer the following specifications and pricing to make the following changes:

Work performed by us:		Ourseller Helle	Half Dalas	Deter
Description	Labor	Quantity Unit	Unit Price	Price \$591.00
Project Management Temporary Protection (plastic, duct tape)	Material			\$100.00
Clean Up (vacuum, sweep, disposal)	Labor			\$100.00
Misc. Materials (2' access door, bracket, paint)	Labor			\$50.00
Misc. Materials (2' access door, bracket, paint)	Material			\$250.00
			Subtotal:	\$1,091.00
Work performed by subcontractors:				
Description	Subcontractor			Price
Fire Alarm				\$17,000.00
Electrical Complete (Fire alarm in existing building)				\$27,630.60
Electrical Complete (Camera conduits)				\$14,874.80
Electrical Complete (Access control)				\$4,397.00
			Subtotal:	\$63,902.40
			Subtotal:	\$64,993.40
D&D F	Profit/Overhead (Direct Work)	\$1,091.00	10.00%	\$109.10
D&D Profit/Ov	erhead (Subcontractor Work)	\$63,902.40	5.00%	\$3,195.12
	D&D Bond	\$68,297.22	1.50%	\$1,024.46
	D&D Insurance	\$69,321.68	2.00%	\$1,386.43
			Total:	\$70,708.51
If you have any questions, please contact me at (919)	778-4525.			

Date:

Project Name/Number:	New Bern City Hall	Total Value			itional on (Days)		
				Sale	es Tax	6.75%	
Scope of Work:					o Jobsite eage	57.00	Key one way mileage
		591.03				Date	
	Name	Rate		Unit	Qty	Amount	
	PERSONNEL RATES						
		*****		-		501.00	
	Project Manager	591.03	1	Day	1.0	591.03	1
	Superintendent		/	Day			ł
	Safety Director		/	Day		•	1
	QC Manager		1	Day			1
	Project Engineer		1	Day		•	
	Assistant Superintendent		1	Day		-	1
	Project Administrator		1	Day		*1	1
	General Superintendent		1	Day		•	1
	2 x Laborers		/	Day	2		1
	TOTAL PERS	ONNEL COSTS				591.03	1
	TOTAL PERSO	DINNEL COSTS	_			551.00	1
	TRAVEL COSTS			35-707			
	TRAVEE GOSTO						1
	PM Vehicle		1	Day	1.000		1
	PM Vehicle Mileage	114.00	1	Mile	0.625		1
	Superintendent Vehicle		1	Day	0.000		1
	Superintendent Vehicle Mileage	114.00	1	Mile	0.625		1
	Safety Director Vehicle	62.25	1	Day	0.000		1
	Safety Director Vehicle Mileage	114.00	1	Mile	0.625		1
	QC Vehicle	62.25	1	Day	0.000		1
	QC Vehicle Mileage	114.00	1	Mile	0.625		1
	Assistant Superintendent Vehicle	56.55	1	Day	0.000	-	1
	Assist. Superintendent Vehicle Mileage	114.00	1	Mile	0.625		
	Project Engineer Vehicle	56.55	1	Day	0.000	14	
	Project Engineer Vehicle Mileage	114.00	1	Mile	0.625		
			1	Day	0.000		
			1	Mile	0.625		
			1				
		RAVEL COSTS	_				
	OFFICE/ADMINISTRATIVE COSTS		-	Ula Ti			
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	Office Supplies	• • • • • • • • • • • • • • • • • • • •	1		0.0		4
	PM Cell/Laptop/Tablet	34.67	-	Day	1.0		-
	Super Cell/Laptop/Tablet	34.67	+-	Day	0.0		-
	Safety Director Cell/Laptop/Tablet	34.67	+	Day	0.0	-	4
		34.67	-	Day	0.0	•	-
	QC Manager Cell/Laptop/Tablet						
	Project Engineer Cell/Laptop/Tablet	34.67	-	Day	0.0		4
	Project Engineer Cell/Laptop/Tablet Assist. Superintendent Cell/Laptop/Tablet	34.67 34.67	1	Day	0.0	-	
	Project Engineer Cell/Laptop/Tablet Assist. Superintendent Cell/Laptop/Tablet Project Administrator Cell/Laptop/Tablet	34.67 34.67 34.67	1	Day Day	0.0		
	Project Engineer Cell/Laptop/Tablet Assist. Superintendent Cell/Laptop/Tablet	34.67 34.67	1	Day Day Day	0.0 0.0 0.0	•	
	Project Engineer Cell/Laptop/Tablet Assist. Superintendent Cell/Laptop/Tablet Project Administrator Cell/Laptop/Tablet	34.67 34.67 34.67	1	Day Day	0.0		

	MATERIALS, EQUIPMENT, SUPPLIES, FAC					
	Town Facilities	452.40	1	Day	0.0	
	Temp Facilities	61.49	1	Day	0.0	
	Temp Utilities		1		0.0	
	Temp Signage	23.08	-	Day	0.0	
	Temp Protection/Fencing	72.19	1	Day		
	Tools & Equipment	107.22	1	Day	0.0	- 14
	Clean Up	107.84	1	Day	0.0	
	Dumpster/Trash Disposal	63.73	1	Day	0.0	-
	Material	-			-	
					-	-
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	Committee of the Commit					
	TOTAL MATERIALS, EQUIPMENT & SUPPL	LIES COST				
-	ADDITIONAL COSTS			200		
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	TOTAL ADDITIONAL COSTS					•
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				13.00		
	TOTAL SUBCONTRACTORS COST		\forall			
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	TOTAL OPERITO		\vdash	-		
	TOTAL CREDITS	-				591.03
	TOTAL COST BEFORE BOND & INSURANCE	E		-		591.03
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	Insurance	591.03	/	%	0.000%	-
	TOTAL BOND & INSURANCE					
	Total Estimated Cost Befor OH & P		1			591.03
			\vdash			
	GC Mark up on all self performed cost OH & Profit % on all subcontractor cost	0% 0%				

Estimating Department

Re: City Hall Elevator Annex Existing Building RF-G4 300 Pollock St.



3300 US Highway 421 N

Wilmington, NC 28401 910-762-5418 FAX 910-762-4992

BFPE International is pleased to submit this proposal for furnishing and installing fire alarm system.

Included in Our Proposal

- Proposal is good for 30 days from the date in top left corner of this proposal.
- Fire alarm equipment and wire necessary per drawing FA-101 dated 9.28.22.
 - This proposal is only for RFQ-G4.
- Drawings and submittals necessary for review, approval, permitting and installation.
- All labor to pull the required wire, mount devices, program the system and perform final testing.
- · A one-year warranty on the system.
- Proposal is based on timely receipt of Auto-Cad contract/EOR drawings by e-mail or CD at no additional cost to BFPE. If CAD files are not received, a change order will be required.
- A required zone map mounted by the fire alarm control.

Excluded in Our Proposal

- This proposal is based on the prices for the fire alarm equipment as of this bid date. As we have seen over the past (12) months, the fire alarm equipment prices have continued to change due to material surcharge and price increase costs. If BFPE International is awarded the project, BFPE International reserves the right to update this proposal based upon updated pricing from our vendors at the time of award and/or prior to releasing appropriate materials. Should the vendors provide a material increase/surcharge to BFPE International during this project, BFPE International reserves the right to seek additional funding for appropriate costs.
 - Due to the extended wait time for RFQ-G4 to come out, material lead time will be delayed. BFPE will order material
 once approved and is not responsible for any delays or liquidated damages.
- Due to supply chain shortages, lead times may vary. BFPE will order material when approved. Lead time will have no financial cost/ liquidated damages to BFPE.
- Our price does not include providing 120V circuit or 120V surge suppressor for the fire alarm control panel or power supplies.
- Our price does not include any underground conduit, conduit, raceways, or common electrical boxes necessary for this
 installation.
 - Wiremold and other electrical material to be provided by others.
 - Cutting and drilling and any pathway work is to be completed by others.
 - Patching, painting, and other cosmetic work is not included.
 - o Repair work if any to be completed by others.
- Our standard work hours will consist of Monday through Friday 7:00am to 5:00pm EST. If work needs to be conducted outside
 these hours, additional cost will apply.
- Fire watch services is not included in this proposal.
- The price below does not include area of rescue, area of refuge, ERRCS (Emergency Responder Radio Communication System), radio notification, card access, security devices, pre action system, or clean agent system. BFPE offers such services, however these services are not included in this proposal.
- Does not include general conditions cleaning or labor to clean jobsite.
- If local AHJ chooses to change the fire alarm design after proper permitting has occurred, then a change order may be required to accommodate changes.

Our price to complete this work will be \$17,000.00. This price includes all applicable sales tax.

Sincerely, Tory A. Burkholder

Signature of Acceptance:	Date:
*** BFPE is HUB Certified. Certific	ation is available upon request, ***



Proposal 10.27.2022 New Bern Town Hall Elevator Annex

Fire Alarm Existing Building

Daniels and Daniels Construction Co PO Box 10337 Goldsboro, NC 27532

We hereby propose to furnish the material and labor necessary to complete the following: Install new fire alarm piping in the "New Device Locations" in the existing building. Fire block all penetrations thru fire walls. Install Wire Mold Conduit and boxes in exposed areas above the basement. Install chases between floors. Install a cable sleeve at each floor to the new building.

The following are excluded from the is proposal: Patching of any plaster or finished surface.

The cost for the above said work is \$27,630.60.

Respectfully, Submitted,

Nathan Barker

F/A EXISTING 9106

	SUBCONTRACTOR'S WORK						
1.	Direct Materials						
2.	Sales Tax on Materials	6.75% of line 11	6.75% '3 /2.50				
3.	Direct Labor		12, 573 0				
1.	Insurance, Taxes, and Fringe Benefits	35.00% of line 13	35.00% 4,401.30				
5.	Rental Equipment						
3.	Sales Tax on Rental Equipment	0.00% of line 15	0				
7.	Equip. Ownership and Operating Expns		3,26,00				
3.	SUBTOTAL (add lines 11-17)						
9.	Field Overhead	10.00% of line 18	+0.00% O				
0.	Home Office Overhead	3.00% of (18+19)	3.00%				
1.	SUBTOTAL (add lines 18, 19, & 20)		111111111111111111111111111111111111111				
2.	Profit (as determined)	0.00% of line 21	10.00% 251/8 0				
3.	SUBTOTAL (Add Lines 21& 22)						

Sub's Remarks: For multiple Subs, Line 11 - 22 are 0; sum of Subs' quotes entered in Line 23. Copy this sheet as many times as needed and create a formula in Line 23 to carry each Sub's estimate (each line 23) to this sheet.

	QTY	UNIT	/	n	- (0			
Subcontractor			Unit Cost	Total Cost	Unit Cost	Total Cost	R	QTY	Rațe	Total
3/4 " EMT	1.500	LF	26	3900,00	4.20	6,300,00	LADDER 8'	30	10/0	300.0
4"59 78	40	E	7	270,00	31.50	1,260,00	LAGDER 12	30	10/10	300.0
WIREMOID	200	LF	7,5	350,00	7.00	706.0	LA 9962 8	30	10/0	300.
WM BOX	10	1	11.0	110,00	31,50	315,00	CORE DRIVI	5	100/10	500.
CORE DESIL	20	E	2	0	260,00	4.000,00	HOMMBEOWN	30	30/P	900.0
2 112 7211				0			nust system	30	20/0	600.0
				0		0	VACCEM	30	10/0	300,0
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DIRECT Subcontract	or's TOTALS			4,630,00	1	12,575,00	R		otal (Rental)	
				7		1	0	To	ital (Owned)	3 200.



Proposal 10.27.2022 New Bern Town Hall Elevator Annex

4 Camera Conduits

Daniels and Daniels Construction Co PO Box 10337 Goldsboro, NC 27532

We hereby propose to furnish the material and labor necessary to complete the following: Install conduit to 4 new camera locations in the new addition and route to the basement camera room. Route the 2 exterior camera conduits between the block and brick in the air gap to a suitable entry location. Install a pull string in each conduit.

The following are excluded from the is proposal: patching of any plaster or finished surface.

The cost for the above said work is \$14,874.80.

Respectfully Submitted,

Nathan Barker

4-CAMERAS

	SUBCONTRACTOR'S WORK						
1.	Direct Materials						
2.	Sales Tax on Materials	6.75% of line 11	6.75% 20.0				
3.	Direct Labor		111111111111111111111111111111111111111				
4.	Insurance, Taxes, and Fringe Benefits	35.00% of line 13	35.00% 2'342.10				
5.	Rental Equipment						
6.	Sales Tax on Rental Equipment	0.00% of line 15					
7.	Equip, Ownership and Operating Expns		1.300,00				
8.	SUBTOTAL (add lines 11-17)						
9.	Field Overhead	10.00% of line 18	10.00%				
10.	Home Office Overhead	3.00% of (18+19)	3.00%				
11.	SUBTOTAL (add lines 18, 19, & 20)		13.517.10				
12.	Profit (as determined)	0.00% of line 21	0.00% / 35/,70				
13.	SUBTOTAL (Add Lines 21& 22)		14 374 8 0				

Sub's Remarks: For multiple Subs, Line 11 - 22 are 0; sum of Subs' quotes entered in Line 23. Copy this sheet as many times as needed and create a formula in Line 23 to carry each Sub's estimate (each line 23) to this sheet.

	QTY	UNIT	/	n	- (_	0			
Subcontractor			Unit Cost	Total Cost	Unit Cost	Total Cost	R	QTY	Rate	Total
VA EMT	660	LF	3,6	2,160,0	4:20	2.520.00	EXT LADORA	5	10/0	50 .
1" PVC	200 -	LF	3.8	7600	3,80	760.00		5	10/0	50 ,01
MASONRY BOX	2	E	11	2.200	31,50	63.00		52	300/0	60,00
4" SOL WALREAL	2,	E	11	22.00	31,50	63.00		3	1000	300,0
CORE PRIII 8	6	E		0	150,00	7 00.00	HAMMERONEY	5	30/0	150.0
CORE PETU 16"	1 8	E		0	300.00	7 406,00	NACLUM	5	10/0	50,6
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DIRECT Subcontracto	or's TOTALS			2,96400		6,706,00	R	To	tal (Rental)	
				7		7	0		tal (Owned)	1.300,0



Proposal 10.27.2022 New Bern Town Hall Elevator Annex

Access Control New Addition

Daniels and Daniels Construction Co PO Box 10337 Goldsboro, NC 27532

We hereby propose to furnish the material and labor necessary to complete the following: Install conduit to 2 new access control locations and route thru the air gap between the brick and block to the access control D mark in the basement. Fire stop any fire wall penetrations. Install a pull string in the conduits

The following are excluded from the is proposal: patching of any plaster or finished surface.

The cost for the above said work is \$4,397.00.

Respectfully Submitted,

Nathan Barker

SUBCONTRACTOR'S WORK CONTROL 1. Direct Materials Sales Tax on Materials 6.75% of line 11 Direct Labor 35.00% 743.80 Insurance, Taxes, and Fringe Benefits 35.00% of line 13 Rental Equipment Sales Tax on Rental Equipment 0.00% of line 15 Equip. Ownership and Operating Expns SUBTOTAL (add lines 11-17) 0 ||||||| 9. Field Overhead 10.00% of line 18 10.00% -3.00% 10. Home Office Overhead 3.00% of (18+19) 3,997.30 11. SUBTOTAL (add lines 18, 19, & 20) 12. Profit (as determined) 0.00% of line 21 13. SUBTOTAL (Add Lines 21& 22)

Sub's Remarks: For multiple Subs, Line 11 - 22 are 0; sum of Subs' quotes entered in Line 23. Copy this sheet as many times as needed and create a formula in Line 23 to carry each Sub's estimate (each line 23) to this sheet.

	QTY	UNIT	1	n		_	0			
Subcontractor	7		Unit Cost	Total Cost	Unit Cost	Total Cost	R	QTY	Rate	Total
1º PUC	LF 700	LF	3.8	380.00	8.8	880,0	CORI ORDII	2	IN/D	206.0
1" EMT	LF 40	LF	4,2	168.00	10.8	432.00	HAMMER DRIVI	4	30/0	120.0
CORE DRIVI	E 4	E		0	150	600.00	BOM 6 LA POST	4	10/0	40.00
MASONRY BUX	£ 2	E	11.00	22.00	31.50		10 LADOEK	4	10/0	40.0
DEFALE &CHIP	E 1	E	11127 7557	0	150	150,00	VACUUM	4	10/0	40.0
				0		0	AVST COLLECTION	4	20/0	80,0
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DIRECT Subcontractor	's TOTALS		1	570,00		2,125,00	R	7	otal (Rental)	
DITEO! GUDGOIII ACTOI	O I O I ALO			710100		-100100	Ö	T	otal (Owned)	1201



October 6, 2022

Mr. Carl Russel
Project Manager
Daniels and Daniels Construction Company, Inc.
178 NC Highway 111 South (27534)
P O Box 10337
Goldsboro, NC 27532

carlr@danddcc.com

RE: City Hall Elevator Annex

City of New Bern

New Bern, Craven County MBFA No: 2009

Dear Carl:

Enclosed, please find RFQ G-4 with drawings for your use in responding to this Request for Quote. Material characteristics comply with applicable technical specifications. Coordinate modifications with submittals approved to date.

Specifically, reference Sheets CA106, CA107, FA101 revised and FA201 revised for extending fire alarm coverage to historic City Hall. Also included are access control and security camera raceway locations for work provided by the Owner's vendor.

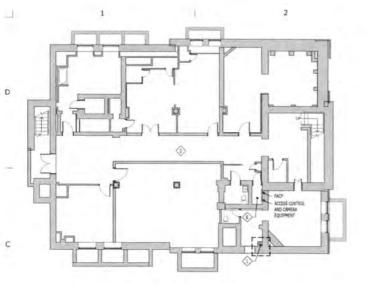
Submit a lump sum proposal within fourteen days. Itemize quotes into units of labor and material, with each substantiated by quantities. Profit and overhead cannot exceed stipulated limitations. If a contract extension is required, indicate the number of additional days. An adjustment to the contract sum is not valid until the contracting parties have executed a change order.

Sincerety,

Darden J. Eure, III, AIA, NCARB

eure@mbfarchitects.com

MBF Architects, P.A.



FIRST FLOOR PLAN

City Hall Elevator Annex

CONSTRUCTION ADMINISTRATION



29-SEPT-2022



FIRE ALARM DEVICES

THIRD FLOOR PLAN

GENERAL CONSTRUCTION NOTES

1, DESTRUBUTE EXPOSED DISTRIBUTION IN WIRE MOUD OR PAINT EXPOSED EMT CONDUIT

CONSTRUCTION KEYNOTES VENTICAL CHASE BETWEEN BASEMENT AND ATTIC.
ENLANGE TO ACCOMMODATE ADDRED CONDUST
DISTRIBUTION (2) SURFACE MOUNT CONDUCT IN BASEMENT FEED NEW DEVICES FROM BASEMENT BELOW, CONCEAL CONDUCT WHERE PRACTICAL ABOVE FLOORS

FEED NEW DEVICES WITH CONCEALED CONDUST ABOVE OVPSUM BOARD CEILINGS FIED NEW DEVICES FROM ATTIC AND THROUGH CELLING. CONCERL CONDUIT WHERE PRACTICAL BENEATH CELLINGS

BASIS FOR COSTING 17 LINET PRICE REPLACEMENTS CONNECTING TO CARLING TO AREMAIN. REFERENCE FAILUS REVISED ATTACHED, INCLUDED ARE TWO HEAT DETECTIORS AND ONE SHOULD DETECTOR IN THE ATTIC. REFERENCE 2/FR102 IN THE CONFORMED GRANDINGS. 12 ADDITIONAL DEVICES REQUIRING CONDUIT RACEWAY AND CABLING, REFERENCE FALCS REVISED ATTACHED.

ACCESS CONTROL DEMARC

CA106 SHEET

EXISTING BASEMENT FLOOR SCALE: 1/8" = 1'-0"

SECOND FLOOR PLAN SCALE 18" - 1"0"

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FIRST FLOOR PLAN

CONSTRUCTION KEYNOTES

(1) EXTENSION MOUNTED CAMERA AT 19"4" ABOVE FINISH PLOOR AND BELOW THE SECOND PLOOR STRUCTURE

5

- (2) CHRO READER
- 3 ELECTRIFIED HARDWARE
- (4) INTERIOR CEILING HOUNTED CAMERA AT LIT-6" ABOVE PINISH FLOOR
- S) DITERIOR CELLING HOUNTED CAMERA AT LIT-5" ABOVE FINESH FLOOR



City Hall Elevator Annex

CONSTRUCTION



29-SEPT-2022

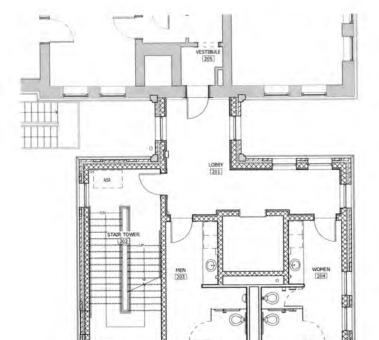


ACCESS CONTROL AND SECURITY CAMERAS

CA107 SHEET

GENERAL CONSTRUCTION NOTES

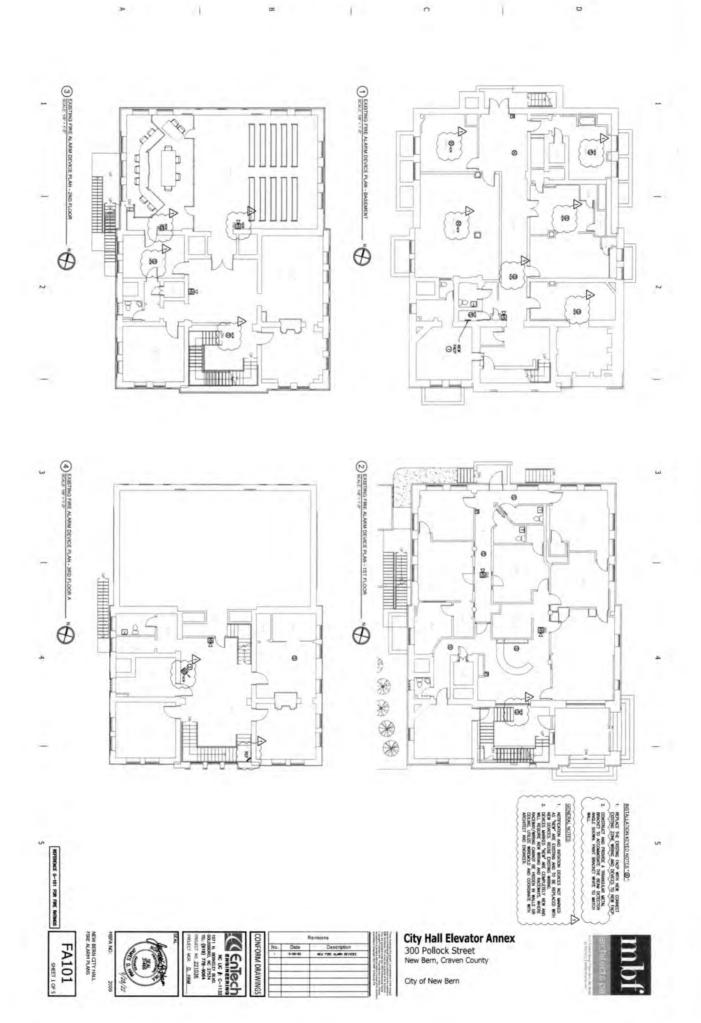
- EMT CONDUTT IS 3/4", CONCIAL DISTRIBUTION ABOVE CELLINGS AND
 MITTEN WALLS
 COMPANS, CARD READEN, ELECTRUFED HANDWARE, CONDUCTORS, AND
 CARLING, ARE PLANTISHED AND INSTALLED BY THE DAMBERS VENDOR, EMILLS'
 COGRODIATE CONDUST INSTALLATION WITH ISAAC KRIEGER, (CSZ) 633-6171,
- ERNIL'S
 4. REFERENCE SHEET CALOG FOR THE ACCESS CONTROL EQUIPMENT DEMARC.



SECOND FLOOR PLAN

SCALE: 1/6" + 1"-0"

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SECONDART POWER REGURENCESTS
VOLICE NLARR BEST M
REHOTE C15 M
CONTRAL: C15 M
PROPRIETARY C15 M2

LIFE SAFETY CONTROLS
SHORE DOOR
DIAFT PRESSURIZATION
DACT DETECTION
DOOR RELEASE.

CLEVATOR CAPTURE DAMPERS/CONTROLS VIDEC ALARM SYSTOM
PRICAGEORICA
LIVE
ENTIRE ROLDING
SOLECTED SOCIETION OF BLOG
SOLECTED SOCIETION OF BLOG
SOLECTED SOCIETION OF BLOG
SOLECTED SOCIETION
Z-VAY COMMUNICATION

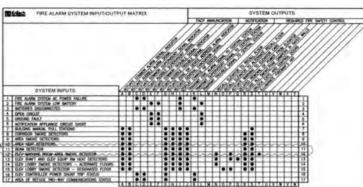
SHORE DETECTOR SYSTEM ONESS-ZEMES ALARM VERIFICATION APPRIORES ERREVALENTS

VIRING CLASS CLASS A SYSTEM CLASS B SYSTEM CLASS X SYSTEM

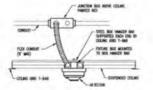
SPECIAL SYSTEMS
FH 200
HOUD SYSTEMS
PRE-ACTION
SPRAY ROUTH
UTHER

11

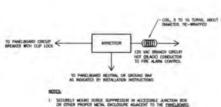
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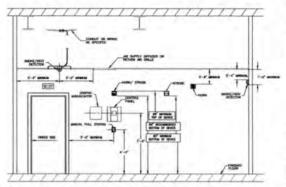
3



3 TYPICAL CELLING MOLPHED SMOKE DETECTOR DETAIL

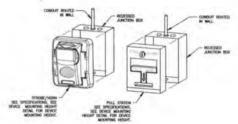


(5) FIRE ALARM POWER CIRCUIT

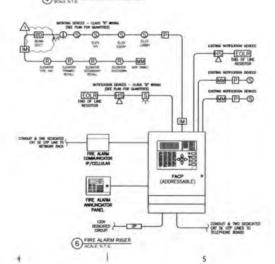


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2) FINE ALARM DEVICE MOUNTING HEIGHTS



FIRE ALARM DEVICE MOUNTING DETAIL.





City Hall Elevator Annex 300 Pollock Street New Bern, Craven County



CONFORM DRAWINGS

(C) EnTech NC LIC & C-1132 1071 H. BEHNELLY BLND. GR.158000, NC 27534 1U. (818) 778-9064 WILEST WIL 221036 PROJECT MOR. D. HAM



NEW BERN CITY HALL FIRE ALARM NOTES AND

SCHEDULES

FA201 SHEETS OF S

CODE DATA SUMMARY SHEET FOR FIRE ALARM GENERAL REQUIREMENTS: SECRETAL ALARM DRLY DISPRINCER SYSTEM SUPERVISION DRLY DISPRINCER AND GENERAL ALARM

CIS MINUTE ALARMON HOUR STANDEY CIS MINUTE ALARMON HOUR STANDEY CIS MINUTE ALARMON HOUR STANDEY

BLIGHT & POWER DIENERATOR

MELEVATOR NEC. 725 MPOVER LIMITED

O DILET OR PLONIN NEC 200-20 SOMEN-POWER LIMITED

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23 N/A 53 N/A 53 N/A 55 N/A

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AGENDA ITEM COVER SHEET



Agenda Item Title:
Consider Adopting an Ordinance to Amend the City Hall Elevator Project Fund

Date of Meeting: 12/13/2022 Department: Finance		Ward # if applicable: N/A	
		Person Submitting Item: Kimberly Ostrom, Director of Finance	
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:	
Explanation of Item:		amend the City Hall Elevator Project Fund to transfer from General Fund	
Actions Needed by Board:	Consider adopting the ordinance amendment		
Backup Attached:	Memo, Ordina	nce Amendment	
Is item time sensitive?	× Vas × Na		
The second secon	The second second second	he meeting? □Yes ⊠ No	
	- * *		
Cost of Agenda Item:			
If this requires an expe and certified by the Fir		een budgeted and are funds available	

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO:

City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM:

Kim Ostrom - Director of Finance

DATE:

December 6, 2022

RE:

Amendment to the City Hall Elevator Project Fund

Background Information

This ordinance will amend the City Hall Elevator Project Fund by \$70,709 for a fire alarm monitoring system. A transfer will be received from the General Fund to cover the cost.

Requested Action

The Board considers adopting the enclosed budget amendment at its meeting on December 13, 2022.

AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE CITY HALL ELEVATOR PROJECT FUND

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

Section 1. That Section 3 of the City Hall Elevator Project Fund Ordinance adopted on May 28, 2019 is hereby amended to recognize additional appropriation:

Increase: Building Improvements \$70,709

Section 2. That Section 4 of the City Hall Elevator Project Fund Ordinance adopted on May 29, 2019 is hereby amended to recognize revenue from the General Fund:

Increase: Transfer from General Fund \$70,709

Section 3. This amendment shall become effective upon adoption.

ADOPTED THIS 13TH DAY OF DECEMBER 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET



Agenda Item Title:
Consider adopting an amendment to the FY 2022-23 annual adopted budget.

as of 6/30/22; Repointing Pro		Ward # if applicable:
		Person Submitting Item: Kim Ostrom, Director of Finance
		Date of Public Hearing:
		ncrease and reduce certain outstanding Po 2; appropriate \$189,108 for City Hall Project; transfers to City Hall Elevator Fund ip 7 Sewer Improvement Fund
Actions Needed by Board:		
Backup Attached:	Memo, Ordina	ance Amendment
T - 14 141 9	MV og DN o	
Is item time sensitive?		
Will there be advocates	s/opponents at t	he meeting? DYes 🛮 No
Cost of Agenda Item:		
	nditure, has it l	been budgeted and are funds available
and certified by the Fir		

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



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City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: Kim Ostrom - Director of Finance

DATE: December 1, 2022

RE: Amendments to the FY 2022-23 Operating Budget

Operating Budget - Rolled POs

The operating budget for Fiscal Year 2023 is amended for the reclassification of encumbrances for outstanding purchase orders as of June 30, 2022 allocated between the General and Electric Funds, the Water and Sewer Funds, and the Electric Fund and various multi-year funds. An additional \$520,142 is appropriated for a Streets outstanding purchase order in the General Fund, and the Grants Fund is decreased by \$15,000 for a purchase order that has been closed.

General Fund

The General Fund is amended to appropriate \$189,108 from fund balance for the City Hall Repointing Project approved by the Board at the November 22, 2022 meeting. It is also amended to transfer \$70,709 from fund balance to the City Hall Elevator Project Fund for a fire alarm monitoring system.

Water and Sewer Funds

The Water and Sewer Funds are amended to appropriate transfers from fund balance to the Township 7 Sewer Improvements Project Phase-III in the amounts of \$1,236,942 and \$4,869,181 respectively. A Declaration of Intent to Reimburse and Resolution will be submitted for reimbursement to the Sewer Fund.

Requested Action

The Board considers adopting the enclosed budget amendment at its meeting on December 13, 2022.

CITY OF NEW BERN, NORTH CAROLINA REQUESTED AMENDMENT TO Fiscal Year 2022-2023

FROM: Kim Ostrom, Director of Finance Meeting Date: December 13, 2022

EXPLANATION:

The operating budget for Fiscal Year 2023 is amended for the reclassification of encumbrances for outstanding purchase orders as of June 30, 2022 allocated between the General and Electric Funds, the Water and Sewer Funds, and the Electric and various multi-year Funds. The encumbrances of outstanding purchase orders are also increased by \$520,142 for Streets in the General Fund and reduced by \$15,000 for the Grants Fund. The General Fund is amended to appropriate from fund balance \$189,108 for the City Hall Repointing Project and a \$70,709 transfer to the City Hall Elevator Project Fund. The Water and Sewer Funds are amended to appropriate transfers from fund balance to the Township 7 Sewer Improvements Project in the amounts of \$1,236,942 and \$4,869,181 respectively.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN THAT THE 2022-2023 ANNUAL BUDGET ORDINANCE IS AMENDED AS FOLLOWS:

Section 1 - Appropriations

A - GENERAL FUND		
Administration		189,108
Streets		520,142
Transfer to Other Funds		70,709
Accounting		(3,550)
	\$	776,409
C - WATER FUND		
Water Distribution Maintenance		339,356
Transfer to Other Funds		1,236,942
	\$	1,576,298
D - SEWER FUND		
Sewer Collection System Maintenance		(339,356)
Transfer to Other Funds		4,869,181
	\$	4,529,825
E - ELECTRIC FUND		
Electric Power Production	\$	(105,423)
Utility Business Office	\$	3,550
	\$	(101,873)
K - GRANTS FUND		
Grants - Development Services	\$	(15,000)
	Administration Streets Transfer to Other Funds Accounting C - WATER FUND Water Distribution Maintenance Transfer to Other Funds D - SEWER FUND Sewer Collection System Maintenance Transfer to Other Funds E - ELECTRIC FUND Electric Power Production	Administration Streets Transfer to Other Funds Accounting \$ C - WATER FUND Water Distribution Maintenance Transfer to Other Funds \$ D - SEWER FUND Sewer Collection System Maintenance Transfer to Other Funds \$ E - ELECTRIC FUND Electric Power Production Utility Business Office \$ K - GRANTS FUND

Section 2 - Estimated Revenues

Schedule A - GENERAL FUND Increase: Fund Balance Appropriated		\$	776,409
Schedule C - WATER FUND			
Increase: Fund Balance Appropriated		\$	1,576,298
Schedule D - SEWER FUND			
Increase: Fund Balance Appropriated		\$	4,529,825
Schedule E - ELECTRIC FUND			
Decrease: Fund Balance Appropriated		\$	(101,873)
Schedule K - GRANTS FUND			
Decrease: Fund Balance Appropriated		\$	(15,000)
	UNTS OF SAME FUND APPROPRIATED	ATION	
Decrease: Fund Balance Appropriated NATURE OF TRANSACTION: ADDITIONAL REVENUE AV TRANSFER WITHIN ACCO	UNTS OF SAME FUND	ATION ARD OF A	LDERMEN AND

AGENDA ITEM COVER SHEET



Agenda Item Title:

Adopt resolution authorizing the City Manager to Execute a Contract-I for the Township No. 7 Sewer Improvements Phase-III Project

Date of Meeting: 12/13/2022 Department: Public Utilities – Water Resources		Ward # if applicable: 3		
		Person Submitting Item: Jordan Hughes		
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing: N/A		
Explanation of Item:	Awarding construction contract to James L. Cayton U Inc., Inc. for Contract-I of the Township No. 7 Sewer Improvements project. This contract includes the line portions of the project.			
Actions Needed by Board:	Adopt resolution authorizing the City Manager to execute the construction contract with James L. Cayton Utilities, Inc.			
Backup Attached:	Memo from Jordan Hughes, Recommendation of Award, Certified Bid-Tab, Memorandum of Negotiation and draft resolution for authorizing the City Manager to execute the construction contract			
Is item time sensitive?				
Will there be advocated	s/opponents at t	he meeting? □Yes ☒ No		
Cost of Agenda Item: \$				
If this requires an expe	nditure, has it l	been budgeted and are funds available		

and certified by the Finance Director? ⊠Yes ☐ No

Additional Notes:



Department of Public Utilities Water Resources 527 NC Highway 55 West, P.O. Box 1129 New Bern, NC 28563-1129 (252) 639-7526

MEMORANDUM

TO: Mayor and Board of Aldermen

FROM: Jordan B. Hughes P.E., City Engineer

DATE: November 22, 2022

SUBJECT: Recommendation to Award Contract I & Contract II for the Township No.

7 Sewer Improvements Phase-III Project

Background Information:

To provide the required sewer system capacity for users south of the Trent River, the City developed the "Township No. 7 Sewer Improvements project" in 2010 and since that time, Phases I&II of the project have been successfully implemented. The remaining portion of the project, Phase-III, will include increased transmission capacity at the equalization basin, the construction of a new transmission force main across the Trent River, and the relocation of lift station No. 10, which is currently located on the bank of Lawson Creek. The need for these improvements has been identified since 2006, as the ultimate solution to fixing the overallocation issues, providing the capacity for New Bern to continue to grow in the areas south of the Trent River, and improving the resiliency of critical sewer infrastructure.

Bids for the Township No. 7 Sewer Improvements Phase-III project were opened at 11:00 a.m. on November 4th, 2022. After reviewing the submitted bids, the low bidder for Contract-I is James L. Cayton Utilities, Inc. of New Bern, NC with a total bid (Base + Add-alternate) of \$5,646,728.00. The low bidder for Contract-II is Peters and White Construction Co. of Chesapeake, VA with a bid of \$959,395.00

Recommendation:

The Department of Public Utilities is recommending that for the Township No. 7 Sewer Improvements Phase-III project, Contract-I be awarded to James L. Cayton Utilities, Inc for the amount of \$5,646,728.00 and Contract-II be awarded to Peters and White Construction Co. for the amount of \$959,395.00.

Attached please find a copy of the certified Bid Tab, a recommendation of award from the consulting engineer, a memorandum of negotiation for the Contract-I Add-Alternate, and draft resolutions for awarding each contract. Please contact me if there are any questions or if additional information should be required.

RESOLUTION

WHEREAS, the following bids were received and opened on November 4th, 2022, for the Township No. 7 Sewer Improvements Phase-III Project: Contract-I:

VENDOR

James L. Cayton Utilities., Inc.
New Bern, NC

Trader Construction Co.
New Bern, NC

\$5,646,728.00

\$9,815,863.00

New Bern, NC

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

THAT the City Manager is hereby authorized to execute on behalf of the City of New Bern a contract with James L. Cayton Utilities., Inc. in the amount of \$5,646,728.00 and any change orders for Township No. 7 Sewer Improvements Phase-III Project: Contract-I.

ADOPTED THIS 13TH DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

MEMORANDUM OF NEGOTIATION

TO: Jordan Hughes, P.E. - City of New Bern

James L. Cayton - James L Cayton Utilities, Inc.

CC: M. Blaine Humphrey, P.E. - Rivers & Associates

File 2016009-J1.1

FROM: Kevin Cooper, E.I. – Rivers & Associates

DATE: November 21, 2022

SUBJECT: City of New Bern Township 7 Sewer Force Main Improvements

Contract I – Linework Rivers File 2016009-J1.1

The City of New Bern received bids for the City of New Bern Township 7 Sewer Force Main Improvements Project Contract I — Linework on Friday, November 4, 2022 at 11 A.M. The lowest base bid for Contract I was submitted by James L. Cayton Utilities, Inc. (JLCU) in the amount of \$4,409,786.00. Contract I included an add-alternate for a proposed 12" water main. JLCU's total price for the alternate, as received, was \$1,236,942.00. The corrected total bid price for the add-alternate was \$312,250.00, as shown on the Bid Tab certified by the Engineer on November 7, 2022. Rivers and Associates (Engineer) and the City of New Bern discussed the discrepancy with the apparent low bidder, JLCU.

A meeting between the City of New Bern and JLCU was held on Monday, November 21, 2022 to discuss the following items:

1. The primary discrepancy between the bid as received and the Certified Bid Tab is the price for Item No. 6 - '12" Horizontal Directional Bore w/ Fusible PVC Trent River — Water'. JLCU mistakenly listed a "unit price" per each as \$437.00, mistakenly thinking that the quantity was "2,116" ('Horizontal Distance — Water Main' as shown on sheet C11 on the plans) and the unit was based on "Linear Feet" (LF); the correct quantity was "1" and the unit was "Each" (EA).

Memorandum of Negotiation New Bern Township 7 Sewer Force Main Improvements Contract I - Linework November 21, 2022

- 2. The bid price for Item No. 6 was corrected on the Certified Bid Tab by the Engineer, per the Contract Documents. More specifically, per Instructions to Bidders (C-200), Article 14 Basis of Bid, page IB-10 IB-11.
- 3. The City of New Bern understands that the discrepancy was for the Bid Alternate and, as such, will not be used in determining the lowest, responsible bidder.
- 4. Should the City elect to include the add-alternate in the final Contract award, the City will negotiate in good faith with JLCU and will not require them to perform the work for the corrected sum. Instead, the unit price and overall cost for Item No. 6 will be set at \$924,692.00, making the overall alternate price \$1,236,942.00.

We request that you review the above memorandum, and if you are in agreement with the negotiation the City of New Bern and JLCU have established, please sign below to signify as such.

AGREED BY:

JAMES L. CAYTON UTILITIES, INC.

()

Signature:

Date:

THE CITY OF NEW BERN

James L. Cayton, Sr. President

Jordan Hughes, P.E., City Engineer

Signature

Date:

P:\Muni\New Bern - Township 7 Sewer Impvts Phase III - 2016009\ADMIN\J-Construction\1.1-Contract Doc\Memo of Negotiation.DOC



ENGINEERS

PLANNERS

SURVEYORS

LANDSCAPE ARCHITECTS

November 11, 2022

Mr. Jordan Hughes, P.E. 527 NC HWY 55 West New Bern, NC 28562

SUBJECT: City of New Bern - Township 7 Sewer Force Main Improvements

Contracts I & II

Tentative Recommendation of Award

Rivers Project No. 2016009

Dear Mr. Hughes,

An initial bid opening was held for the subject project at 11 A.M. on Thursday, October 27th, 2022 at the City of New Bern's Water Resources Office. Neither Contract had the required three bid minimum to publicly open bids. A second bid date was scheduled for November 4th, 2022. The second formal bid opening was held at 11 A.M. on Friday, November 4th, 2022 at the City of New Bern's Water Resources Office where only two bids each were submitted for Contract I and Contract II. The bids were opened and read aloud. The initial Advertisement for Bids was published on the City of New Bern website on the "City Bids & Proposals" webpage.

The two Bids received for Contract I - Linework were from James L. Cayton Utilities, Inc. and Trader Construction. The bids received are as follows:

Bidder	Base Price	Add-Alternate
James L. Cayton Utilities, Inc.	\$4,409,786.00	\$312,250.00*
Trader Construction	\$7,939,283.00*	\$1,876,580.00

^{*}Corrected Total

The two Bids received for Contract II - Pump Station were from Peters & White Construction Co. and Trader Construction. The bids received are as follows:

Bidder	Base Price
Peters and White Construction Co.	\$959,395.00
Trader Construction	\$1,098,230.00

Tentative Award Recommendation
New Bern Township 7 – Sewer Force Main Improvements
Contract I & II
November 11,2022

Enclosed with this letter is a copy of the certified Bid Tabulation for each Contract. Based upon the bids received, we recommend that the City of New Bern issue tentative award for the Township 7 Sewer Force Main Improvements Project – Contract I to James L. Cayton Utilities, Inc. for the bid amount of \$4,409,786.00. We also recommend that the City issue tentative award for the Township 7 Sewer Force Main Improvements Project – Contract II to Peters and White Construction Co. for the bid amount of \$959,395.00. Final award of the project should be subject to the approval by the City and an evaluation of qualification information as listed in the Instructions to Bidders.

If you have any questions or concerns regarding this project, please call at (252) 752-4135. Thank you for this opportunity to serve the City of New Bern. We look forward to assisting you during the construction phase of the project.

Sincerely,

Kevin Cooper, E.I. Design Engineer

Klin icon

Enclosures

cc: M. Blaine Humphrey, P.E., Rivers and Associates (w/o enclosures)

Rivers File 2016009-C (w/ enclosures)

CERTIFICATION

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

I CERTIFY THAT THIS IS A TRUE RECORD OF BIDS RECEIVED.

SEAL 22987 //-7-ZZ

CONTRACTOR ADDRESS LIC#/BID BOND			James L. Cayton Utilities, Inc. 1906 Hwy, 70 East New Bern, NC 28560 29341/ 5%					der Construction Drawer 1578 Bern, NC 2856: 294	3	////	
NO.	OTY LINIT	DESCRIPTION		UNIT		0007		UNIT		- 3225	
BASE I		DESCRIPTION	1	PRICE		COST	+	PRICE	_	COST	
1.	1 LS	Mobilization and Bonding (not to exceed 3%)	\$	117,500.00	\$	117,500.00	\$	238,178.00	* \$	238,178.00	
2.	1 AC	Clearing & Grubbing	\$	20,000.00	\$	20,000.00	\$	50,000.00	\$	50,000.00	
3.	1 EA	Core and Tie-in to Existing Manhole	s	5,000.00	s	5,000.00	\$	5,300.00	\$	5,300.00	
4.	1 EA	Plug and Abandon Existing 10" Sewer Force Main Remove Existing 8" Force Main in Existing Casing	s	5,000.00	\$	5,000.00	\$	5,100.00	\$	5,100.00	
5.	40 LF	and Replace With 12" Force Main	\$	225.00	\$	9,000.00	\$	515.00	\$	20,600.00	
6.	300 LF	Remove Existing 6" Force Main	\$	30.00	\$	9,000.00	\$	54.00	\$	16,200.00	
7.	25 LF	10" RJPVC Sewer Main	s	180.00	S	4,500.00	\$	375.00	\$	9,375.00	
8.	5,850 LF	12" PVC Sewer Force Main	\$	125.00	s	731,250.00	\$	242.00	\$	1,415,700.00	
9.	2,250 LF	12" RJPVC Sewer Force Main	\$	200.00	\$	450,000.00	\$	240.00	\$	540,000.00	
10.	220 LF	12" DIP Sewer Force Main	\$	200.00	\$	44,000.00	s	240.00	\$	52,800.00	
11.	1,200 LF	12" RJDIP Sewer Force Main 12" Horizontal Directional Bore w/ Fusible® PVC	\$	250.00	s	300,000.00	\$	400.00	\$	480,000.00	
12.	1 EA	to Glenn Dr	\$	80,660.00	\$	80,660.00	\$	375,000.00	\$	375,000.00	
13.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC Howell Rd	\$	200,512.00	\$	200,512.00	\$	500,000.00	\$	500,000.00	
14.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC Trent River - Sewer	s	941,735.00	s	941,735.00	s	1,670,000.00	\$	1,670,000.00	
15.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC Lawson Creek	\$	197,379.00	\$	197,379.00	s	535,000.00	\$	535,000.00	
16.	20,000 LBS	Additional Ductile Iron Fittings	\$	26.00	\$	520,000.00	\$	15.00	\$	300,000.00	
17.	9 EA	12" Plug Valve	\$	8,500.00	\$	76,500.00	\$	10,700.00	\$	96,300.00	

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract 1 - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

CONTRACTOR ADDRESS LIC#/BID BOND			James L. Cayton Utilities, Inc. 1906 Hwy. 70 East New Bern, NC 28560 29341/ 5%					Trader Construction P.O. Drawer 1578 New Bern, NC 28563 2943/ 5%				
NO.	QTY. UNIT	DESCRIPTION	7	UNIT PRICE		COST		UNIT PRICE		COST		
18.	2 EA	8" Plug Valve	s	5,000.00	\$	10,000.00	s	6,800.00	\$	13,600.00		
19.	1 EA	14" Tapping Sleeve, Valve & Box	\$	28,000.00	\$	28,000.00	s	34,900.00	\$	34,900.00		
20.	8 EA	Automatic Air-Vacuum/Pressure Air Valve	\$	8,500.00	\$	68,000.00	\$	21,615.00	\$	172,920.00		
21.	I EA	1" Manual Air Release Valve	\$	1,000.00	\$	1,000.00	\$	1,310.00	\$	1,310.00		
22.	408 LF	24" Steel Casing (Jack & Bore)	\$	450.00	\$	183,600.00	\$	1,960.00	\$	799,680.00		
23.	1 EA	Tie-in to Existing 2" LPFM	\$	500.00	\$	500.00	\$	8,100.00	\$	8,100.00		
24.	2 EA	Tie-in to Existing 8" Sewer Main	\$	8,000.00	\$	16,000.00	\$	9,900.00	\$	19,800.00		
25.	1 EA	Tie-in to Existing 10" Sewer Force Main	s	3,500.00	\$	3,500.00	\$	10,100.00	\$	10,100.00		
26.	700 LF	2" Low Pressure Sewer Force Main	s	13.00	\$	9,100.00	\$	48.00	\$	33,600.00		
27.	1 EA	2" Plug Valve for Low Pressure Sewer	s	750.00	\$	750.00	\$	1,300.00	s	1,300.00		
28.	10 EA	Remove and Replace Existing Water Services as Needed	s	600.00	5	6,000.00	\$	600.00	\$	6,000.00		
29.	10 EA	Remove and Replace Existing Water Meter as Needed	\$	1,000.00	\$	10,000.00	s	750.00	\$	7,500.00		
30.	7 EA	Remove and Replace Existing RCP Under Driveway	s	900.00	\$	6,300.00	\$	8,500.00	\$	59,500.00		
31.	1,100 SY	Asphalt Pavement Removal and Replacement (Trent Villa Drive)	\$	75.00	\$	82,500.00	\$	47.00	\$	51,700.00		
32.	150 LF	Asphalt Pavement Removal and Replacement	\$	75.00	\$	11,250.00	\$	148.00	\$	22,200.00		
33.	120 LF	Concrete Sidewalk Removal and Replacement	\$	75.00	\$	9,000.00	\$	176.00	\$	21,120.00		
34.	100 LF	Concrete Curb and Gutter Removal and Replacement	\$	75.00	\$	7,500.00	\$	152.00	s	15,200.00		

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

CONTRACTOR ADDRESS LIC#/BID BOND		James L. Cayton Utilities, Inc. 1906 Hwy. 70 East New Bern, NC 28560 29341/ 5%					Trader Construction P.O. Drawer 1578 New Bern, NC 28563 2943/ 5%			
TEM NO.	QTY, UNIT	DESCRIPTION		UNIT PRICE		COST		UNIT PRICE		COST
35.	25 LF	Concrete Driveway Removal and Replacement	s	60.00	\$	1,500.00	\$	424.00	\$	10,600.00
36.	150 LF	Asphalt Driveway and Sidewalk Removal and Replacement	\$	50.00	\$	7,500.00	\$	330.00	\$	49,500.00
37.	245 LF	ABC stone in Driveways	\$	20.00	\$	4,900.00	\$	82.00	\$	20,090.00
38.	40 LF	Construction Barriers	\$	50.00	\$	2,000.00	\$	120.00	\$	4,800.00
39.	20 EA	Straw Wattles	\$	300.00	\$	6,000.00	s	90.00	\$	1,800.00
40.	5,250 LF	Silt Fence	\$	15.00	\$	78,750.00	\$	4.00	\$	21,000.00
41.	19 EA	Silt Fence Outlet	\$	500.00	\$	9,500.00	\$	750.00	\$	14,250.00
42.	2 EA	Pipe Inlet Protection	s	500.00	\$	1,000.00	\$	2,500.00	\$	5,000.00
43.	900 SY	Excelsior Matting for Erosion Control	s	10.00	\$	9,000.00	s	3.00	\$	2,700.00
44.	6 EA	Railroad Pipeline Crossing Signs	s	500.00	\$	3,000.00	\$	2,400.00	\$	14,400.00
45.	4 EA	Fiberglass Railroad Utility Markers	\$	500.00	\$	2,000.00	s	415.00	\$	1,660.00
46.	1 L5	Bypass Pumping and Piping	\$	95,000.00	\$	95,000.00	\$	150,000.00	\$	150,000.00
47.	200 CY	Select Backfill	s	30.00	\$	6,000.00	5	130.00	s	26,000.00
48.	50 CY	Stabilization Stone - Trench	\$	60.00	\$	3,000.00	\$	350.00	\$	17,500.00
49.	10 TN	Rip Rap	\$	60.00	\$	600.00	s	240.00	\$	2,400.00
50.	1 EA	Construction Entrance Pad	\$	10,000.00	\$	10,000.00	s	4,500.00	\$	4,500.00
51.	1 LS	Testing Allowance			\$	5,000.00			\$	5,000.00
		TOTAL BASE BID			\$ 4	4,409,786.00			\$	7,939,283.00

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

CONTRACTOR ADDRESS LIC#/BID BOND		James L. Cayton Utilities, Inc. 1906 Hwy. 70 East New Bern, NC 28560 29341/ 5%					Trader Construction P.O. Drawer 1578 New Bern, NC 28563 2943/ 5%				
ITEM NO.	OTY LIMIT	DECODIFICAL	UNIT			UNIT					
NO.		DESCRIPTION LTERNATE A: WATER MAIN	1	PRICE	-	COST	+	PRICE	_	COST	
	^	LILITORILA, WATER MAIN									
1.	600 LF	12" PVC Water Main	s	120.00	s	72,000.00	\$	160.00	S	96,000.00	
2.	50 LF	12" RJPVC Water Main	\$	140.00	\$	7,000.00	\$	180.00	\$	9,000.00	
3.	200 LF	12" DIP Water Main	\$	130.00	\$	26,000.00	\$	162.00	\$	32,400.00	
4.	400 LF	12" RJDIP Water Main	s	200.00	\$	80,000.00	\$	275.00	\$	110,000.00	
5.	2 EA	Plug Proposed 12" Water Main 12" Horizontal Directional Bore w/ Fusible® PVC	\$	1,000.00	\$	2,000.00	\$	3,500.00	\$	7,000.00	
6.	1 EA	Trent River - Water	\$	437.00		\$437.00*	\$	1,500,000.00	\$	1,500,000.00	
7.	650 SY	Asphalt Pavement Removal and Replacement (Trent Villa Drive)	\$	75.00	\$	48,750.00	\$	40.00	\$	26,000.00	
8.	70 LF	24" Steel Casing (Jack & Bore)	\$	450.00	\$	31,500.00	\$	685.00	\$	47,950.00	
9.	1 EA	12" Gate Valve & Box	\$	6,500.00	\$	6,500.00	5	6,300.00	\$	6,300.00	
10.	2 EA	Fiberglass Railroad Utility Markers	\$	500.00	\$	1,000.00	\$	415.00	s	830.00	
11.	2,000 LBS	Additional Ductile Iron Fittings	s	15.00	\$	30,000.00	\$	10.00	\$	20,000.00	
12.	1 EA	Automatic Air Valve (Water)	\$	7,500.00	\$	7,500.00	\$	21,100.00	\$	21,100.00	
		TOTAL ALTERNATE BID			\$	312,250.00			\$	1,876,580.00	
List of Subcontractors List of Suppliers List of Project Reference Evidence to Do Buisiness in NC Bidder's Qualification Statement		* indicates come Not Submitted			ned f	gure	mitte	4			
			Not Sub Not Sub Not Sub Not Sub	mitte mitte mitte	ed ed ed		Not Su Not Su Not Su Subi	ibmit ibmit	ted ted ted		
Bidder's Qulaification Statement Total Value of Minority Business Contracting (MB-1) Listing of Good Faith Efforts (MB-2) E-Verify Certification			\$177,85 50 Po Not Sub	0.00 ints	1		\$50,0	00.00 Point	10 s		

OWNER:

City of New Bern

PROJECT:

8.

9.

10.

11.

12.

30 LF

Township 7 Sewer Force Main Improvements

Contract II - Pump Station

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

Cut and Tie-in to Existing 14" Sewer Force Main

BIDS OPENED:	Friday, November 4, 2022 at 11:00am
CONTRACTOR	
ADDRESS	

Peters & White Construction Co. Trader Construction 3032 Yadkin Road P.O. Drawer 1578 Chesapeake, VA 23323 New Bern, NC 28563 LIC#/BID BOND 12222/ 5% 2943/5% ITEM UNIT UNIT QTY. UNIT DESCRIPTION PRICE COST PRICE BASE BID:

1. Mobilization and Bonding (not to exceed 3%) 27,000.00 31,500.00 2. Sanitary Sewer Pump Station 758,396.00 890,130,00 Demolish/Abandon Existing Pump Station 3. 1 LS 66,297.00 41,750.00 1 EA Plug and Abandon Existing 12" Gravity Sewer 6,785.00 6,785.00 9,900.00 \$ 9,900,00 5. Plug and Abandon Existing 14" Sewer Force Main 9,062.00 9.062.00 | \$ 9,900.00 \$ 9,900.00

14" Tapping Tee and Valve 31,368.00 \$ 31,368.00 34,900.00 S 34,900.00 1 EA 10" Plug Valve 5,994.00 \$ 5,994.00 7,100.00 S 7,100.00 Saw Cut and Remove and Replace Asphalt 139.50 \$ 8,370.00 \$ 500.00 S 30,000.00 Concrete Curb and Gutter Removal and

13,338.00

\$

13,338.00

17,250.00 S

Replacement 182.00 \$ 5,460.00 \$ 120.00 S 3,600.00 Construction Barriers 105.00 4,200.00 \$ 55.00 S 2,200.00 Construction Entrance Pad 6,125.00 \$ 6,125.00 \$ 3,000.00 S 3,000.00

Electrical Service Entrance Allowance 13. 10,000.00 10,000.00 14. 1 LS Testing Allowance 7,000.00 7,000.00

TOTAL BASE BID 5 959,395.00 \$ 1,098,230.00 List of Subcontractors Submitted Submitted List of Suppliers Submitted Not Submitted List of Project Reference Submitted Not Submitted Evidence to Do Buisiness in NC Not Submitted Not Submitted Bidder's Qulaification Statement Submitted Submitted Total Value of Minority Business Contracting (MB-1) \$0.00 \$50,000.00 Listing of Good Faith Efforts (MB-2) 70 Points 80 Points E-Verify Certification Not Submitted Not Submitted

COST

17,250,00

AGENDA ITEM COVER SHEET



Agenda Item Title:

Adopt resolution authorizing the City Manager to Execute a Contract-II for the Township No. 7 Sewer Improvements Phase-III Project

Date of Meeting: 12/13/2022	Ward # if applicable: 1
Department: Public Utilities – Water Resources	Person Submitting Item: Jordan Hughes
Call for Public Hearing: □Yes⊠No	Date of Public Hearing: N/A

Awarding construction contract to Peters & White Construction Co. for Contract-II of the Township No. 7 Sewer Improvements project. This contract includes the pump station relocation portion of the project.
Adopt resolution authorizing the City Manager to execute the construction contract with Peters and White Construction Co.
Memo from Jordan Hughes, Recommendation of Award, Certified Bid-Tab, and draft resolution for authorizing the City Manager to execute the construction contract

Is item time sens	sitive? ⊠Yes □No
Will there be ad	vocates/opponents at the meeting? Yes No
Cost of Agenda	Item: \$959,395.00
	Item: \$959,395.00 an expenditure, has it been budgeted and are funds available

Additional Notes:



Department of Public Utilities Water Resources 527 NC Highway 55 West, P.O. Box 1129 New Bern, NC 28563-1129 (252) 639-7526

MEMORANDUM

TO: Mayor and Board of Aldermen

FROM: Jordan B. Hughes P.E., City Engineer

DATE: November 22, 2022

SUBJECT: Recommendation to Award Contract I & Contract II for the Township No.

7 Sewer Improvements Phase-III Project

Background Information:

To provide the required sewer system capacity for users south of the Trent River, the City developed the "Township No. 7 Sewer Improvements project" in 2010 and since that time, Phases I&II of the project have been successfully implemented. The remaining portion of the project, Phase-III, will include increased transmission capacity at the equalization basin, the construction of a new transmission force main across the Trent River, and the relocation of lift station No. 10, which is currently located on the bank of Lawson Creek. The need for these improvements has been identified since 2006, as the ultimate solution to fixing the overallocation issues, providing the capacity for New Bern to continue to grow in the areas south of the Trent River, and improving the resiliency of critical sewer infrastructure.

Bids for the Township No. 7 Sewer Improvements Phase-III project were opened at 11:00 a.m. on November 4th, 2022. After reviewing the submitted bids, the low bidder for Contract-I is James L. Cayton Utilities, Inc. of New Bern, NC with a total bid (Base + Add-alternate) of \$5,646,728.00. The low bidder for Contract-II is Peters and White Construction Co. of Chesapeake, VA with a bid of \$959,395.00

Recommendation:

The Department of Public Utilities is recommending that for the Township No. 7 Sewer Improvements Phase-III project, Contract-I be awarded to James L. Cayton Utilities, Inc for the amount of \$5,646,728.00 and Contract-II be awarded to Peters and White Construction Co. for the amount of \$959,395.00.

Attached please find a copy of the certified Bid Tab, a recommendation of award from the consulting engineer, a memorandum of negotiation for the Contract-I Add-Alternate, and draft resolutions for awarding each contract. Please contact me if there are any questions or if additional information should be required.

RESOLUTION

WHEREAS, the following bids were received and opened on November 4th, 2022, for the Township No. 7 Sewer Improvements Phase-III Project: Contract-II;

<u>VENDOR</u> <u>TOTAL BID AMOUNT</u>

Peters and White Construction Co.

\$ 959,395.00

Chesapeake, VA

Trader Construction Co.

\$1,098,230.00

New Bern, NC

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

THAT the City Manager is hereby authorized to execute on behalf of the City of New Bern a contract with Peters and White Construction Co. in the amount of \$959,395.00 and any change orders for Township No. 7 Sewer Improvements Phase-III Project: Contract-II.

ADOPTED THIS 13TH DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK



ENGINEERS

PLANNERS

SURVEYORS

LANDSCAPE ARCHITECTS

November 11, 2022

Mr. Jordan Hughes, P.E. 527 NC HWY 55 West New Bern, NC 28562

SUBJECT:

City of New Bern - Township 7 Sewer Force Main Improvements

Contracts I & II

Tentative Recommendation of Award

Rivers Project No. 2016009

Dear Mr. Hughes,

An initial bid opening was held for the subject project at 11 A.M. on Thursday, October 27th, 2022 at the City of New Bern's Water Resources Office. Neither Contract had the required three bid minimum to publicly open bids. A second bid date was scheduled for November 4th, 2022. The second formal bid opening was held at 11 A.M. on Friday, November 4th, 2022 at the City of New Bern's Water Resources Office where only two bids each were submitted for Contract I and Contract II. The bids were opened and read aloud. The initial Advertisement for Bids was published on the City of New Bern website on the "City Bids & Proposals" webpage.

The two Bids received for Contract I – Linework were from James L. Cayton Utilities, Inc. and Trader Construction. The bids received are as follows:

Bidder	Base Price	Add-Alternate
James L. Cayton Utilities, Inc.	\$4,409,786.00	\$312,250.00*
Trader Construction	\$7,939,283.00*	\$1,876,580.00

^{*}Corrected Total

The two Bids received for Contract II – Pump Station were from Peters & White Construction Co. and Trader Construction. The bids received are as follows:

Bidder	Base Price
Peters and White Construction Co.	\$959,395.00
Trader Construction	\$1,098,230.00

Tentative Award Recommendation
New Bern Township 7 – Sewer Force Main Improvements
Contract I & II
November 11,2022

Enclosed with this letter is a copy of the certified Bid Tabulation for each Contract. Based upon the bids received, we recommend that the City of New Bern issue tentative award for the Township 7 Sewer Force Main Improvements Project — Contract I to James L. Cayton Utilities, Inc. for the bid amount of \$4,409,786.00. We also recommend that the City issue tentative award for the Township 7 Sewer Force Main Improvements Project — Contract II to Peters and White Construction Co. for the bid amount of \$959,395.00. Final award of the project should be subject to the approval by the City and an evaluation of qualification information as listed in the Instructions to Bidders.

If you have any questions or concerns regarding this project, please call at (252) 752-4135. Thank you for this opportunity to serve the City of New Bern. We look forward to assisting you during the construction phase of the project.

Sincerely,

Kevin Cooper, E.I. Design Engineer

Kun icon

Enclosures

cc: M. Blaine Humphrey, P.E., Rivers and Associates (w/o enclosures) Rivers File 2016009-C (w/ enclosures)

CERTIFICATION

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

I CERTIFY THAT THIS IS A TRUE RECORD OF BIDS RECEIVED.

CONTRACTOR ADDRESS LIC#/BID BOND			James L. Cayton Utilities, Inc. 1906 Hwy. 70 East New Bern, NC 28560 29341/ 5%					er Construction Drawer 1578 Bern, NC 28563 2943	11,1		
TEM	Value Contract	a.o.ain		UNIT		COST		UNIT			
NO.		DESCRIPTION	+	PRICE		COST	+	PRICE		COST	
DAGE :											
1.	1 LS	Mobilization and Bonding (not to exceed 3%)	\$	117,500.00	\$	117,500.00	\$	238,178.00	* \$	238,178.00	
2.	1 AC	Clearing & Grubbing	5	20,000.00	\$	20,000.00	\$	50,000.00	\$	50,000.00	
3.	1 EA	Core and Tie-in to Existing Manhole	\$	5,000.00	\$	5,000.00	\$	5,300.00	\$	5,300.00	
4.	1 EA	Plug and Abandon Existing 10" Sewer Force Main	\$	5,000.00	5	5,000.00	\$	5,100.00	\$	5,100.00	
5.	40 LF	Remove Existing 8" Force Main in Existing Casing and Replace With 12" Force Main	\$	225.00	\$	9,000.00	\$	515.00	\$	20,600.00	
6.	300 LF	Remove Existing 6" Force Main	\$	30.00	\$	9,000.00	\$	54.00	\$	16,200.00	
7.	25 LF	10" RJPVC Sewer Main	s	180.00	S	4,500.00	\$	375.00	\$	9,375.00	
8.	5,850 LF	12" PVC Sewer Force Main	\$	125.00	s	731,250.00	\$	242.00	\$	1,415,700.00	
9.	2,250 LF	12" RJPVC Sewer Force Main	\$	200.00	\$	450,000.00	\$	240.00	\$	540,000.00	
10.	220 LF	12" DIP Sewer Force Main	\$	200.00	\$	44,000.00	\$	240.00	\$	52,800.00	
11.	1,200 LF	12" RJDIP Sewer Force Main	\$	250.00	\$	300,000.00	\$	400.00	\$	480,000.00	
12.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC to Glenn Dr	\$	80,660.00	\$	80,660.00	s	375,000.00	\$	375,000.00	
13.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC Howell Rd	\$	200,512.00	\$	200,512.00	\$	500,000.00	\$	500,000.00	
14.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC Trent River - Sewer	s	941,735.00	\$	941,735.00	\$	1,670,000.00	\$	1,670,000.00	
15.	1 EA	12" Horizontal Directional Bore w/ Fusible® PVC Lawson Creek	s	197,379.00	s	197,379.00	\$	535,000.00	\$	535,000.00	
16.	20,000 LBS	Additional Ductile Iron Fittings	\$	26.00	\$	520,000.00	\$	15.00	\$	300,000.00	
17.	9 EA	12" Plug Valve	\$	8,500.00	\$	76,500.00	\$	10,700.00	\$	96,300.00	

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

ADDRE	ACTOR SS D BOND		James L. Cayton Utilities, Inc. 1906 Hwy. 70 East New Bern, NC 28560 29341/ 5%					Trader Construction P.O. Drawer 1578 New Bern, NC 28563 2943/ 5%				
NO.	QTY, UNIT	IT DESCRIPTION		UNIT PRICE COST				UNIT		COST		
18.	2 EA	8" Plug Valve	\$	5,000.00	\$	10,000.00	s	6,800.00	\$	13,600.00		
19.	1 EA	14" Tapping Sleeve, Valve & Box	s	28,000.00	\$	28,000.00	s	34,900.00	\$	34,900.00		
20.	8 EA	Automatic Air-Vacuum/Pressure Air Valve	\$	8,500.00	\$	68,000.00	s	21,615.00	\$	172,920.00		
21.	1 EA	1" Manual Air Release Valve	s	1,000.00	\$	1,000.00	\$	1,310.00	\$	1,310.00		
22.	408 LF	24" Steel Casing (Jack & Bore)	\$	450.00	\$	183,600.00	\$	1,960.00	\$	799,680.00		
23.	1 EA	Tie-in to Existing 2" LPFM	\$	500.00	\$	500.00	\$	8,100.00	s	8,100.00		
24.	2 EA	Tie-in to Existing 8" Sewer Main	\$	8,000.00	\$	16,000.00	s	9,900.00	\$	19,800.00		
25.	1 EA	Tie-in to Existing 10" Sewer Force Main	s	3,500.00	\$	3,500.00	\$	10,100.00	\$	10,100.00		
26.	700 LF	2" Low Pressure Sewer Force Main	\$	13.00	\$	9,100.00	\$	48.00	\$	33,600.00		
27.	1 EA	2" Plug Valve for Low Pressure Sewer	\$	750.00	\$	750.00	s	1,300.00	s	1,300.00		
28.	10 EA	Remove and Replace Existing Water Services as Needed	\$	600.00	\$	6,000.00	\$	600.00	\$	6,000.00		
29.	10 EA	Remove and Replace Existing Water Meter as Needed	\$	1,000.00	\$	10,000.00	s	750.00	\$	7,500.00		
30.	7 EA	Remove and Replace Existing RCP Under Driveway	\$	900,00	\$	6,300.00	\$	8,500.00	\$	59,500.00		
31.	1,100 SY	Asphalt Pavement Removal and Replacement (Trent Villa Drive)	\$	75.00	\$	82,500.00	s	47.00	\$	51,700.00		
32.	150 LF	Asphalt Pavement Removal and Replacement	\$	75.00	\$	11,250.00	\$	148.00	\$	22,200.00		
33.	120 LF	Concrete Sidewalk Removal and Replacement	s	75.00	\$	9,000.00	s	176.00	\$	21,120.00		
34.	100 LF	Concrete Curb and Gutter Removal and Replacement	\$	75.00	\$	7,500.00	\$	152.00	s	15,200.00		

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

BIDS OPENED: Friday, November 4, 2022 at 11:00am

ADDRES	2		1906 Hwy	Cayton Utilities 7. 70 East 1, NC 28560 29341/		P.O.	er Construction Drawer 1578 Bern, NC 28563 2943	5%		
		TY. UNIT DESCRIPTION		UNIT PRICE COS		cost		UNIT PRICE		COST
35.	25 LF	Concrete Driveway Removal and Replacement Asphalt Driveway and Sidewalk Removal and	s	60.00	\$	1,500.00	\$	424.00	\$	10,600.00
36.	150 LF	Replacement	\$	50.00	\$	7,500.00	\$	330.00	\$	49,500.00
37.	245 LF	ABC stone in Driveways	s	20.00	\$	4,900.00	\$	82.00	\$	20,090.00
38.	40 LF	Construction Barriers	\$	50.00	\$	2,000.00	\$	120.00	\$	4,800.00
39.	20 EA	Straw Wattles	\$	300.00	\$	6,000.00	\$	90.00	s	1,800.00
40.	5,250 LF	Silt Fence	\$	15.00	\$	78,750.00	\$	4.00	\$	21,000.00
41.	19 EA	Silt Fence Outlet	s	500.00	5	9,500.00	\$	750.00	\$	14,250.00
42.	2 EA	Pipe Inlet Protection	\$	500.00	\$	1,000.00	\$	2,500.00	\$	5,000.00
43.	900 SY	Excelsior Matting for Erosion Control	s	10.00	\$	9,000.00	s	3.00	\$	2,700.00
44.	6 EA	Railroad Pipeline Crossing Signs	\$	500.00	\$	3,000.00	\$	2,400.00	\$	14,400.00
45.	4 EA	Fiberglass Railroad Utility Markers	\$	500.00	\$	2,000.00	s	415.00	\$	1,660.00
46.	1 L5	Bypass Pumping and Piping	s	95,000.00	\$	95,000.00	s	150,000.00	\$	150,000.00
47.	200 CY	Select Backfill	\$	30.00	\$	6,000.00	\$	130.00	\$	26,000.00
48.	50 CY	Stabilization Stone - Trench	\$	60,00	\$	3,000.00	\$	350.00	5	17,500.00
49.	10 TN	Rip Rap	\$	60.00	\$	600.00	\$	240.00	s	2,400.00
50.	1 EA	Construction Entrance Pad	\$	10,000.00	\$	10,000.00	s	4,500.00	\$	4,500.00
51.	1 LS	Testing Allowance			\$	5,000.00			\$	5,000.00
		TOTAL BASE BID			\$ 4	4,409,786.00			s	7,939,283.00

OWNER:

City of New Bern

PROJECT:

Township 7 Sewer Force Main Improvements

Contract I - Linework

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560 BIDS OPENED: Friday, November 4, 2022 at 11:00am

ADDRE	CONTRACTOR ADDRESS LIC#/BID BOND			James L. Cayton Utilities, Inc. 1906 Hwy. 70 East New Bern, NC 28560 29341/ 5%				der Construction D. Drawer 1578 w Bern, NC 28563 2943	/ 5%		
NO.	OTY LINE	DECORPORA		UNIT			UNIT				
NO.	The second secon	DESCRIPTION	1	PRICE		COST		PRICE		COST	
	A	LTERNATE A: WATER MAIN									
1.	600 LF	12" PVC Water Main	s	120.00	\$	72,000.00	s	160.00	s	96,000.00	
2.	50 LF	12" RIPVC Water Main	\$	140.00	\$	7,000.00	\$	180.00	s	9,000.00	
3.	200 LF	12" DIP Water Main	s	130.00	\$	26,000.00	s	162.00	\$	32,400.00	
4.	400 LF	12" RJDIP Water Main	s	200.00	\$	80,000.00	\$	275.00	s	110,000.00	
5.	2 EA	Plug Proposed 12" Water Main 12" Horizontal Directional Bore w/ Fusible® PVC	\$	1,000.00	\$	2,000.00	\$	3,500.00	\$	7,000.00	
6.	1 EA	Trent River - Water Asphalt Pavement Removal and Replacement	\$	437.00		\$437.00*	s	1,500,000.00	s	1,500,000.00	
7.	650 SY	(Trent Villa Drive)	\$	75.00	\$	48,750.00	\$	40.00	\$	26,000.00	
8.	70 LF	24" Steel Casing (Jack & Bore)	\$	450.00	\$	31,500.00	\$	685.00	\$	47,950.00	
9.	1 EA	12" Gate Valve & Box	\$	6,500.00	\$	6,500.00	s	6,300.00	s	6,300.00	
10.	2 EA	Fiberglass Railroad Utility Markers	s	500.00	\$	1,000.00	\$	415.00	s	830.00	
11.	2,000 LBS	Additional Ductile Iron Fittings	\$	15.00	\$	30,000.00	\$	10.00	\$	20,000.00	
12.	1 EA	Automatic Air Valve (Water)	\$	7,500.00	\$	7,500.00	\$	21,100.00	\$	21,100.00	
		TOTAL ALTERNATE BID				312,250.00 dicates correct	*		\$	1,876,580.00	
	Total V	List of Subcontractors List of Suppliers List of Project Reference Evidence to Do Buisiness in NC Bidder's Qulaification Statement alue of Minority Business Contracting (MB-1) Listing of Good Faith Efforts (MB-2) E-Verify Certification		Not Subr Not Subr Not Subr Not Subr Not Subr \$177,85 50 Poi Not Subr	nitter nitter nitter nitter nitter 0.00 nts	d d d d	led ng	Subr Not Su Not Su Not Su Subr \$50,0 80 P Not Su	bmitt bmitt bmitted 00.00 oints	ted ted ted d	

CERTIFICATION

I CERTIFY THAT THIS IS A TRUE RECORD OF BIDS RECEIVED.

OWNER:

(

City of New Bern

PROJECT:

CONTRACTOR

Township 7 Sewer Force Main Improvements

Contract II - Pump Station

LOCATION:

Water Resources Administration Office

527 NC Highway 55 West, New Bern, NC 28560

E-Verify Certification

BIDS OPENED: Friday, November 4, 2022 at 11:00am

Peters & White Construction Co.

3032 Yadkin Road
P.O. Drawer 1578

ADDRES	s		Trader Construction 3032 Yadkin Road Chesapeake, VA 23323 12222/ 5% Trader Construction P.O. Drawer 1578 New Bern, NC 28563 2943/ 5%		3032 Yadkin Road Chesapeake, VA 23323 12222/ 5%					
NO.	OTY LINIT	DESCRIPTION		UNIT		301,	UNIT			
BASE BI		DESCRIPTION	+	PRICE	-	COST	-	PRICE		COST
1.	1 LS	Mobilization and Bonding (not to exceed 3%)			\$	27,000.00			\$	31,500.00
2.	1 LS	Sanitary Sewer Pump Station			\$	758,396.00			\$	890,130.00
3.	1 LS	Demolish/Abandon Existing Pump Station			\$	66,297.00			s	41,750.00
4.	1 EA	Plug and Abandon Existing 12" Gravity Sewer	\$	6,785.00	\$	6,785.00	\$	9,900.00	\$	9,900.00
5.	1 EA	Plug and Abandon Existing 14" Sewer Force Main	\$	9,062.00	\$	9,062.00	\$	9,900.00	5	9,900.00
6.	1 EA	Cut and Tie-in to Existing 14" Sewer Force Main	\$	13,338.00	s	13,338.00	\$	17,250.00	s	17,250.00
7.	1 EA	14" Tapping Tee and Valve	\$	31,368.00	\$	31,368.00	\$	34,900.00	s	34,900.00
8.	1 EA	10" Plug Valve	s	5,994.00	\$	5,994.00	\$	7,100.00	\$	7,100.00
9.	60 LF	Saw Cut and Remove and Replace Asphalt	\$	139.50	\$	8,370.00	\$	500.00	s	30,000.00
10.	30 LF	Concrete Curb and Gutter Removal and Replacement	\$	182.00	\$	5,460.00	\$	120.00	5	3,600.00
11.	40 LF	Construction Barriers	\$	105.00	\$	4,200.00	\$	55.00	\$	2,200.00
12.	1 EA	Construction Entrance Pad	\$	6,125.00	\$	6,125.00	\$	3,000.00	\$	3,000.00
13.	1 LS	Electrical Service Entrance Allowance			\$	10,000.00			\$	10,000.00
14.	1 LS	Testing Allowance			\$	7,000.00			\$	7,000.00
		TOTAL BASE BID			s	959,395.00				1,098,230.00
	Total V	List of Subcontractors List of Suppliers List of Project Reference Evidence to Do Buisiness in NC Bidder's Qulaification Statement (alue of Minority Business Contracting (MB-1) Listing of Good Faith Efforts (MB-2)		Submi Submi Submi Not Submi Submi \$0.00 70 Poi	ted ted ted nitte ted			Subr Not Su Not Su Not Su Subr \$50,0 80 P	bmit bmit bmit bmit nitte 00.0	d ted ted ted d 0

Not Submitted

Not Submitted

AGENDA ITEM COVER SHEET



Agenda Item Title:Consider adopting an amendment to the Township 7 Sewer Improvements Project Fund

Date of Meeting: 12/13/	22	Ward # if applicable: Person Submitting Item: Kim Ostrom, Director of Finance				
Department: Finance						
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:				
Explanation of Item:	Consider adopt Improvements	ing an amendment to the Township 7 Sewer Project Fund.				
Actions Needed by Board:	Adopt ordinance	e amendment.				
Backup Attached:	Memo, Ordina	ance Amendment				
Is item time sensitive?	⊠Yes □No					
		the meeting? □Yes ☒ No				
Cost of Agenda Item:						
If this requires an expe		been budgeted and are funds available P □Yes □ No				

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: Kim Ostrom -Director of Finance

DATE: December 1, 2022

RE: Amendment to the Township 7 Sewer Improvements Project Fund

Background Information

This ordinance will amend the Township 7 Sewer Improvements Project Fund by a total of \$6,106,123 for Phase-III of the project.

The sewer improvements construction costs will initially be covered by a \$4,869,181 transfer from the Sewer Fund (in addition to a \$500,000 Golden Leaf grant already received). Financing options will be reviewed with the intent to reimburse the Sewer Fund.

In addition, \$1,236,942 will be transferred from the Water Fund for water line work to be completed in the same area. No reimbursement will be requested to the Water Fund.

Requested Action

The Board considers adopting the enclosed budget amendment at its meeting on December 13, 2022.

AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE TOWNSHIP 7 SEWER IMPROVEMENTS PROJECT FUND

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

Section 1. That Section 3 of the Township 7 Sewer Improvements Project Fund Ordinance adopted on December 10, 2015 is hereby amended to recognize additional appropriation:

Increase: Sewer System Improvements Project Fund \$6,106,123

Section 2. That Section 4 of the Township 7 Sewer Improvements Project Fund Ordinance adopted on December 10, 2015 is hereby amended to recognize revenue from the Sewer Fund:

Increase: Transfer from Sewer Fund \$4,869,181
Transfer from Water Fund \$1,236,942

Section 3. This amendment shall become effective upon adoption.

ADOPTED THIS 13TH DAY OF DECEMBER 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET



Agenda Item Title:

Consider adopting a Resolution Approving a Declaration of Intent to Reimburse the Sewer Fund for the Township No. 7 Sewer Improvements Project Fund Phase-III

Date of Meeting: 12/13/22		Ward # if applicable:					
Department: Finance		Person Submitting Item: Kimberly Ostrom – Finance Director					
Call for Public Hearing	g: □Yes⊠No	Date of Public Hearing:					
Explanation of Item:	Intent to Reimb	ting a Resolution Approving a Declaration of ourse the Sewer Fund for the Township No. 7 ments Project Fund Phase-III					
Actions Needed by Board:	Adopt resolution						
Backup Attached:	Memo, resoluti	ion					
Is item time sensitive?	⊠Yes □No						
Will there be advocates	s/opponents at t	he meeting? □Yes ☒ No					
Cost of Agenda Item:							
		een budgeted and are funds available □Yes □ No					

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: Kim Ostrom - Director of Finance

DATE: December 1, 2022

RE: Township No. 7 Sewer Improvements Fund-Intent to Reimburse Sewer Fund

Background Information

Bids for the Township No. 7 Sewer Improvements Fund Phase-III were opened on November 4, 2022. The work was divided into two contracts and the total combined for both contracts is \$5,369,181. The City has received a \$500,000 grant from Golden Leaf for the project. A transfer from the Sewer Fund will initially cover the remaining \$4,869,181. Financing options for the project will be reviewed with the intent to reimburse the Sewer Fund for the funds transferred.

Requested Action

It is recommended that the Board consider adopting the Resolution and Declaration of Official Intent to Reimburse at the December 13, 2022 meeting.

RESOLUTION

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

Section 1. That the document entitled "Declaration of Official Intent to Reimburse", a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor is hereby authorized and directed to execute said Declaration for and on behalf of the City of New Bern.

ADOPTED THIS 13TH DAY OF DECEMBER, 2022

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

DECLARATION OF OFFICIAL INTENT TO REIMBURSE

THIS DECLARATION ("Declaration") is made pursuant to the requirements of United States Treasury Regulations § 1.103-18 and is intended to constitute a Declaration of Official Intent to Reimburse under such Treasury Regulations section.

THE UNDERSIGNED, JEFFREY T. ODHAM, Mayor of the City of New Bern, North Carolina, is authorized to declare the official intent of the City of New Bern ("Issuer") with respect to the matters contained herein.

- 1. FUNDS TO BE EXPENDED. The Issuer intends to incur expenditures ("Expenditures") for the Township No. 7 Sewer Improvements Project Fund Phase-III ("Project"). The funds transferred for this project from the Sewer Fund is \$4,869,181.
- PLAN OF FINANCE. The Issuer intends to finance the cost of the Project described above with the proceeds of debt to be issued by the Issuer ("Obligations").
- 3. MAXIMUM PRINCIPAL AMOUNT OF DEBT TO BE ISSUED. The maximum principal of Obligations to be issued by the Issuer to finance the Project is \$4,870,000.
- 4. DECLARATION OF OFFICIAL INTENT TO REIMBURSE. The Issuer hereby declares its official intent to reimburse itself with the proceeds of the Obligations for any of the eligible Expenditures incurred by it prior to the issuance of the Obligations.

THIS 13TH DAY OF DECEMBER, 2022.

THE CITY OF NEW BERN

Bv:	
JEFFREY T. ODHAM, MAYOR	

AGENDA ITEM COVER SHEET



Agenda Item Title:

Consider Adopting Resolution in Support of NC Department of Transportation Revising the Speed Limit NC 43 Between SR 1483 (Briarwood Lane) and the 0.101 Mile Mark North of SR 1480 (Gracie Farms Road).

Date of Meeting: 12/13/22	Ward # if applicable: 5
Department: Public Works	Person Submitting Item: George Chiles, Interim Director PW
Call for Public Hearing: □Yes⊠No	Date of Public Hearing:

Explanation of Item:	Consider Adopting Resolution in Support of NC Department of Transportation Revising the Speed Limit NC 43 Between SR 1483 (Briarwood Lane) and the 0.101 Mile Mark North of SR 1480 (Gracie Farms Road).
Actions Needed by Board:	Adopt Resolution.
Backup Attached:	Resolution, Memo, Certification of Municipal Declaration, Map

Is item time sensitiv	e? □Yes ⊠No
Will there be advoca	ates/opponents at the meeting? □Yes ☒ No
N/A	
Cost of Agenda Item	1:
Cost of Agenda Item	ո։ «penditure, has it been budgeted and are funds

Additional Notes:



Public Works Department

P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501

Fax: (252) 636-1848

December 01, 2022

Memo to: Mayor and Board of Aldermen

From: George Chiles, Interim Director of Public Works

Re: Consider Adopting Resolution in Support of NC Department of

Transportation revising the Speed Limit on NC 43 Between SR 1483 (Briarwood Lane) and the 0.101 Mile Mark North of SR 1481 (Gracie

Farms Road).

Background Information

The North Carolina Department of Transportation (NCDOT) has requested the City of New Bern consider adopting resolution in support of NCDOT revising the speed limit on NC 43 between SR 1483 (Briarwood Lane) and the 0.101 mile mark north of SR 1481 (Gracie Farms Road).

Upon approval by the Board of this resolution in support of NCDOT's request to revise the speed limit, a copy of the approved resolution together with the required executed certification form will be sent to NCDOT. Upon receipt, NCDOT should take formal action to confirm the speed limit. Once City Staff have received documentation of that final action, Public Works will in turn request an update of the City's schedule of speed limits in Chapter 70 "Traffic and Vehicles" of the Municipal Code of Ordinances of the City of New Bern.

Recommendation

The Public Works Department has reviewed this request and recommends that the Board approve this NCDOT certification.

RESOLUTION

WHEREAS, NC 43 between State Route ("SR") 1483 (Briarwood Lane) and 0.101 mile north of SR 1481 (Gracie Farms Road) is a major street owned and maintained by NC Department of Transportation that is heavily traveled within the city limits of New Bern; and

WHEREAS, after completing an engineering and traffic investigation, NCDOT has recommended the speed limit in this area of NC 43 be reduced from 55 miles per hour ("MPH") to 50 MPH; and

WHEREAS, for the enhancement and benefit of public safety, NCDOT has asked for the City to support this reduction.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

- The City of New Bern hereby conveys support for the request made by NCDOT to reduce the speed limit from 55 MPH to 50 MPH on NC 43 between SR 1483 and 0.101 mile north of SR 1481; and
- The City of New Bern, upon acknowledgement of formal action by NCDOT to reduce and post the new speed limit, will amend its schedule of maximum speed limits in Section 70-132 of the Code of Ordinances.

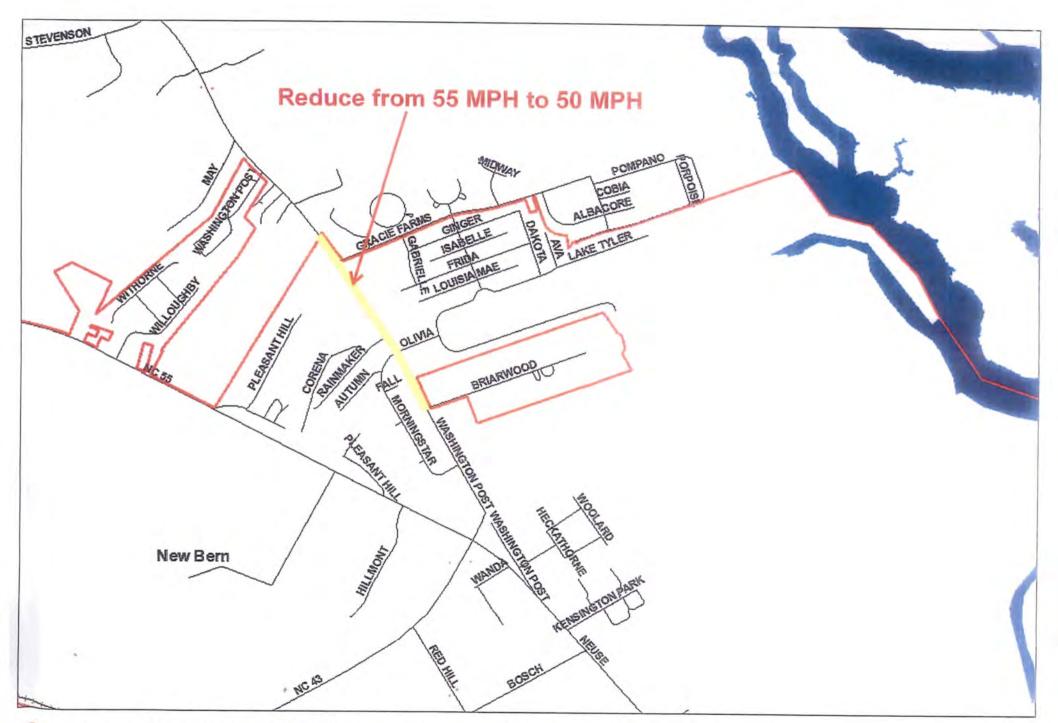
ADOPTED THIS 13th DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Certification of Municipal Declaration To Enact Speed Limits and Request for Concurrence

Concurring State Ordinance Number: 1076857 Division: 2 County: CRAVEN Municipality: NEW BERN Type: Municipal Speed Zones Road: NC 43 Car: 50 MPH Truck: 50 MPH Description: Between SR 1483 (Briarwood Lane) and 0.101 mile north of SR 1481 (Gracie Farms Road). Municipal Certification Brenda E. Blanco Clerk of the City of New Bern do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the 13th day of December 20 22, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit. The said municipal declaration is recorded as follows: Resolution Minute Book: Ordinance Number: In witness whereof, I have hereunto set my hand and the municipal seal this day _, 20 22 (signature) (municipal seal) Department of Transportation Approval Title: Region:



Sherri Baldree

From: George Chiles

Sent: Wednesday, November 16, 2022 4:50 PM

To: Sherri Baldree

Subject: FW: Proposed speed limit on NC43 north west of New Bern

From: Hamilton, Steven J <shamilton@ncdot.gov>
Sent: Tuesday, November 15, 2022 11:55 AM
To: George Chiles <ChilesG@newbernnc.gov>
Cc: Evans, James F <jfevans@ncdot.gov>

Subject: Proposed speed limit on NC43 north west of New Bern

George,

I am writing regarding the previously submitted request to reduce the speed limit along NC43 between Brierwood Lane and Just past Gracie Farms Road.

As we discussed, NCDOT had received a request for a reduction of the speed limit through this area. Based on our evaluation we found that the density of the development with direct driveway connection to NC43 along this stretch did not support a reduction to 45 mph; however, the current 55 mph limit may not be the most desirable either. Based on this we selected 50 mph. Studies have indicated that falsely reducing speed limits typically results in little compliance which then leads to less safe conditions because motorists make unsafe maneuvers thinking traffic is moving slower that they are traveling.

nail correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.	
cipient, you must destroy this message and inform the sender immediately. This electronic mail message and any tachments, as well as any electronic mail message(s) sent in response to it may be considered public record and a such subject to request and review by anyone at any time. It also may contain information which is confidential with the meaning of applicable federal and state laws.	S
cipient, you must destroy this message and inform the sender immediately. This electronic mail message and any tachments, as well as any electronic mail message(s) sent in response to it may be considered public record and a sch subject to request and review by anyone at any time. It also may contain information which is confidential with a meaning of applicable federal and state laws.	5

AGENDA ITEM COVER SHEET



Agenda Item Title:Consider Adopting a Resolution approving a Bill of Sale for the Tisdale House and Special Warranty Deed for Tax Parcel ID 8-011-27000 (1311 Rhem Avenue)

Date of Meeting: 12/13/2022 Department: Administration Call for Public Hearing: □Yes⊠No		Ward # if applicable: 1 Person Submitting Item: Foster Hughes	
		Explanation of Item:	Foundation on property on Rho restrictions and
Actions Needed by Board:	Consider Adopting resolution approving bill of sale and special warranty deed		
Backup Attached:	Memo, resolution, bill of sale, deed		
Is item time sensitive?	⊠Yes □No		
Will there be advocate	s/opponents at t	the meeting? Yes No	
Cost of Agenda Item:			
		been budgeted and are funds available Yes No	

Additional Notes:

Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

To:

Mayor and Board of Aldermen

From:

Foster Hughes, City Manager

Date:

December 9, 2022

Subject:

Special Warranty Deed and Bill of Sale for Rhem Avenue property and

Tisdale House

Background Information:

We have been working toward the sale of the Rhem Avenue property and transfer of the Tisdale House to the New Bern Preservation Foundation, Inc.,

To preserve the Tisdale House, certain restrictions and obligations are being included in the Restrictive Covenants and Preservation Agreement for the Tisdale House. It is important that the governing board review and adopt the resolution.

Recommendation:

Adopt the resolution.

RESOLUTION

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW

BERN:

That the Special Warranty Deed and Bill of Sale by and between the New Bern

Preservation Foundation, Inc. and the City of New Bern, copies of which are attached hereto and

incorporated herein by reference, be and the same are hereby approved, and the Mayor and City

Clerk are hereby authorized and directed to execute the same for and on behalf of the City.

ADOPTED THIS THE 13th DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

CRAVEN COUNTY BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of Three Thousand Two Hundred Fifty Dollars (\$3,250.00) paid by New Bern Preservation Foundation, Inc. ("Purchaser") to the City of New Bern ("Seller"), Seller hereby sells, transfers, conveys, assigns, and delivers to Purchaser all right, title, and interest in and to the tangible personal property identified as follows:

A two-story, single-family historic structure located at the corner of Broad Street and Gaston Boulevard in the City of New Bern commonly referred to as the "Tisdale House" specifically including any and all interior and exterior fixtures (hereinafter, "Tisdale House")

TO HAVE AND TO HOLD the Tisdale House hereby transferred to Purchaser, its successors and assigns, in fee simple forever, free and clear of all liens, claims, and encumbrances of any nature whatsoever.

AND Seller represents and warrants that it is seized of the Tisdale House in fee simple, free and clear of all liens, claims, and encumbrances of any nature whatsoever, that it has the right to convey the same in fee simple, and that it will warrant and defend the title to the Tisdale House hereby sold to Purchaser, its successors and assigns, forever against the claims and demands of all persons whomsoever.

AND Seller, for itself and its successors and assigns, does hereby represent, warrant, covenant, and agree to and with Purchaser and its successors and assigns that it shall, from time to time, at the request of Purchaser, execute, acknowledge, and deliver to Purchaser any and all further instruments, documents, and other papers which may be necessary or reasonably required to transfer the Tisdale House to Purchaser and to give full force and effect to the full intent and purposes of this Bill of Sale.

The transfer and sale of the Tisdale House is subject to the following duties and obligations of the Purchaser:

- 1. Purchaser shall cause the Tisdale House to be relocated to the real property described in Exhibit A and bearing postal address 1311 Rhem Avenue, New Bern, North Carolina ("Property") no later than February 15, 2023. Should Purchaser fail to cause the Tisdale House to be relocated to the Rhem Avenue parcel by February 15, 2023: (1) the City shall have no further obligation to transfer the Tisdale House to Purchaser; and (2) Purchaser shall convey the Rhem Street parcel to the Seller who shall return the purchase price of \$45,000 to the Purchaser.
- Purchaser shall cause the Tisdale House to be repaired, restored, rehabilitated, preserved and maintained to reasonable historic preservation standards consistent with its public purpose, consistent with the Restrictive Covenants and Preservation Agreement for the Tisdale

House attached hereto as Exhibit B, and completed such that a certificate of occupancy be issued within three (3) years of its conveyance of the Rhem Avenue parcel to a suitable purchaser.

IN WITNESS WHEREOF, the parties have executed this Agreement, under seal, as of the date first above written.

SELLER:			
CITY OF NEW BERN			
Ву:	(SEAL)	Date:	, 2022
Jeffrey T. Odham.	, Mayor		
PURCHASER:			
NEW BERN PRESERVA	ATION FOUNDATION, INC.		
By:	(SEAL)	Date:	, 2022
	, President		

EXHIBIT A

All that certain lot or parcel of land lying and being situate in Number Eight (8) Township, Craven County, North Carolina, and being more particularly described as follows:

BEING ALL of Tract 1 as depicted on a recombination plat entitled "Recombination Plat for the Tisdale House Relocation." dated October 5, 2022, prepared by Avolis Engineering, P. A., recorded in Plat Cabinet J, Slide 27-G of the Craven County Registry, said plat being incorporated herein by reference.

STATE OF NORTH CAROLINA

SPECIAL WARRANTY DEED

COUNTY OF CRAVEN

Excise Tax: \$0.00

Tax Parcel ID No. 8-011-27000

Prepared by:

Michael Scott Davis Davis Hartman Wright LLP 209 Pollock Street New Bern, North Carolina 28560

Return recorded deed to:

New Bern Preservation Foundation, Inc. P.O. Box 207 New Bern, NC 28563

THIS DEED, made this the day of December, 2022, by and between

GRANTOR: CITY OF NEW BERN, a North Carolina municipal corporation, with a

mailing address of P.O. Box 1129, New Bern, NC 28563

GRANTEE: NEW BERN PRESERVATION FOUNDATION, INC., a North

Carolina non-profit corporation, with a mailing address of P.O. Box 207,

New Bern, NC 28563

WITNESSETH:

For valuable consideration from Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby gives, grants, bargains, sells and conveys unto Grantee in fee simple, subject to the exceptions and reservations hereinafter provided, if any, the following described property, located in Number Eight (8) Township, Craven County, North Carolina, and more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Said property having been previously conveyed to Grantor by instrument recorded in Book 1307, at Page 551 in the Office of the Register of Deeds of Craven County, North Carolina.

All or a portion of the property herein conveyed does not include the primary residence of a Grantor.

TO HAVE AND TO HOLD unto Grantee, together with all privileges and appurtenances thereunto belonging, in fee simple, subject to the exceptions and reservations hereinafter and hereinabove provided, if any.

And Grantor hereby warrants that Grantor has done nothing to impair the title as received by Grantor and that Grantor will forever warrant and defend the title against the lawful claims of all persons claiming by, through or under Grantor.

This conveyance is made subject to the following exceptions and reservations:

- All such road, railroad, public utility and similar easements or rights-of-way, if any, as may serve, cross, encroach upon, or otherwise affect the property herein conveyed;
- All such zoning ordinances and other governmental regulations, if any, as may apply to the property herein conveyed;
- All matters which would be revealed by a current and accurate survey of the property herein conveyed;
- 4) All easements, rights-of-way and restrictions of record, if any; and
- 5) All ad valorem taxes for the current year; and
- 6) The Restrictive Covenants and Preservation Agreement attached hereto as Exhibit B.

All references to Grantor and Grantee as used herein shall include the parties as well as their heirs, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as required by context.

IN TESTIMONY WHEREOF, the CITY OF NEW BERN has caused this instrument to be executed as its act and deed by its Mayor, attested by its City Clerk, and its seal to be hereunto affixed, all by the authority of its Board of Aldermen, as of the day and year first above written.

CITY OF NEW BERN

(SEAL)	
	By:
ATTEST:	
BRENDA E. BLANCO, City Clerk	

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

I,	, Notary Public in and for said County and State, do day of December, 2022, before me personally appeared JEFFREY
	am personally acquainted, who, being by me duly sworn, says that he
	NDA E. BLANCO is the City Clerk for the City of New Bern, the ribed in and which executed the foregoing instrument; that he knows
the common seal of said mu	nicipal corporation; that the seal affixed to the foregoing instrument is name of the municipal corporation was subscribed thereto by the said
Mayor; that the said comm	on seal was affixed, all by order of the Board of Aldermen of said I that the said instrument is the act and deed of said municipal
WITNESS my hand	and official seal this the day of December, 2022.
	Notary Public
My Commission Expires:	

EXHIBIT A

All that certain lot or parcel of land lying and being situate in Number Eight (8) Township, Craven County, North Carolina, and being more particularly described as follows:

BEING ALL of Tract 1 as depicted on a recombination plat entitled "Recombination Plat for the Tisdale House Relocation." dated October 5, 2022, prepared by Avolis Engineering, P. A., recorded in Plat Cabinet J, Slide 27-G of the Craven County Registry, said plat being incorporated herein by reference.

EXHIBIT B

Restrictive Covenants and Preservation Agreement for the Tisdale House

THAT WHEREAS, the real property described in Exhibit A and bearing postal address 1311 Rhem Avenue, New Bern, North Carolina ("Property") is located in the Ghent Historic District, an historic district listed on the National Register of Historic Places; and

WHEREAS, the two-story, single-family structure located at the corner of Broad Street and Gaston Boulevard in the City of New Bern commonly referred to as the "Tisdale House" is a building of recognized historical, cultural and architectural significance; and

WHEREAS, Grantee is a North Carolina non-profit corporation whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and

WHEREAS, contemporaneously with the execution of this conveyance, Grantee purchased the Tisdale House from Grantor as evidenced by a Bill of Sale containing terms imposing various duties and obligations on Grantee to cause the Tisdale House to be relocated to the Property, and thereafter rehabilitated, preserved, and maintained; and

WHEREAS, Grantor and Grantee both desire that the Tisdale House be relocated to the Property where it will thereafter be rehabilitated, preserved, and maintained consistent with the restrictions, covenants, and conditions contained herein; and

WHEREAS, Grantor understands and agrees that Grantee intends to convey the Property and Tisdale House to a suitable purchaser who shall subsequently relocate the Tisdale House to the Property where it will thereafter be rehabilitated, preserved, and maintained; and

WHEREAS, G.S. §160A-266 authorizes the Grantor to sell and convey the Property and Tisdale House to Grantee, provided that a preservation agreement on conservation agreement as defined in G.S. §121-35 is placed in the deed conveying the Property from the Grantor to the Grantee; and

WHEREAS, Grantor and Grantee understand and agree that the restrictive covenants contained herein are intended to comply with the provisions of G.S. §160A-266 and G.S. §121-35, and shall be binding on Grantee, and all subsequent owners of the Property once the Tisdale House is relocated and affixed to the Property.

NOW, THEREFORE, the Property shall be and shall permanently remain subject to the following agreement, easements, covenants and restrictions:

1. These covenants shall be administered solely by the City of New Bern, its successors in interest or assigns. Upon any conveyance of the Property by the New Bern Preservation Foundation, Inc. ("Foundation"), the City of New Bern's rights under these Restrictive Covenants and Preservation Agreement shall pass to Foundation who shall thereafter administer these covenants. Additionally, upon the Foundation's conveyance of the Property, the Foundation may record additional covenants and restrictions to further the purposes of the Foundation, and to further the purpose of rehabilitating, preserving, and maintaining the Property.

- Grantee agrees to continuously maintain the Property to generally acceptable community standards using the same materials and workmanship, and shall abide by all local ordinances regulating the rehabilitation and use of the Property.
- 3. The Tisdale House shall not be removed or demolished without the prior written approval of the Grantor until such time as the Foundation conveys the Property, at which time the Tisdale House shall not be removed or demolished without the prior written approval of the Foundation.
- 4. No addition to the Tisdale House, nor any additional structure, either interior or exterior, shall be built on the Property unless the plans and designs for such addition or structure have been approved in advance by the Grantor. Once the Foundation conveys the Property, the Foundation shall approve any such plans and designs. Grantee shall request any desired changes in writing. Grantor, and upon the subsequent conveyance of the Property, the Foundation, shall have thirty (30) days to consider any such request. Failure by Grantor, and upon the subsequent conveyance of the Property, the Foundation, to respond within thirty (30) days shall constitute approval by Grantor, or the Foundation of the requested changes. Like kind repairs, both as to materials and workmanship, are hereby exempt from this restriction.
- 5. The architecturally significant features of the Property shall not be changed, added to, or altered without the prior written approval of the Grantor. Once the Foundation conveys the Property, such changes, additions, or alternations shall require the written approval of the Foundation.
- 6. The Tisdale House shall only be used as a single-family residence.
- These restrictions shall be covenants and restrictions running with the land.
- 8. Unless otherwise provided, the covenants and restrictions set forth above shall run in perpetuity.
- 9. Each provision of this document shall be interpreted in such a manner as to not affect the validity of the conveyance of the Property under G.S. §160A-266 and G.S. §121-35. However, if the application of any provision shall be invalid or shall result in the invalidity of the conveyance of the Property under G.S. §160A-266 and G.S. §121-35, that provision shall be null and void. The provisions of this document are declared to be severable.
- 10. The parties agree that these covenants and restrictions shall be terminate and be of no further force in the event that the Tisdale House is damaged by fire or other catastrophe to an extent of fifty percent (50%) or more of its replacement cost. Such an extinguishment must be the result of a final judicial proceeding.
- 11. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to either the Grantor or the Foundation as the case may be depending upon whether the Foundation has subsequently conveyed the Property. No failure on the part of the Grantor (or the Foundation) to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Grantor (or the Foundation) shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Grantor (or the Foundation) to enforce the same in event of a subsequent breach or default. In any case where a court finds that a violation has occurred the court may require the Foundation (or subsequent grantee if the Foundation has

conveyed the Property) to reimburse the Grantor (or the Foundation) for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees.

AGENDA ITEM COVER SHEET



Agenda Item Title:

Consider Adopting a Resolution Approving a General Warranty Deed Between Habitat for Humanity of Craven County NC, Marie Brown, and the City of New Bern for 2007 Pearson St.

Date of Meeting: 10/11/2022 Department: City Attorney Call for Public Hearing: □Yes⊠No		Ward # if applicable: 2 Person Submitting Item: Jaimee Bullock-Mosley	
			Date of Public Hearing:
Explanation of Item:		and is ready to convey the property to a	
Actions Needed by Board:	Consider adopting resolution approving a deed between Habitat, Marie Brown, and the City		
Backup Attached:	Memo, resolution, deed		
Is item time sensitive?			
Will there be advocate	s/opponents at t	the meeting? Yes No	
Cost of Agenda Item:			
If this requires an expe and certified by the Fir		been budgeted and are funds available ☐Yes ☐ No	

Additional Notes:

MEMORANDUM

TO: Mayor and Members of the Board

City Manager

FROM: Jaimee Bullock Mosley, Assistant City Attorney

RE: Property at 2007 Pearson Street conveyed by the City to Habitat for Humanity of

Craven County NC

DATE: December 12, 2022

In September of 2019, the City conveyed numerous properties, including property at 2007 Pearson Street (Craven County parcel identification number 8-038-104A) to Habitat for Humanity of Craven County NC to be developed as affordable housing for persons of low and moderate income. This property is subject to the terms and conditions of a Transfer and Reversion Agreement. The property has now been developed as low-income housing, and Habitat has requested that the City execute the deed to the buyer for the sole purpose of releasing any rights retained by the City by virtue of the Transfer and Reversion Agreement.

RESOLUTION

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the General Warranty Deed by and between Habitat for Humanity of Craven County NC, Marie Brown, and the City of New Bern, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the same for and on behalf of the City.

ADOPTED THIS THE 13th DAY OF DECEMBER, 2022.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Prepared by: Aaron D. Arnette Attorney at Law Sumrell Sugg, P.A. 416 Pollock Street New Bern, NC 28560

CRAVEN COUNTY

The property herein conveyed DOES NOT include the primary residence of a Grantor.

Parcel No. 8-038-104-A	
Revenue Stamps \$	
NORTH CAROLINA	

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, dated the _____ day of _____, 2022, is made by and between Habitat for Humanity of Craven County NC ("Habitat"), a North Carolina nonprofit corporation, whose address is 930 Pollock Street, New Bern, North Carolina 28560, (herein called the "Grantor"); MARIE BROWN, whose address is 2007 Pearson St., New Bern, NC 28560, (herein called the "Grantee") and The City of New Bern, a North Carolina municipal corporation, whose address is P.O. Box 1129, New Bern, NC 28563, party of the third part (herein called the "City"), which joins in the execution of this deed for the sole purpose set out hereinbelow.

The terms "Grantor" and "Grantee" as used herein shall mean and include the parties indicated, whether one or more, and their heirs, legal representatives, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by the context.

WITNESSETH:

WHEREAS, City conveyed to Habitat the hereinafter described real property by Deed recorded in Book 3588, Page 469 of the Craven County Registry; and

WHEREAS, the conveyance by the City to Habitat was to enable Habitat to develop the subject property as affordable housing for persons of low and moderate income in the City of New Bern, as addressed in the Transfer and Reversion Agreement dated September 24, 2019, and recorded in Book 3588, Page 459 of the Craven County Registry.

NOW THEREFORE, Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple the following described real property in the City of New Bern, Township Eight (8), Craven County, to wit:

All that certain lot or parcel of land lying and being situate in Number Eight (8) Township, City of New Bern, Craven County, North Carolina, and being more particularly described as follows:

Being all of that land identified by the tax parcel identification number given by the Craven County Tax Assessor as 8-038-104-A and bounded on the north end by a parcel owned by Annie R. Parham granted to Annie R. Parham in a deed recorded in Deed Book 1949 at Page 166 in the Craven County Registry, commonly referred to by its tax parcel identification number which is 8-038-104-B, and bounded on the northeast corner by a parcel owned by Harriet and William H. Hattley, Jr. granted to Harriet and William H. Hattley, Jr. in a deed recorded in Deed Book 1638 at Page 684 in the Craven County Registry, commonly referred to by its tax parcel identification number which is 8-038-099, and bounded on the east end by a parcel owned by Annie R. Parham granted to Annie R. Parham in Deed Book 1991 at Page 66 in the Craven County Registry, commonly referred to by its tax parcel identification number which is 8-038-100, and bounded on the southeast corner by parcel owned by Mable Mewborn granted to Mable Mewborn in a deed recorded in Deed Book 1165 at Page 75 in the Craven County Registry, commonly referred to its tax parcel identification number which is 8-038-102, and bounded on the southern right end by a parcel owned by Mable Mewborn granted to Mable Mewborn in a deed recorded in Deed Book 1165 at Page 75 in the Craven County Registry,

commonly referred to by its tax parcel identification number which is 8-038-103, and bounded on the southern left end by a parcel owned by Harry S. and Fern D. Cotton granted to Harry S. and Fern D. Cotton in a deed recorded in Deed Book 1385 at Page 24 in the Craven County Registry, commonly referred to by its tax parcel identification number which is 8-038-104, and bounded on the west end by Pearson Street. Said parcel consists of a calculated acreage of 0.12, more or less, and has a property address of 2007 Pearson Street, New Bern, NC 28562.

This conveyance is made subject to the restrictive and protective covenants which are attached hereto as Exhibit A.

This being a portion of that property described in Deed Book 3588, Page 469 in the Craven County Registry.

TO HAVE AND TO HOLD the aforesaid real property and all privileges and appurtenances thereunto belonging to Grantee in fee simple.

And Habitat covenants with Grantee that Grantor is seized of the premises in fee and has the right to convey the same in fee simple, that the title is free and clear of all liens and encumbrances except as herein otherwise described, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever.

The City of New Bern joins in the execution of this deed for the sole purpose of releasing any rights which it retained in the property being conveyed by this instrument by virtue of the Transfer and Reversion Agreement dated September 24, 2019, and recorded in Book 3588, Page 459 of the Craven County Registry.

IN WITNESS WHEREOF, Grantor and City have caused this instrument to be properly executed in such form as to be binding after proper authority having been given this the day and year first above written.

Habitat	for Humanity of Craven County NC,
a North	Carolina nonprofit corporation

BY: Rose	MacNeal, President	
ACKNOWLE	DGEMENT	
The undersigned Notary Public does he appeared before such Notary Public this day in the and acknowledged (i) that she is the President of B North Carolina nonprofit corporation, and (ii) such corporation, she signed the foregoing instrust corporation's behalf as its act and deed.	State of North Carolina and labitat for Humanity of Cr that by authority duly given	County of Crave raven County NO n and as the act of
WITNESS my hand and notarial seal, this	day of	, 2022.
My Commission Expires:	NOTARY PUBLIC	

NOTARY SEAL/STAMP MUST APPEAR LEGIBLY IN BOX TO RIGHT

City of New Bern A North Carolina Municipal Corporation

By:	Jeffrey T. Odham, Mayor	
ATTEST:		
Brenda E. Blanco, City Clerk		
NORTH CAROLINA CRAVEN COUNTY		
I,	me duly sworn, says that he is the Me the City of New Bern, the municipal going instrument; that he knows the confixed to the foregoing instrument is said in was subscribed thereto by the said Me order of the Board of Aldermen of says	layor and that al corporation mmon seal of common seal; layor; that the aid municipal oration.
My Commission Expires:	NOTARY PUBLIC	1

lss: 140634

EXHIBIT A

(Deed: Marie Brown)

This Restrictive and Protective Covenants Agreement, entered into this the _____ day of ______, 2022, by and between Habitat for Humanity of Craven County NC, a North Carolina non-profit corporation (hereinafter called "Habitat"), and Marie Brown (hereinafter called "Buyer"),

WITNESSETH:

WHEREAS, Habitat is the Craven County affiliate of Habitat for Humanity, an Ecumenical Christian Housing Ministry whose objective is to eliminate poverty housing from the world and to make decent shelter a matter of conscience; and,

WHEREAS, in accordance with its stated goal of providing affordable housing, Habitat agrees to build low cost homes for individuals or families, for no profit to Habitat and with no interest expense to the homeowner; and,

WHEREAS, because of the unique opportunity the Habitat program affords the homeowner, in order to protect the goals of Habitat it is necessary that certain restrictions be placed on the real property in this deed; and,

WHEREAS, Habitat has selected Buyer for whom Habitat has constructed a house; and,

WHEREAS, as a condition to the closing of this house Buyer has agreed to execute this Restrictive and Protective Covenants Agreement simultaneously with the delivery by Habitat of this deed and Buyer's receipt of said Deed in order to protect the interest of Habitat in the house and land.

NOW, THEREFORE, for valuable consideration, including without limitation the substantially below-market price and financing terms offered to Buyer, the receipt and disclosures of which are hereby acknowledged, Habitat and Buyer hereby agree as follows:

- DESCRIPTION OF PROPERTY. The property which is the subject of this
 Restrictive and Protective Covenants Agreement is described in the Deed executed
 simultaneously with this Agreement and appended hereto and is hereinafter called "Property".
- 2. PROMISSORY NOTE: DEED OF TRUST. Buyer has executed a Promissory Note in favor of Habitat and Buyer has promised to execute a Deed of Trust on the Property. Reference is hereby made to that Offer to Purchase and Contract entered into by and between Habitat and Buyer for documentation of the underlying promises herein cited. For so long as the Habitat Note is outstanding and unpaid, Buyer agrees to comply with the terms of the Habitat

Note and the Habitat Deed of Trust. Buyer also agrees to execute a second Promissory Note and second Deed of Trust as further security for Habitat; a corresponding acknowledgment regarding this liquidated damages provision is documented in said offer to Purchase and Contract.

- 3. RESTRICTION ON RENTAL; USE AS PRINCIPAL RESIDENCE. For so long as Buyer is indebted to Habitat for the Property, Buyer shall not lease or rent the property/or any part thereof to one or more third parties; and, so long as Buyer is indebted to Habitat, Buyer shall utilize the Property as Buyer's principal residence. A breach of this condition shall be a default under the terms of the Deed of Trust given to secure the loans to Habitat, which default would allow Habitat to foreclose without any other default being evident.
- 4. <u>FENCE RESTRICTION</u>. No fence shall be erected on the Property that does not comply with the City of New Bern zoning ordinances or historic overlay district restrictions, and no fence shall be erected that is chain link or wire mesh. No fence shall exceed four (4) feet in height and any fence that is allowed must be slatted such that there are visible gaps between pickets to be "see through".
- 5. RIGHT OF FIRST REFUSAL. So long as Buyer is indebted to Habitat, upon the receipt by Buyer of a bona fide offer to purchase the property, Buyer shall promptly deliver to Habitat a copy of said Notice and a letter indicating that Buyer desires to sell the Property for that price. Habitat shall have a period of thirty (30) days in which to notify Buyer that Habitat is exercising its right of first refusal in electing to purchase the Property. In the event that Habitat elects to purchase the Property, Habitat shall have the right to purchase the Property in accordance with the following price schedule:
- (a) If the contract from the third party is received within one (1) year of the date of recording of the Habitat Deed of Trust, (hereinafter called the "Acquisition Date"). Habitat shall be entitled to purchase the Property at the then outstanding amount of the Habitat Note.
- (b) If the third party offer is received more than one (1) year after the Acquisition Date, Habitat shall be entitled to purchase the Property for the then outstanding amount of the Habitat Note plus the following described percentage of the difference between the outstanding amount of the Habitat Note and the third party offering price:

Year	Percentage
First anniversary to second anniversary	6.6%
For each subsequent year through the 14th anniversary add per year	6.6%
Fourteenth anniversary to Final Anniversary	93.4%

- (c) After the final anniversary of the Acquisition Date, the right of first refusal granted hereunder to Habitat shall terminate.
- (d) The right of first refusal granted hereunder shall remain in effect until the final anniversary, regardless of whether the Habitat Note shall have been prepaid in whole or in part prior to such final anniversary.
- (e) If Habitat shall elect to purchase the Property pursuant to this paragraph, closing the sale to Habitat shall occur no later than sixty (60) days from the date of delivery by Habitat of the notice of its election to purchase, and the purchase shall be for cash. Habitat shall be entitled to credit against its purchase price any amount outstanding to Habitat by Buyer on the date of closing under the Habitat Note or otherwise.
- (f) In the event of the death of Buyer, Habitat shall be entitled to purchase the Property by giving written notice thereof to the executor or administrator of the estate within thirty (30) days from the date Habitat shall receive written notice of death. The purchase price to Habitat shall be equal to the outstanding amount owing to Habitat under the Habitat Note as of the date of death, plus a percentage of the difference between such outstanding amount and the fair market value of the Property at the date of death, which percentage shall be calculated in the same manner as hereinbefore provided in this section 5, as if the fair market value were identical to the third party offer. In order to determine the fair market value, Habitat shall appoint three (3) certified real estate appraisers, each of whom shall establish a value for the Property, and the fair market value shall be deemed to be the average of the three appraisals.
- 6. SHARING OF SALE PROCEEDS. If Habitat shall elect not to purchase the Property at the time of a third party offer, Buyer shall be entitled to sell the Property to such third party offeror, subject to the following terms and conditions. First, the purchase price shall be paid in cash or by official bank check at closing. Second, Habitat shall be entitled to receive a percentage of the proceeds of the sale, pursuant to the following schedule:
- (a) If the sale occurs prior to the first anniversary of the acquisition Date, Habitat shall be entitled to receive an amount equal to the then outstanding principal amount of the Habitat Note on the date of closing plus one hundred per cent (100%) of the net excess proceeds. For purposes of this paragraph 6, "net excess proceeds" shall mean all proceeds, less all the payoff of the Habitat Note, less sales commission and less all other seller closing costs.
- (b) If the sale shall occur after the first anniversary of the Acquisition Date Habitat shall be entitled to receive the outstanding principal amount of the Habitat Note on the date of closing, plus the following described percentage of the net excess proceeds:

Year	Percentages
First anniversary to	
Second anniversary 93.4%	
For each subsequent year	
through the final anniversary	
subtract per year 6.6%	
After final anniversary	0%

- (c) The prepayment of the Habitat Note in whole or in part, shall not affect the right of Habitat to share proceeds as described above.
- 7. <u>DEFAULT</u>. The occurrence of any default or breach under this agreement shall constitute a default under the Habitat Note and the Habitat Deed of Trust, and shall entitle Habitat to accelerate the Habitat Note and foreclose upon the Property and pursue all other legal remedies provided under the Habitat Deed of Trust or otherwise available at law.
- 8. <u>SUCCESSORS AND ASSIGNS</u>. This agreement shall be binding upon, and inure to the benefit of, the parties hereto, and any subsequent owner of the property described herein.
- AMENDMENTS. These restrictive and protective covenants may not be modified or amended without the prior or written consent of Habitat.
- 10. ENFORCEMENT. Enforcement of these restrictive and protective covenants shall be by any proceedings at law or at equity against any person or persons violating or attempting to violate any covenants or restriction contained herein, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by Habitat to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the provisions hereof, which shall remain in full force and effect.
- 12. **TERMINATION**. These restrictive and protective covenants shall terminate on the final anniversary hereof, said final anniversary being the date on which the debt is repaid in full.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed in such form as to be binding as of the day and year first above written.

Marie Brown	

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that **Marie Brown** personally appeared before such Notary Public this day in the State of North Carolina and County of Craven and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and notarial seal, this	day of	, 2022.
My Commission Expires:	NOTARY PUBLIC	
NOTARY SEAL/STAMP MUST APPEAR		

LEGIBLY IN BOX TO RIGHT

ВҮ:		
Ro	ose MacNeal, President	
ACKNOWI	LEDGEMENT	
The undersigned Notary Public does appeared before such Notary Public this day in and acknowledged (i) that she is the President of North Carolina nonprofit corporation, and (such corporation, she signed the foregoing instruction) is behalf as its act and deed.	the State of North Carolina and of Habitat for Humanity of Cracii) that by authority duly given	County of Craven aven County NC, and as the act of
WITNESS my hand and notarial seal, the	nisday of	, 2022.
My Commission Expires:	NOTARY PUBLIC	

Habitat for Humanity of Craven County, a North Carolina nonprofit corporation

lss: 140654

LEGIBLY IN BOX TO RIGHT