

**CITY OF NEW BERN
BOARD OF ALDERMEN MEETING
JANUARY 23, 2024 – 6:00 P.M.
CITY HALL COURTROOM
300 POLLOCK STREET**

1. Meeting opened by Mayor Odham. Prayer Coordinated by Alderman Aster. Pledge of Allegiance.
2. Roll Call.
3. Approve Agenda.

Consent Agenda

4. Consider Approving a Proclamation for Arbor Day.
5. Consider Adopting a Resolution Validating the Current Roster of Firefighters Eligible for the NC Firefighters' and Rescue Squad Workers' Pension Fund.
6. Consider Adopting a Resolution in Opposition of the NC Rate Bureau's Request for Homeowners' Insurance Rate Increase.
7. Approve Minutes.

8. Presentation of 2023 Crime Report by Police Department.
9. Conduct a Public Hearing and Consider Adopting a Resolution Approving a Lease with New Bern Baseball LLC for Kafer Park at 603 George Street.
10. Consider Adopting a Resolution Approving a General Warranty Deed between Habitat for Humanity of Craven County, Marc S. Thomas, and the City of New Bern for 1701 Aycock Avenue.
11. Consider Adopting a Resolution Approving an Amendment to the Contract with T.A. Loving for the Stanley White Recreation Center Project.
12. Discussion of BP Building Change in Scope of Work.
13. Discussion of Governing Board Rules of Procedure.
14. Appointment(s).
15. Attorney's Report.
16. City Manager's Report.
17. New Business.
18. Closed Session.
19. 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: January 18, 2024
Re: January 23, 2024 Agenda Explanations

1. **Meeting opened by Mayor Jeffrey T. Odham. Prayer Coordinated by Alderman Aster. Pledge of Allegiance.**
2. **Roll Call.**
3. **Approve Agenda.**

Consent Agenda

4. **Consider Approving a Proclamation for Arbor Day.**

Kari Warren, Director of Parks and Recreation, has requested a proclamation to recognize Arbor Day on Friday, March 22, 2024. Parks and Recreation will make a future announcement about its plans to observe the day.

5. **Consider Adopting a Resolution Validating the Current Roster of Firefighters Eligible for the NC Firefighters' and Rescue Squad Workers' Pension Fund.**

NCGS §58-86-25 requires the Governing Board to annually validate a list of firefighters meeting the eligibility for the NC Firefighters' and Rescue Squad Workers' Pension Fund. The roster is provided. A memo from Fire Chief Damien Locklear is attached.

6. **Consider Adopting a Resolution in Opposition of the NC Rate Bureau's Request for Homeowners' Insurance Rate Increase.**

The NC Rate Bureau represents companies that write insurance policies in North Carolina. The Bureau is requesting increases in homeowners' insurance effective August 01, 2024. The increases range from 4.3% to 99.4% depending on location. Craven County's proposed increase is 25.6%. Homeowners with coverage through

NC Insurance Underwriters will be subject to an additional 15% surcharge. This resolution expresses opposition to the increase, asks the NC Insurance Commissioner to deny the request, and provides citizens with information on how to express their concern and opposition. A memo from Brenda Blanco, City Clerk, is attached.

7. Approve Minutes.

Draft minutes from the January 09, 2024 meeting are provided for review and approval.

8. Presentation of 2023 Crime Report by Police Department.

Police Chief Patrick Gallagher will make a presentation reviewing New Bern's 2023 crime statistics.

9. Conduct a Public Hearing and Consider Adopting a Resolution Approving Leases with New Bern Baseball LLC for Kafer Park at 603 George Street.

(Ward 1) At its July 25, 2023 meeting, Old North State League made a presentation about their interest in utilizing Kafer Park for a collegiate summer baseball league. The proposed leases are for a period of nine years and would expire January 31, 2033. The lease for the park provides for an annual payment of \$20,000, and the concession lease provides for an annual payment of \$2,222.22. After conducting a public hearing, the Board is asked to consider adopting a resolution to authorize the execution of the leases.

10. Consider Adopting a Resolution Approving a General Warranty Deed between Habitat for Humanity of Craven County, Marc S. Thomas, and the City of New Bern for 1701 Aycock Avenue.

(Ward 2) On September 24, 2019, the City approved the conveyance of 1701 Aycock Avenue 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, Assistant City Attorney, is attached.

11. Consider Adopting a Resolution Approving an Amendment to the Contract with T.A. Loving for the Stanley White Recreation Center Project.

(Ward 2) On May 23, 2023, the Board adopted a resolution authorizing the Manager to execute a contract with T.A. Loving Company in the amount of \$13,180,400 for the Stanley White Recreation Center Project. However, additional funding of \$171,950.84 is needed for required changes that relate to extra structural steel,

additional step footings to accommodate utility penetrations into the building, and testing of excavated soils. It is requested that the City Manager be authorized to execute a change order in this amount. A memo from George Chiles, Director of Public Works, is attached with further information.

12. Discussion of BP Building Change in Scope of Work.

At the Board's November 14, 2023 meeting, the City Manager announced FEMA allocated \$955,812.07 toward the rebuilding of the BP Building on Oaks Road. Instead of rebuilding the structure, a change in the scope of work was discussed and several options were presented for use of the funds. The Board agreed the BP station should be promptly demolished, but tabled further discussion about the change in scope of work for an alternative project.

13. Discussion of Governing Board Rules of Procedure.

At the January 09, 2024 meeting, the Board voted to review and discuss its rules of procedure. A copy of the current rules, which were last amended on January 09, 2018, are provided for reference.

14. Appointment(s).

The resolution establishing the Municipal Service District Advisory Committee provides for one at-large appointment from the Board of Aldermen to serve as an ex officio, non-voting member. This official will serve in addition to the Ward 1 Alderman.

15. Attorney's Report.

16. City Manager's Report.

17. New Business.

18. Closed Session.

19. Adjourn.

AGENDA ITEM COVER SHEET

Agenda Item Title:

Proclamation to Recognize March 22, 2024, as Arbor Day.

Date of Meeting: 1/23/2024	Ward # if applicable: N/A
Department: Parks & Recreation	Person Submitting Item: Kari Warren Director of Parks & Recreation
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	Parks and Recreation is requesting a Proclamation to recognize Arbor Day, which falls on Friday, March 22, 2024.
Actions Needed by Board:	Consider Approving the Proclamation.
Backup Attached:	Memo and Proclamation.
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item: N/A
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes: N/A

Aldermen

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



Kari Warren, CPRP
Director of Parks & Recreation

Jeffrey T. Odham
Mayor

Foster Hughes
City Manager
Brenda E. Blanco
City Clerk

Kimberly A. Ostrom
Director of Finance



Date: January 12, 2024

Memo To: Mayor and Board of Aldermen

From: Kari Warren, CPRP *KW*
Director of Parks and Recreation

Re: Consider Approving a Proclamation for Arbor Day 2024

Background Information:

Parks and Recreation is requesting a Proclamation to recognize Arbor Day, which falls on Friday, March 22, 2024. In 1967, the State Legislature ratified a bill in support of recognizing a particular day each year as Arbor Day. The first Friday following March 15th is designated as Arbor Day in North Carolina.

We will have a celebration for Arbor Day on Friday, March 22, 2024. Information to come about location and time.

Recommendation:

Consider approving the Arbor Day Proclamation.

If you have any questions concerning this matter, please let me know.

1307 Country Club Rd
New Bern, NC 28562
Office 252 639-2901
Fax 252 636-4138



MAYOR'S OFFICE P R O C L A M A T I O N

WHEREAS, Arbor Day is a national celebration of community tree growing, planting and care dating back to 1872; and

WHEREAS, recognition of this important historical tradition and the practical as well as aesthetic value of trees is a year-long effort in New Bern; and

WHEREAS, Arbor Day serves to acknowledge the good work of City employees, resident volunteers, local garden clubs, corporate participants and the many service groups involved in the preservation and expansion of our urban forest; and

WHEREAS, Arbor Day reminds us all of the basic need for trees, such as they help clean the air, protect wildlife, save heating and cooling costs, conserve energy production, block pollution of rivers and streams, reduce soil erosion and provide a sense of comfort, shelter and spiritual well-being; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas and comprise a visual record of New Bern's past as well as a plan for the future appearance of its streetscapes and landscapes,

NOW THEREFORE, I, Jeffrey T. Odham, Mayor of the City of New Bern, on behalf of the New Bern Board of Aldermen do hereby proclaim March 22, 2024, as

"ARBOR DAY"

in the City of New Bern and urge all citizens to celebrate its meaning by planting, replacing, or protecting their trees and woodlands and by learning more about the proper selection, care and maintenance of trees to make them last longer for the benefit of this and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of New Bern this the 23rd day of January in the Year of Our Lord Two Thousand and Twenty-Four.



JEFFREY T. ODHAM, MAYOR

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Validating the Current Roster of Firefighters Eligible for the NC Firefighters' and Rescue Squad Workers' Pension Fund

Date of Meeting: 1/23/2024	Ward # if applicable: N/A
Department: Fire	Person Submitting Item: Damien Locklear, Fire Chief
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	NCGS 58-86-25 requires the Governing Board to annually validate a list of firefighters meeting the eligibility for the NC Firefighters' and Rescue Squad Workers' Pension Fund. A roster of individuals certified by the Fire Chief is provided.
Actions Needed by Board:	Adopt resolution validating roster of firefighters and authorizing submission of list to the state
Backup Attached:	Memo and resolution with attached roster
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item: \$2,325.00

If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? ☒ Yes ☐ No

Additional Notes:



Fire Chief
Damien M. Locklear

NEW BERN

NORTH CAROLINA

FIRE-RESCUE DEPARTMENT

1401 Neuse Boulevard
New Bern, NC 28560
(252) 639-2931

~ Proudly Serving Since 1845 ~

Battalion Chiefs
Ashley Jones - A Shift
William Smith - B Shift
Scott Gladson - C Shift

Division Chiefs
Johnathon Gaskins, Fire Marshal
James McConnell, Training Officer
Dennis Tyndall, Support Services

TO: Mayor and the Board of Alderman

FROM: Damien Locklear, Fire Chief

SUBJECT: Annual Report of Certified Eligible Firefighters

DATE: January 11, 2024

As part of the NCGS 58-86-25, we are required to provide the governing board a roster of the names of those firefighters meeting the eligibility qualifications set by the general statute. The roster of firefighters for 2023 will be submitted to the North Carolina Firefighters' Association.

RESOLUTION

WHEREAS, NCGS § 58-86-25 requires eligible fire departments to annually report to its Governing Board a certified roster of firefighters who have met the eligibility qualifications established in Article 86 – North Carolina Firefighters' and Rescue Squad Workers' Pension Fund; and

WHEREAS, after the roster has been validated by the Governing Board, the fire department is to promptly submit the information to the North Carolina State Firefighters' Association, and the association is required to forward the information to the State Treasurer by January 31st of each year.

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

The roster of firefighters dated January 31, 2024 and certified by Fire Chief Damien Locklear, a copy of which is attached hereto and incorporated herein by reference, is hereby determined to be valid and accurate, and the New Bern Fire Rescue Department is directed to immediately submit said roster to the North Carolina State Firefighters' Association.

ADOPTED THIS 24th DAY OF JANUARY, 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Fire Department Roster on 1/12/2024

New Bern Fire Department



NC State Firefighters' Association
323 West Jones St, Suite 401
Raleigh, NC 27603
888-546-2732
919-821-9382

This Roster was last updated on 1/4/2024 1:48:35 PM

New Bern Fire Department

PO Box 1129
New Bern, NC 28563

Day Phone (252) 639-2931
Email evans.patricia@newbernnc.gov

Member Id: 101111

Member Type: FDC / Fire Dept Combo

Department Chief: Robert M. Boyd, Jr.

Paid thru: 12/31/2023

NCSFA Member Y Certification Letter 2023

Paid	72	Junior	0
Vol	2	Retired	19
Member	0	Life	0
Rescue	0	Non-Mem	0
Total	93	Vacant	0
County:	Craven		

Name on Credit Card

Credit Card

Expiration Date

Signature

Showing certification for hours completed in 2023

	SSN	ID	Name/DOB	Address	PHONE/Email	GEN	MAR	P/V/R	CERT
1	[REDACTED]	112850	Robert V. Aster	[REDACTED]	[REDACTED]	■	■	RI	N
2	[REDACTED]	124592	Jeremy S. Banks	[REDACTED]	[REDACTED]	■	■	P	Y
3	[REDACTED]	180048	Jeremy D. Barbee	[REDACTED]	[REDACTED]	■	■	P	Y
4	[REDACTED]	225693	Brandon Lee Barnett	[REDACTED]	[REDACTED]	■	■	P	Y
5	[REDACTED]	117875	Brandon J. Bersch	[REDACTED]	[REDACTED]	■	■	P	Y
6	[REDACTED]	124364	Jeremy L. Blalock	[REDACTED]	[REDACTED]	■	■	P	Y
7	[REDACTED]	113970	Robert K. Blalock	[REDACTED]	[REDACTED]	■	■	P	Y
8	[REDACTED]	260183	Nicholas Austin Blount	[REDACTED]	[REDACTED]	■	■	P	Y
9	[REDACTED]	112857	Robert F. Bordeaux	[REDACTED]	[REDACTED]	■	■	P	Y
10	[REDACTED]	112859	Robert M. Boyd, Jr.	[REDACTED]	[REDACTED]	■	■	RI	Y
11	[REDACTED]	112860	Claude I. Brantley III	[REDACTED]	[REDACTED]	■	■	RI	N
12	[REDACTED]	225694	Kyle T. Brewington	[REDACTED]	[REDACTED]	■	■	P	Y

	<u>SSN</u>	<u>ID</u>	<u>Name/DOB</u>	<u>Address</u>	<u>PHONE/Email</u>	<u>GEN</u>	<u>MAR</u>	<u>P/V/R</u>	<u>CERT</u>
13	[REDACTED]	112863	Albert W. Brinson, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
14	[REDACTED]	112864	James A. Broome [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
15	[REDACTED]	134424	Jason R. Bullock [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
16	[REDACTED]	207751	Jordan A. Cobb [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
17	[REDACTED]	166017	Jeffery B. Connor [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
18	[REDACTED]	236410	Clayton E. Cuthrell [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
19	[REDACTED]	192894	Will T. Cutler [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
20	[REDACTED]	259258	Joshua Daugherty [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
21	[REDACTED]	230615	Benjamin L. Davies [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
22	[REDACTED]	223114	Joseph M. Dunn, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
23	[REDACTED]	153805	Stewart D. Evans [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
24	[REDACTED]	235505	Joshua C. Forbis [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
25	[REDACTED]	112869	Nicholas B. Fortier [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
26	[REDACTED]	227295	Elona Y. Fowler [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
27	[REDACTED]	120442	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
28	[REDACTED]	112880	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
29	[REDACTED]	227301	Erik G. Gawlowski [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
30	[REDACTED]	112881	Randy S. Gladson [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
31	[REDACTED]	188199	Barry L. Gohn III [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
32	[REDACTED]	112884	John D. Harrington, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
33	[REDACTED]	108524	Raymond B. Hayes [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
34	[REDACTED]	112885	Tony L. Heckman [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
35	[REDACTED]	192895	Ethan B. Hewson [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
36	[REDACTED]	245400	Jacob B. Hicks [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
37	[REDACTED]	113979	James C. Highsmith [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
38	[REDACTED]	126699	Jamie C. Hill [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
39	[REDACTED]	112887	Daniel T. Hill, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	RA	Y
40	[REDACTED]	207857	William B Hill [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
41	[REDACTED]	252041	Kenneth M. Hofmann [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	N
42	[REDACTED]	140600	Richard A. Howard [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
43	[REDACTED]	194748	Jeromy D. Hudgins [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y

	<u>SSN</u>	<u>ID</u>	<u>Name/DOB</u>	<u>Address</u>	<u>PHONE/Email</u>	<u>GEN</u>	<u>MAR</u>	<u>P/V/R</u>	<u>CERT</u>
44	[REDACTED]	188210	Jeremy N. Ipock [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
45	[REDACTED]	112891	Daniel E. Jackson [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
46	[REDACTED]	113960	Trent A. Jarman [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
47	[REDACTED]	135754	Stephen J. Jasset, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
48	[REDACTED]	227305	Thomas H. Jeppson [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
49	[REDACTED]	112868	Steven A. Jerome [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
50	[REDACTED]	124380	Walton A. Jones [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
51	[REDACTED]	113928	Glenn P. Kiely [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
52	[REDACTED]	207486	Ryan P. Kiely [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
53	[REDACTED]	225444	Tommy E. Lassitter, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
54	[REDACTED]	113931	Stacey A. Lewis [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
55	[REDACTED]	113932	Robert V. Locklear [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
56	[REDACTED]	225445	Michael C. Mann [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
57	[REDACTED]	113936	Richard E. May [REDACTED]	[REDACTED]	[REDACTED]	■	■	RA	Y
58	[REDACTED]	113940	James P. McConnell [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
59	[REDACTED]	225446	Joshua L. McCormick [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
60	[REDACTED]	119454	Gary T. McDaniel, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	V	Y
61	[REDACTED]	252044	Nathan Belknap McGough [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
62	[REDACTED]	113942	Kevin P. McKenna [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
63	[REDACTED]	225695	Hernan Melendez [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
64	[REDACTED]	262206	Andrew Midgett [REDACTED]	[REDACTED]	[REDACTED]	■		P	Y
65	[REDACTED]	112854	Kenneth L. Monroe [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
66	[REDACTED]	118543	Stephen P. Mooring [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
67	[REDACTED]	113943	Eric T. Mullis [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
68	[REDACTED]	218705	Barkley H. Nobles [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
69	[REDACTED]	110700	Sean M. Ostmann [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
70	[REDACTED]	203669	Jack E. Parker III [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
71	[REDACTED]	264114	Filippo Peri [REDACTED]	[REDACTED]	[REDACTED]	■	■	V	Y
72	[REDACTED]	207752	Ethan T. Polk [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
73	[REDACTED]	226500	William M. Price [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y

	<u>SSN</u>	<u>ID</u>	<u>Name/DOB</u>	<u>Address</u>	<u>PHONE/Email</u>	<u>GEN</u>	<u>MAR</u>	<u>P/V/R</u>	<u>CERT</u>
74	[REDACTED]	134075	John T. Pugh, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
75	[REDACTED]	113950	Anthony D. Roberg [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
76	[REDACTED]	262483	Mikala Roberts [REDACTED]	[REDACTED]	[REDACTED]	■		P	Y
77	[REDACTED]	244720	Chase B. Roupp [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
78	[REDACTED]	113951	John F. Sadler [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
79	[REDACTED]	150484	Justin L. Sawyer [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
80	[REDACTED]	113956	William J. Smith [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
81	[REDACTED]	113957	Douglas Lee Soltow [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
82	[REDACTED]	113958	Douglas L. Soltow, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
83	[REDACTED]	168584	Stanley L. Sutton [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
84	[REDACTED]	113966	Dennis L. Tyndall [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
85	[REDACTED]	133120	Christopher E. Walls [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
86	[REDACTED]	168585	Henry A. Watson [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
87	[REDACTED]	113972	Richard L. Weems [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
88	[REDACTED]	129635	Patrick C. Wetherington [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
89	[REDACTED]	111108	Joshua D. Whitford [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
90	[REDACTED]	113978	Thomas C. Williams, Jr. [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N
91	[REDACTED]	265164	Kyle Lee Winfrey [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
92	[REDACTED]	150474	Richard C. Woolls [REDACTED]	[REDACTED]	[REDACTED]	■	■	P	Y
93	[REDACTED]	113981	David W. Works [REDACTED]	[REDACTED]	[REDACTED]	■	■	RI	N

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Opposing the NC Rate Bureau's Request for Homeowners' Insurance Rate Increase

Date of Meeting: 1/23/2024	Ward # if applicable: All
Department: City Clerk	Person Submitting Item: Brenda Blanco
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

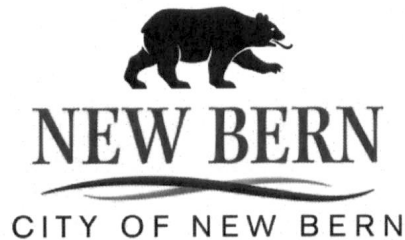
Explanation of Item:	The NC Rate Bureau is proposing increases in homeowners' insurance effective 8/1/24. The increases range from 4.3% to 99.4% depending on location. Craven County's increase is proposed at 25.6%. Homeowners with coverage through NC Insurance Underwriters is subject to an additional 15% surcharge.
Actions Needed by Board:	Consider adopting the resolution
Backup Attached:	Resolution
Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost of Agenda Item: \$0
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:

Aldermen

Rick Prill
Hazel 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: Brenda E. Blanco, City Clerk

DATE: January 17, 2024

SUBJECT: Consider Adopting a Resolution Opposing the NC Rate Bureau's Request for Homeowners' Insurance Rate Increase

Background

The NC Rate Bureau, which represents companies that write insurance policies in North Carolina, filed a request with the NC Department of Insurance on January 03, 2024 seeking an increase in homeowners' insurance rates. The increases range from 4.3% to 99.4% with a statewide average of 42.2%. The proposed increase for Craven County is 25.6%. Increases for neighboring counties range from 57.8% for Pitt County, 71.3% for Lenoir County, and 43%, 71.4% or 99.4% for Carteret County depending on property location. Additionally, homeowners with coverage through the NC Insurance Underwriters Association would be subject to an additional 15% surcharge under North Carolina law.

The proposed resolution expresses opposition to the increase and encourages citizens to submit their concerns to the NC Department of Insurance no later than February 02, 2024.

Recommendation

Consider adopting the resolution in opposition of the increase.

**RESOLUTION IN OPPOSITION OF THE NC RATE BUREAU'S
REQUEST FOR HOMEOWNERS' INSURANCE RATE INCREASE**

WHEREAS, the NC Rate Bureau, which represents companies that write insurance policies in North Carolina, is seeking approval from the NC Department of Insurance for an average statewide increase of 42.2% in homeowners' insurance rates effective August 1, 2024; and

WHEREAS, as shown on the attached list, the requested increases range from 4.3% to 99.4%, with a proposed increase of 25.6% for Craven County homeowners; and

WHEREAS, homeowners with coverage through the NC Insurance Underwriters Association would also be subjected to an additional 15% surcharge under North Carolina law; and

WHEREAS, homeowners cannot afford this colossal rate increase.

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

1. The City of New Bern opposes the excessive rate increase for homeowners' insurance and requests that the NC Insurance Commissioner deny the request for the increase; and
2. Upon adoption, the City Clerk shall forward a copy of this resolution to NC Insurance Commissioner Mike Causey; and
3. Citizens are encouraged to email their the NC Department of Insurance at 2024Homeowners@ncdoi.gov or submit written comments to Kimberly W. Pearce, Paralegal III, 1201 Mail Service Center, Raleigh, NC 27699-1201 no later than February 02, 2024 to express concern and opposition to the proposed rate increase.

ADOPTED THIS 23RD DAY OF JANUARY, 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

2024 Proposed Homeowners Increase

TERRITORY	COUNTIES/CITIES LOCATED IN THIS TERRITORY	NCRB PROPOSED INCREASE
110	Beach areas in Currituck, Dare and Hyde Counties	45.1%
120	Beach areas in Brunswick, Carteret, New Hanover, Onslow and Pender Counties	99.4%
130	Coastal areas in Currituck, Dare, Hyde and Pamlico Counties	33.9%
140	Eastern Coastal areas of Brunswick, Carteret, New Hanover, Onslow & Pender Counties. Eastern Coastal area zip codes: 28403, 28404, 28405, 28406, 28407, 28408, 28409, 28410, 28411, 28412, 28422, 28428, 28443, 28445, 28459, 28460, 28461, 28462, 28467, 28468, 28469, 28470, 28480, 28511, 28516, 28520, 28524, 28528, 28531, 28532, 28533, 28539, 28553, 28557, 28570, 28577, 28579, 28581, 28584, 28589	71.4%
150	Coastal areas in Beaufort, Camden, Chowan, Craven, Jones, Pasquotank, Perquimans, Tyrell & Washington Counties	25.6%
160	Western Coastal areas of Brunswick, Carteret, New Hanover, Onslow & Pender Counties. Western Coastal area zip codes: 28401, 28402, 28420, 28421, 28425, 28429, 28435, 28436, 28447, 28448, 28451, 28452, 28454, 28456, 28457, 28466, 28478, 28479, 28518, 28521, 28540, 28541, 28542, 28543, 28544, 28545, 28546, 28547, 28555, 28574, 28582	43.0%
170	Gates and Hertford Counties	30.4%
180	Bertie, Greene, Martin, Pitt, and Wayne Counties	57.8%
190	Duplin and Lenoir Counties	71.3%
200	Columbus County	63.1%
210	Edgecombe and Wilson Counties	57.8%
220	Cumberland and Sampson Counties	45.5%
230	Bladen and Robeson Counties	56.1%
240	Franklin, Halifax, Johnston, Nash, and Northampton Counties	40.8%
250	Harnett, Hoke, and Scotland Counties	39.9%
260	Granville, Person, Vance, and Warren Counties	39.3%
270	Cities of Durham and Raleigh. Durham and Wake Counties	39.8%
280	Chatham and Orange Counties	25.1%
290	Lee and Moore Counties	28.4%
300	Anson, Montgomery, and Richmond Counties	26.1%
310	Cities of Greensboro and Winston-Salem. Alamance, Davie, Caswell, Forsyth, Guilford, Rockingham, Stokes, and Surry Counties	36.6%
320	Cabarrus, Davidson, Randolph and Rowan Counties	25.1%
330	Yadkin County	22.3%
340	City of Charlotte. Alexander, Iredell, Mecklenburg, Stanly, Wilkes and Union Counties	41.3%
350	Cleveland, Gaston Lincoln, and Rutherford Counties	27.8%
360	Alleghany, Ashe, Buncombe, Burke, Caldwell, Catawba, Henderson, McDowell, Polk, Watauga, and Yancey Counties	20.5%
370	Avery and Mitchell Counties	7.6%
380	Haywood, Madison, Swain, and Transylvania Counties	4.3%
390	Cherokee, Clay, Graham, Jackson, and Macon Counties	8.5%

AGENDA ITEM COVER SHEET

Agenda Item Title: Presentation of 2023 New Bern Crime Stats

Date of Meeting: 1/23/2024	Ward # if applicable:
Department: Police	Person Submitting Item: Chief Patrick Gallagher
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	PowerPoint Presentation for Crime Stats for the City of New Bern for 2023.
Actions Needed by Board:	None
Backup Attached:	Memo to Mayor Odham and Power Point Presentation
Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost of Agenda Item: \$0
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Additional Notes:



Founded 1797

NEW BERN

NEW BERN POLICE DEPARTMENT

P.O. Box 1129, New Bern, NC 28563-1129
(252) 672-4100

Police and Community Come Together Here



Patrick L. Gallagher
Chief of Police

To: Mayor Jeffrey T. Odham and the Board of Aldermen
From: Chief Patrick Gallagher
Date: January 23, 2024
Subject: 2023 Crime Stats

I will be presenting a PowerPoint presentation that reflects the crime statistics for the City of New Bern for the past year (2023). This data will also cross-reference data over a 3-year timeframe. I will also provide data comparing the City of New Bern with 16 other cities in North Carolina that have a similar size to our community.



A Nationally Accredited Agency

Integrity – Motivation – Professionalism – Accountability – Commitment – Trust

2023 New Bern Crime Statistics

Chief Patrick Gallagher

January 23, 2024

NEW BERN
NORTH CAROLINA

1

FBI Uniform Crime Reporting Data (UCR)

3-YEAR COMPARISON	2021	2022	2023	Average
AGGRAVATED ASSAULT	93	112	70	91.7
HOMICIDE	6	3	4	4.3
ROBBERY	21	17	9	15.7
SEXUAL ASSAULT (RAPE)	14	14	6	11.3
VIOLENT CRIME TOTAL	134	146	89	123.3
ARSON	4	3	4	3.7
BURGLARY B&E	167	148	162	159.0
LARCENY	592	482	462	512.0
MOTOR VEHICLE THEFT	35	33	33	33.7
THEFT FROM MOTOR VEHICLE	111	100	112	107.7
TOTAL PROPERTY CRIME	909	766	773	816.0
TOTAL PART I CRIME	1043	912	862	939.3

NEW BERN
NORTH CAROLINA

2

Compared to 2022, **violent crime** has **decreased** by 39.0%.

Compared to the 3-year average (2021-2023), the 2023 year-to-date **violent crime** has **decreased** by 27.8%.

Compared to 2022, **property crime** has **increased** by less than 1%.

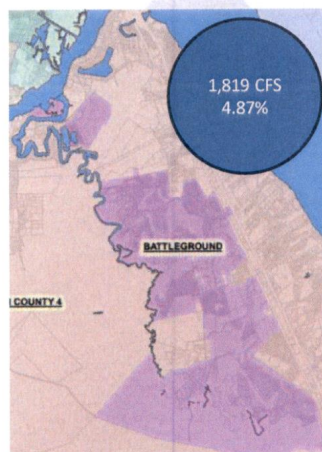
Compared to the 3-year average (2021-2023), the 2023 year-to-date **property crime** has **decreased** by 5.4%.

2023
37,303 CFS

NEW BERN
NORTH CAROLINA

3

Battle Ground Community Policing District



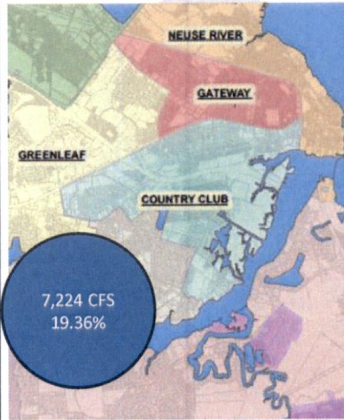
Violent Crime	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Aggravated Assault	2	1	-50	1.3	-25.0
Homicide	0	0	N/C	0	N/C
Robbery	0	0	N/C	0	N/C
Sexual Assault (Rape)	0	1	N/C	0.7	50.0
Total Violent Crime	2	2	0	2.0	0.0

Property Crime	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Arson	0	0	N/C	0	N/C
Burglary B&E	4	2	-50	2.3	-14.3
Larceny	15	9	-40	12.7	-28.9
Motor Vehicle Theft	1	1	0	1.0	0.0
Theft from Motor Vehicle	2	3	50	2.0	50.0
Total Property Crime	22	15	-32	18.0	-16.7
Total Part I Crime	24	17	-29	20.0	-15.0

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NORTH CAROLINA

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Country Club Community Policing District

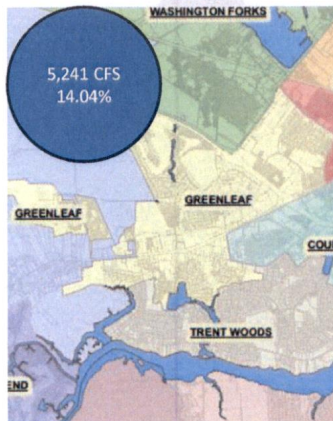


	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Violent Crime					
Aggravated Assault	19	12	-37	14.0	-14.3
Homicide	1	1	0	0.7	50.0
Robbery	2	1	-50	3.0	-66.7
Sexual Assault (Rape)	2	1	-50	1.7	-40.0
Total Violent Crime	24	15	-38	19.3	-22.4
Property Crime					
Arson	0	1	N/C	1.3	-25.0
Burglary B&E	31	31	0	35.3	-12.3
Larceny	160	148	-7.5	166.7	-11.2
Motor Vehicle Theft	4	6	50	6.7	-10.0
Theft from Motor Vehicle	28	22	-21	23.0	-4.3
Total Property Crime	223	208	-7	233.0	-10.7
Total Part I Crime	247	223	-10	252.3	-11.6

NEW BERN
NORTH CAROLINA

5

Green Leaf Community Policing District

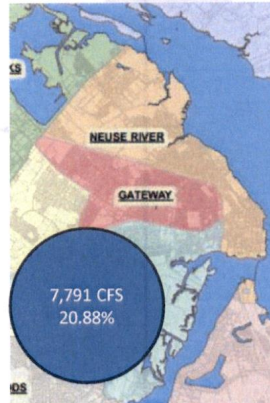


	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Violent Crime					
Aggravated Assault	4	5	25	5.0	0.0
Homicide	0	0	N/C	0.0	N/C
Robbery	3	1	-67	1.7	-40.0
Sexual Assault (Rape)	2	0	-100	1.3	-100.0
Total Violent Crime	9	6	-33	8.0	-25.0
Property Crime					
Arson	0	0	N/C	0.0	N/C
Burglary B&E	12	19	58	20.7	-8.1
Larceny	62	76	23	93.0	-18.3
Motor Vehicle Theft	4	2	-50	3.7	-45.5
Theft from Motor Vehicle	8	11	38	9.3	-17.9
Total Property Crime	86	108	26	126.7	-14.7
Total Part I Crime	95	114	20	134.7	-15.3

NEW BERN
NORTH CAROLINA

6

Gateway Community Policing District

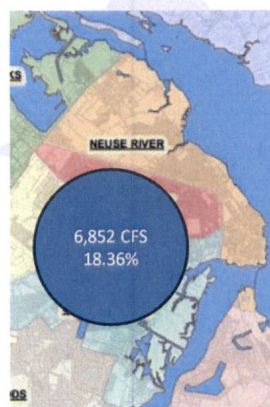


	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Violent Crime					
Aggravated Assault	42	22	-48	34.0	-35.3
Homicide	1	1	0	2.0	-50.0
Robbery	6	7	17	7.3	-4.5
Sexual Assault (Rape)	1	0	-100	1.3	-100.0
Total Violent Crime	50	30	-40	44.7	-32.8
Property Crime					
Arson	1	2	100	1.0	100.0
Burglary B&E	38	45	18	37.0	21.6
Larceny	97	77	-21	81.0	-4.9
Motor Vehicle Theft	5	5	0	4.7	7.1
Theft from Motor Vehicle	28	21	-25	21.3	-1.6
Total Property Crime	169	150	-11	145.0	3.4
Total Part I Crime	219	180	-18	189.7	-5.1

NEW BERN
NORTH CAROLINA

7

Neuse River Community Policing District

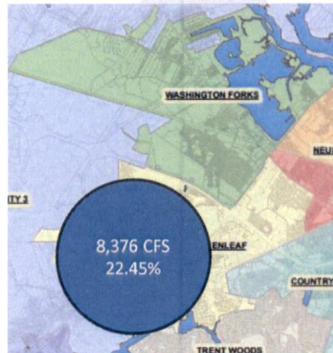


	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Violent Crime					
Aggravated Assault	21	12	-43	17.0	-29.4
Homicide	1	0	-100	0.7	-100.0
Robbery	4	0	-100	1.7	-100.0
Sexual Assault (Rape)	5	2	-60	3.3	-40.0
Total Violent Crime	31	14	-55	22.7	-38.2
Property Crime					
Arson	2	0	-100	1.0	-100.0
Burglary B&E	30	24	-20	28.3	-15.3
Larceny	66	65	-1.5	63.0	3.2
Motor Vehicle Theft	5	6	20	4.7	28.6
Theft from Motor Vehicle	17	27	59	24.3	11.0
Total Property Crime	120	122	2	121.3	0.5
Total Part I Crime	151	136	-10	144.0	-5.6

NEW BERN
NORTH CAROLINA

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Washington Forks Community Policing District



	YTD COMPARISON				
	2022 YTD Ending 12/21/2022	2023 YTD Ending 12/21/2023	% Change	3 Year YTD Avg	2023 YTD Compared to 3 Year YTD Avg
Violent Crime					
Aggravated Assault	23	18	-22	20.0	-10.0
Homicide	0	2	N/C	1.0	100.0
Robbery	2	0	-100	2.0	-100.0
Sexual Assault (Rape)	4	2	-50	3.0	-33.3
Total Violent Crime	29	22	-24	26.0	-15.4
Property Crime					
Arson	0	0	N/C	0.0	N/C
Burglary B&E	33	45	36	36.7	22.7
Larceny	82	85	4	94.7	-10.2
Motor Vehicle Theft	14	13	-7	13.0	0.0
Theft from Motor Vehicle	17	27	59	27.3	-1.2
Total Property Crime	146	170	16	171.7	-1.0
Total Part I Crime	175	192	10	197.7	-2.9

NEW BERN
NORTH CAROLINA

9

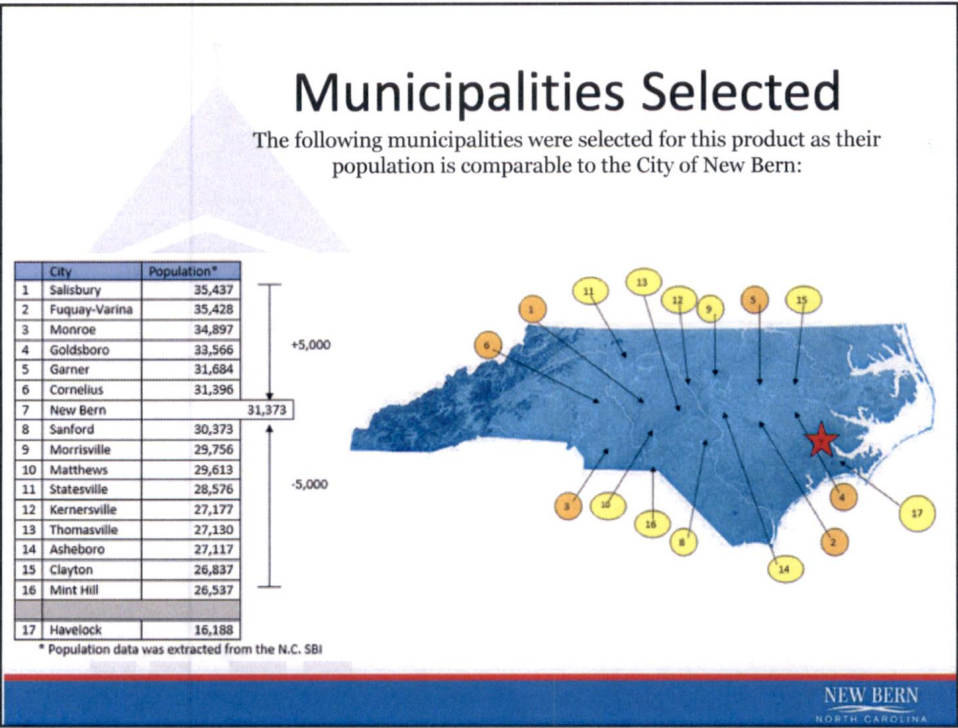
Important Notes



1. Comparing the City of New Bern's Crime rate to other municipalities within N.C. of similar size (+/- 5,000)
2. The City of Havelock was included due to its proximity to New Bern, N.C.
3. The N.C. State Bureau of Investigation does not publish data for a given year until the following year, meaning only 2022 (calendar year) crime data is available at this time.
4. Data for 2023 will not be available until early Summer 2024.

NEW BERN
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Conclusion

- Our analysis of data reflects that the City of New Bern has a lower-than-average crime rate compared to similar cities our size for violent crime or property crimes.
- Most sources researched online publish misleading/inaccurate information pertaining to criminal statistical data.

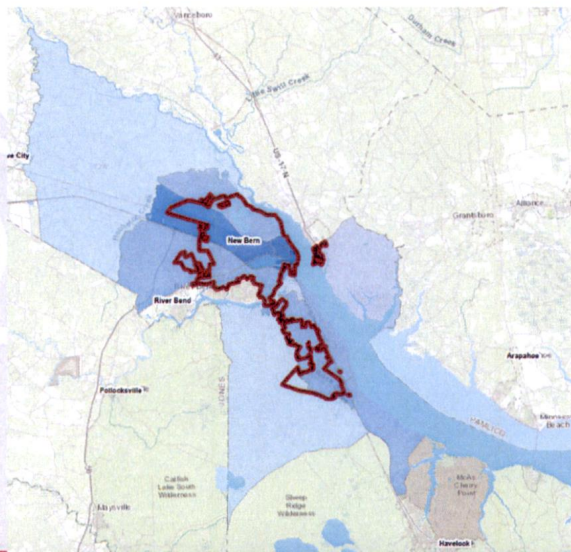
Three (3) recommended websites to view crime data for the City of New Bern are:

- Lexis-Nexis Community Crime Map
- Federal Bureau of Investigation's Crime Data Explorer
- North Carolina State Bureau of Investigation's Summary Statistics Report Viewer

NEW BERN
NORTH CAROLINA

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Conclusion



NEW BERN
NORTH CAROLINA

14

AGENDA ITEM COVER SHEET

Agenda Item Title:

Conduct a Public Hearing and Consider Adopting a Resolution Approving leases with New Bern Baseball LLC for Kafer Park at 603 George Street.

Date of Meeting: 1/23/2024	Ward # if applicable: 1
Department: Administration	Person Submitting Item: Foster Hughes, City Manager
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The board is asked to conduct a public hearing then consider leasing Kafer Park to New Bern Baseball, LLC for a summer college baseball league.
Actions Needed by Board:	Conduct a public hearing and consider approving the two leases.
Backup Attached:	Memo, Lease for Kafer Park, Lease for Restrooms
Is item time sensitive? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> 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: January 18, 2024

Subject: Conduct a Public Hearing and Consider Adopting a Resolution Approving leases with New Bern Baseball, LLC for Kafer Park at 603 George Street.

Background Information:

On July 25, 2023, Alec Allred, with the Old North State League, made a presentation to the Board of Aldermen to request a lease of Kafer Park for a summer collegiate baseball league. The Board made a request to gather public input.

On August 9th, A survey was released on the city website, through press and social media releases, and an information flyer was released. On August 14th, a community input meeting was held at the Omega Center. Alec Allred with the Old North State League made the presentation and answered questions.

On August 22, 2023, results of the survey and meeting were shared. 46 people were in attendance. The meeting was broadcast live on the parks and recreation face book page. The meeting is currently being broadcast on City 3 TV, with links available on You tube, and the city website. To date, the face book video has reached over 1,700 users. The You tube link has been viewed 30 times. To date, over 357 surveys have been received.

The board then gave direction for the City Manager to negotiate a lease with Alec Allred for use of Kafer Park.

Recommendation:

Conduct a public hearing and consider approving a lease for Kafer Park.

NORTH CAROLINA

CRAVEN COUNTY

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), dated January 23, 2024, for convenience of reference, is made by and between the CITY OF NEW BERN ("Lessor"), a North Carolina municipal corporation, and NEW BERN BASEBALL, LLC, ("Lessee"), a North Carolina limited liability company, collectively referred to as the "Parties."

WITNESSETH:

THAT WHEREAS, the Lessor owns the real property in the City of New Bern commonly referred to as Kafer Park located at the southeast corner of Cedar Street at its intersection with George Street, said parcel being identified by Craven County Tax Parcel Number 8-007-337; and

WHEREAS, the Lessee owns a baseball team that plays in the Old North State League, a collegiate baseball program; and

WHEREAS, the Lessor has agreed that the Lessee may lease a portion of Kafer Park identified as "Area A" on the illustration attached hereto as Exhibit A ("Premises") for use by Old North State League to conduct its collegiate baseball program and other related activities as generally described hereafter, subject to the terms and conditions established herein; and

WHEREAS, the Lessor has determined that the Premises will not be needed by the Lessor for the term of the Lease; and

WHEREAS, the Parties have agreed upon the terms of a Lease and wish to reduce their agreement to writing.

NOW, THEREFORE, the Lessor does hereby let and lease unto said Lessee, and said Lessee does hereby accept as tenant of said Lessor, the Premises, for the term and upon the conditions hereinafter set forth:

1. **INCORPORATION OF RECITALS.** The foregoing WHEREAS paragraphs are incorporated herein as part of the terms and conditions of this Lease.

2. **THE PREMISES.** In consideration of the obligation of Lessee to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Lessor hereby demises and leases the Premises and all improvements located thereon (collectively, the "Premises") to Lessee, and Lessee hereby leases the Premises from Lessor. Lessor reserves the right to install an historic marker on the Premises at a point along George Street and/or Cedar

Street with Lessor being solely responsible for the purchase, installation, and maintenance of the historic marker.

3. **CONDITIONS OF PREMISES AND TENANT UPFIT.** Lessor shall deliver the Premises to Lessee “as-is.” Lessee shall provide all upfitting and improvements to the Premises as more specifically provided in Section 11 at its sole cost and expense, which shall be performed in a workman-like manner with such work to be done in accordance with the requirements of local ordinances and public authorities having jurisdiction thereof, specifically including the North Carolina Building Code.

4. **TERM.** The term of this Lease shall commence on February 1, 2024 and shall continue through midnight on January 31, 2033, unless sooner terminated. The Parties, by written instrument, may agree to an extension of the lease term prior to the termination of this Agreement.

5. **RENT.** As rent for the said Premises, the Lessee agrees to maintain the Premises as set forth herein, and to pay the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) per annum during the term of this Lease, the first such payment to be made on July 1, 2024, with each subsequent annual payment to be made on or before July 1 of each subsequent year. For purposes of this Section 5, the Lessee may pay rent to the Lessor in cash, or in kind. The Lessor shall accept the payment of rent in kind only for the improvements specifically identified on Exhibit B or as otherwise provided in Section 11, where the Lessee provides the Lessor with written evidence of payments to third-parties for labor and materials associated with the improvements. The Lessee shall have the option of prepaying rent at any time in cash or in kind. Prepaid rent in excess of the annual rent shall be credited to subsequent years. Should prepaid rent in the form of cash and/or in kind investment exceed the total sum of \$200,000.00, the Lessee shall not be entitled to any refund of rent, nor shall the Lessee be credited with any additional prepaid rent in the event the Parties agree to enter into a written agreement to extend the term of this Agreement.

6. **PERMITTED USES.** The Lessee may use the Premises for collegiate baseball games, practices, competitions, and community events, and for no other purposes without the Lessor’s prior written consent. All of the Lessee’s activities conducted on the Premises shall be in full compliance with all applicable federal, state, and local ordinances. The Parties recognize and agree that the Lessee manages a for profit business, and that any and all revenue generated on the Premises shall remain the property of the Lessee. Should alcohol be sold or consumed on the Premises, the Lessee agrees to comply with all laws, rules and regulations regarding the same.

Should the Lessee require the Lessor's assistance in obtaining permits to sell alcoholic beverages on the Premises, the Lessor shall reasonably support the Lessee in such efforts. The Lessee may sell and display advertising at the Premises consistent with the Lessor's sign ordinance. Such advertising may include naming rights for various features within the Premises such as the stadium, dugouts or grand stand, but in no event may the Lessee rename the entirety of the Premises to anything other than Kafer Park. All such advertising and signage shall be removed from the Premises upon the termination of this Agreement unless the Parties otherwise agree in writing.

7. **PROHIBITED USES.** The Lessee shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable activities or nuisances. The Lessee agrees not to permit any Hazardous Material (as defined hereinafter) to be installed, brought, kept, used, stored or discharged upon the Premises in violation of any State, Federal or local environmental laws regulating Lessee's use and occupancy of the Premises. The Lessee shall indemnify the Lessor for any losses, damages, liability, claim, or expenses (including reasonable attorneys' fees) resulting from a breach of the aforesaid agreement or resulting from the exercise of the Lessee's rights to store or use any Hazardous Material in accordance with the provisions of this paragraph. For purposes hereof, the term "Hazardous Material" shall include, without limitation, any substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," or "toxic substances" by the Resource Conservation and Recovery Act of 1976, as amended from time to time, or the regulations promulgated thereunder, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or the regulations promulgated thereunder, the Toxic Substances Control Act, as amended from time to time, or the regulations promulgated thereunder, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement or any governmental authority having jurisdiction over the Premises which regulates or imposes liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, as now or at any time hereafter in effect. Without limiting the generality of the foregoing, the term "Hazardous Material" shall include dry cleaning solvents and petroleum products outside sealed containers. Notwithstanding the above, the Lessee shall not be responsible for any claim, demand, cost, damage, injury, loss, liability or change based on or arising out of the presence of any Hazardous Materials or conditions on or about the Premises which existed prior to the Lessee's

occupancy or which was not expressly caused by the Lessee, its agents, employees or representatives.

8. **UTILITIES.** All applications and connections for utility services required by the Lessee in conjunction with the Lessee's use and occupancy of the Premises shall be made in the name of the Lessee only, and the Lessee shall be solely responsible for obtaining such services and for the payment of all charges for such services as they become due. Such utility services include, but are not limited to, sewer, water, gas, electricity, and telephone services.

9. **REPAIR AND MAINTENANCE.** The Lessee accepts the Premises in its current "as is" condition. The Lessee shall maintain the Premises in good condition and repair. The Lessor shall have no obligation whatsoever regarding the repair, maintenance, or improvement of the Premises during the term of this Agreement. The Lessee shall promptly repair, improve, or remove any condition existing on the Premises that presents a risk to the public's safety. The Lessor retains the right to enter all areas of the Premises at any time without notice to the Lessee to ensure compliance with this Agreement or applicable law. In the event that the Premises become in need of repairs, the Lessor shall give prompt written notice to the Lessee, and the Lessee shall have a reasonable time thereafter to complete such repair so long as the Lessee promptly commences and diligently pursues such repair to completion.

10. **CARE OF PREMISES BY LESSEE.** The Lessee shall keep and maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; shall not permit undue accumulations of garbage, trash, rubbish and other refuse, and shall keep such refuse in proper containers in the areas designated therefor by the Lessor; and shall maintain temperatures within the buildings located on the Premises sufficient (and open taps to reduce pressure as needed) to prevent the freezing and bursting of water and sewer pipes serving such buildings. All repairs and replacements shall be of quality and class at least equal to the quality and class of the Premises at the time of entry by the Lessee. The Lessee shall not place or maintain any structures or other articles on the sidewalk or street adjacent to the Premises without Lessor's written consent.

11. **ALTERATIONS AND IMPROVEMENTS.** Lessee may only make changes, alterations or improvements to the Premises with the prior written consent of Lessor. Lessee shall not alter the murals that presently exist on the Premises, and shall restore and maintain such murals. If approved by Lessor, such work shall be done in accordance with the requirements of local

ordinances and public authorities having jurisdiction thereof. The improvements identified on Exhibit B are approved by the Lessor. Lessee shall make no such change, alteration or improvement which substantially affects the structural integrity of the Premises or substantially decreases the value of the Premises. All changes, alterations or improvements to the Premises shall remain for the benefit of Lessor unless otherwise provided in a writing signed by Lessor. Additionally, all improvements and personal property for which the Lessee proposes as in kind payments of rent, and to which the Lessor agrees, shall remain the property of the Lessor upon the termination of this Agreement.

12. CASUALTY AND LIABILITY INSURANCE. The Lessee, at its sole cost and expense, shall maintain for the benefit of the Lessor and the Lessee, general liability insurance protecting the Lessor and the Lessee against any claim or claims for damage arising by reason of injury, death or damage occasioned in, upon or adjacent to the Premises, and products liability, such insurance to protect the Lessor and the Lessee jointly and severally to the combined limit of no less than One Million and No/100 Dollars (\$1,000,000.00) for injury to or death of any one (1) or more persons by the same accident or for damage to property of other persons. Each policy effecting such coverage shall designate the Lessor, the Lessor's mortgagee, if any, as additional insureds as their respective interests may appear, and shall contain a clause that the insurer will not cancel or materially modify the insurance coverage without first giving the Lessor a minimum of thirty (30) days' advance written notice. Further, each such policy shall be carried with a reputable insurance company authorized to do business in North Carolina and reasonably approved by the Lessor, and a certificate of insurance shall be provided to the Lessor. In the event the Lessee at any time shall fail to maintain such insurance or shall fail to pay any and all premiums therefor, the Lessor shall have the right and option to effect such insurance and pay any and all premiums therefor; and, in the event of any such payment, the Lessee, shall pay to the Lessor a sum equal to the amount which was so paid for such insurance premiums within thirty (30) days of receipt of notice of the same, it being expressly understood that the Lessor shall have no obligation whatsoever hereunder to effect such insurance or to make such premium payments to cure the default of the Lessee. To the extent that the Lessee sells, serves, or authorizes the serving of alcoholic beverages on the Premises, such general liability insurance coverage shall include liquor liability insurance protecting against claims arising out of the sale or distribution of alcoholic beverages at the Premises.

13. **WORKERS' COMPENSATION INSURANCE.** The Lessee shall maintain workers' compensation insurance as required by law. Such policy shall designate the Lessor, as an additional insured, and shall contain a clause that the insurer will not cancel or materially modify the insurance coverage without first giving the Lessor a minimum of thirty (30) days' advance written notice. Further, such policy shall be carried with a reputable insurance company authorized to do business in North Carolina and reasonably approved by the Lessor, and a certificate of insurance shall be provided to the Lessor.

14. **DAMAGE OR DESTRUCTION.** In the event the Premises shall be totally or partially damaged or destroyed by fire, flood, act of God or other casualty, the duties, rights and obligations of the Lessor and the Lessee shall be as follows:

(a) If the Premises shall be destroyed by fire or other casualty or act of God, then this Agreement shall terminate as of the time of such destruction without further action on the part of either party.

(b) If the improvements upon the Premises shall be damaged or destroyed by fire, the elements, or other casualty to the extent the Premises cannot reasonably be used by the Lessee in the conduct of its activities, the Lessor or the Lessee may, at either party's election, terminate this Agreement by written notice to the other party not more than thirty (30) days after the occurrence of such damage or destruction.

15. **DEFAULT.** If the Lessor or the Lessee shall fail to perform or comply with any of the agreements or covenants of this Agreement and if such nonperformance shall continue for a period of ten (10) days after receipt of notice thereof, or, if such performance cannot be reasonably had within the ten (10) day period, such party shall not in good faith have commenced performance within the ten (10) day period and shall not diligently proceed to the completion of such performance, such event shall constitute a default under this Agreement.

16. **REMEDIES.** Upon the occurrence of any default, each party shall have all of the rights and remedies that are available under the laws of the State of North Carolina, including, but not limited to the termination of this Lease.

17. **ASSIGNMENT OR SUBLETTING.** The Lessee may sublet the Premises, or any portion thereof for a Permitted Use as defined in Section 6 for a period not to exceed fourteen (14) days. Otherwise, the Lessee shall not assign this Agreement nor sublet any part of the Premises without written consent of the Lessor.

18. **QUIET POSSESSION.** The Lessor agrees that the Lessee shall, upon paying the

rent and performing the covenants of this Agreement, quietly have, hold and enjoy the Premises during the term of this Agreement.

19. SURRENDER OF POSSESSION. Upon expiration of the term of this Agreement, the Lessee shall surrender the Premises to the Lessor in as good condition as the same are at the beginning of the lease term, reasonable wear and tear and casualty excepted. Any improvements that the Lessee has made to the Premises pursuant to the provisions of Section 11 shall remain the property of the Lessor upon the termination of this Agreement.

20. FIXTURES. The Lessee shall have the right to install on the Premises such fixtures or equipment deemed necessary by the Lessee for the conduct of the Lessee's operations. So long as the Lessee is not in default of the terms of this Agreement, and provided that such fixtures do not constitute the in kind payment of rent, all fixtures and equipment installed by the Lessee shall remain the property of the Lessee and the Lessee shall have the right to remove such equipment at any time up to and including the expiration date of this Agreement or sooner termination of this Agreement for any reason; provided, however, the Lessee shall give the Lessor ten (10) days' written notice prior to removal of a fixture that has been affixed to the foundation or structural systems of the Premises if the removal would damage in any way the Premises. The Lessee shall be responsible for the cost of repairing any damage to the Premises which is caused by such removal. Any fixtures installed by the Lessee shall automatically become the property of the Lessor, with the Lessee remaining liable for any indebtedness thereon, if such fixtures are not removed by the Lessee within a reasonable time after the expiration date of this Agreement or sooner termination of this Agreement for any reason.

21. NOTICES. All notices required to be given with respect to any matter pertaining to this Agreement shall be sent by certified mail, return receipt requested, or other nationally recognized overnight courier and shall be deemed delivered upon receipt or refusal if addressed to Lessee or to Lessor at the following addresses:

Lessor
City of New Bern
Attn: Director of Public Works
P.O. Box 1129
New Bern, N.C. 28560

Lessee
New Bern Baseball, LLC
456 Brady Street Ext.
Ramseur, NC. 27316

Either the Lessor or the Lessee may change the address to which notices are to be sent to them by giving written notice of such change of address to the other party as herein provided.

22. INDEMNIFICATION. To the maximum extent allowed by law, the Lessee shall indemnify, protect and save the Lessor and its officers, elected officials, employees, and agents (each, an "Indemnified Party," and collectively, the "Indemnified Parties"), harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees (collectively, "Indemnified Losses"), arising out of, connected with, or resulting directly or indirectly from this Agreement or the transactions contemplated by or relating to this Agreement, without limitation, provided that no indemnification is provided by the Lessee for Indemnified Losses to the extent they are caused by the intentional act or negligence of any Indemnified Party. The indemnification arising under this Section 22 shall survive the Agreement's termination.

23. LIENS. The Lessee agrees that it will not permit the claim of any contractor, subcontractor, mechanic, laborer, or materialmen to become and remain a lien on the Premises or upon the right, title, or interest of the Lessee created by this Agreement after the indebtedness secured by such lien shall become due unless the same is in the process of actually being contested in good faith on the part of the Lessee and in any event the Lessee will protect, indemnify, and save harmless the Lessor from and in respect of any and all such claims

24. MEMORANDUM OF LEASE. This Agreement shall not be recorded, but the Lessor and Lessee, at either's request, shall execute a memorandum of lease for recording purposes which shall contain only the information required by Section 47-118 of the North Carolina General Statutes.

25. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties with respect to the Premises, and cannot be changed or terminated except by written instrument subsequently executed by the parties hereto.

25. BINDING EFFECT. All the terms and conditions of this Agreement shall be binding upon and shall apply and inure to the benefit of the parties hereto.

26. CONSTRUCTION OF LEASE. In construing and interpreting this Agreement, the following rules shall apply:

(a) This lease shall be construed with equal weight for the rights of both parties, the terms hereof having been determined by fair negotiations with due consideration for the rights and requirements of both parties.

(b) Pronouns used in this lease importing any specific gender shall be interpreted to refer to corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require.

(c) Pronouns, verbs and/or other words used in this lease importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.

(d) Paragraph headings appearing in this lease are for purposes of easy reference and shall be considered a part of this lease and shall in no way modify, amend, or affect the provisions thereof.

27. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any differences between the parties as to their several rights or obligations under this Agreement not settled by mutual agreement after thorough discussion shall be submitted for informal mediation. The mediator shall be knowledgeable of the subject matter of the dispute and shall be agreed upon by the parties. The disputing parties shall share equally the cost of the mediator. If the parties cannot resolve their differences by mediation, the parties agree that any action relating to this Agreement shall be instituted and prosecuted in the state courts of Craven County, North Carolina, and each party hereto hereby does waive any and all defenses relating to venue and jurisdiction over the person.

28. COMPLIANCE WITH NONDISCRIMINATION LAWS. Lessee agrees to comply with all applicable federal, state, and local laws prohibiting discrimination.

29. RELATIONSHIP. This Agreement will not be deemed to give rise to an employment, joint venture, or partnership relationship between the parties.

30. SEVERABILITY. If any one or more of the provisions contained in this Agreement or any application thereof is found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and application thereof will not in any way be affected or impaired thereby.

31. CUMULATIVE REMEDIES, NO WAIVER. No right or remedy conferred upon or reserved by any of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy given hereunder or now or hereafter legally existing upon the occurrence of any event of default hereunder. Failure of any party hereto to insist at any time upon the strict

observance or performance of any of the provisions of this Agreement or to exercise any right or remedy will not be construed to be a waiver or relinquishment thereof.

32. **TITLE OF PROPERTY.** The Lessor will retain title to all property that is the subject of this Agreement, and the Lessee only acquires the right to use the above-described property in the regular course of its business.

33. **PRESUMPTION.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

34. **PARTIES IN INTEREST.** Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party

35. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The Parties shall accept electronic signatures, documents, notices, and records to the fullest extent provided by law, including in satisfaction of any requirements for documents to be in "writing" or "original." The delivery of an executed signature page by one Party to another via facsimile or e-mail transmission shall bind the transmitting Party to the same extent as service of the original signature page by hand delivery. A Party shall not be required, and the Parties waive any requirement for any Party, to produce the original of this Agreement in connection with any judicial, non-judicial, or other legal proceeding. Any photocopy, microfilm, microfiche or optical image of this Agreement may be presented as evidence in lieu of the original in any legal proceeding and shall have the same validity as the original. The Parties intend the Electronic Signatures in Global and National Commerce Act and North Carolina's version of the Uniform Electronic Transactions Act to apply to this Agreement and the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN TESTIMONY WHEREOF, the City has caused this instrument to be executed as its act and deed by the Mayor, and its corporate seal to be hereunto affixed, and attested by its City Clerk, all by the authority of its Board of Aldermen; and New Bern Baseball, LLC has executed or caused this document to be duly executed, all as of the day and year first above written.

LESSOR: **CITY OF NEW BERN**

By: _____
MAYOR

ATTEST:

City Clerk

(CORPORATE SEAL)

LESSEE: **NEW BERN BASEBALL, LLC**

By: _____
_____, Manager

[SEAL]

NORTH CAROLINA

CRAVEN COUNTY

I, _____, a notary public in and for said county and state, do hereby certify that on the ____ day of January, 2024, before me personally appeared JEFFREY ODHAM with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that she knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this the ____ day of January, 2024.

NOTARY PUBLIC

My Commission Expires:

NORTH CAROLINA

_____ COUNTY

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: _____.

Date: _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____

Exhibit A

Premises



Exhibit B

Approved Improvements

1. Cameras. Lessee shall be permitted to install cameras, poles, and related equipment ("Cameras") at the Premises which Cameras shall remain the property of Lessee, or a third party, and may be removed after the conclusion of the Term. Lessor shall have no ownership, license, use, or other rights in and to the Cameras, nor shall Lessor have any obligation to any third party as to the ownership, license, use, or other rights in and to the Cameras. In the event Lessor or any other party desires to use the Cameras, a separate agreement must first be entered into with Lessee.

NORTH CAROLINA

CRAVEN COUNTY

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), dated January 23, 2024, for convenience of reference, is made by and between the CITY OF NEW BERN ("Lessor"), a North Carolina municipal corporation, and NEW BERN BASEBALL, LLC, ("Lessee"), a North Carolina limited liability company, collectively referred to as the "Parties."

WITNESSETH:

THAT WHEREAS, the Lessor owns the real property in the City of New Bern commonly referred to as Kafer Park located at the southeast corner of Cedar Street at its intersection with George Street, said parcel being identified by Craven County Tax Parcel Number 8-007-337; and

WHEREAS, the Lessee owns a baseball team that plays in the Old North State League, a collegiate baseball program; and

WHEREAS, contemporaneous with the execution of this Agreement, the Parties are entering into a lease agreement whereby the Lessor has agreed that the Lessee may lease a portion of Kafer Park for use by Old North State League to conduct its collegiate baseball program and other related activities ("Kafer Park Lease Agreement"); and

WHEREAS, the Lessor has agreed that the Lessee may lease an additional portion of Kafer Park identified as "Area B" on the illustration attached hereto as Exhibit A ("Premises") to provide concessions to those attending events at Kafer Park, subject to the terms and conditions established herein; and

WHEREAS, the Lessor has determined that the Premises will not be needed by the Lessor for the term of the Lease; and

WHEREAS, the Parties have agreed upon the terms of a Lease and wish to reduce their agreement to writing.

NOW, THEREFORE, the Lessor does hereby let and lease unto said Lessee, and said Lessee does hereby accept as tenant of said Lessor, the Premises, for the term and upon the conditions hereinafter set forth:

1. **INCORPORATION OF RECITALS.** The foregoing WHEREAS paragraphs are incorporated herein as part of the terms and conditions of this Lease.

2. **THE PREMISES.** In consideration of the obligation of Lessee to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Lessor hereby demises and leases the Premises and all improvements located thereon (collectively the "Premises") to Lessee, and Lessee hereby leases the Premises from Lessor.

3. **CONDITIONS OF PREMISES AND TENANT UPFIT.** Lessor shall deliver the Premises to Lessee "as-is." Lessee shall provide all upfitting and improvements to the Premises as more specifically provided in Section 11 at its sole cost and expense, which shall be performed in a workman-like manner with such work to be done in accordance with the requirements of local ordinances and public authorities having jurisdiction thereof, specifically including the North Carolina Building Code.

4. **TERM.** The term of this Lease shall commence on February 1, 2024 and shall continue through midnight on January 31, 2033, unless sooner terminated. The Parties, by written instrument, may agree to an extension of the lease term prior to the termination of this Agreement.

5. **RENT.** As rent for the said Premises, the Lessee agrees to maintain the Premises as set forth herein, and to pay the sum of TWO THOUSAND TWO HUNDRED AND TWENTY-TWO AND 22/100 DOLLARS (\$2,222.22) per annum during the term of this Lease, the first such payment to be made on July 1, 2024, with each subsequent annual payment to be made on or before July 1 of each subsequent year. For purposes of this Section 5, the Lessee may pay rent to the Lessor in cash, or in kind. The Lessor shall accept the payment of rent as provided in Section 11 where the Lessee provides the Lessor with written evidence of payments to third-parties for labor and materials associated with the improvements. The Lessee shall have the option of prepaying rent at any time in cash or in kind. Prepaid rent in excess of the annual rent shall be credited to subsequent years. Should prepaid rent in the form of cash and/or in kind investment exceed the total sum of \$20,000.00, the Lessee shall not be entitled to any refund of rent, nor shall the Lessee be credited with any additional prepaid rent in the event the Parties agree to enter into a written agreement to extend the term of this Agreement.

6. **PERMITTED USES.** The Lessee may use the Premises to provide concessions to those attending events at Kafer Park, and for no other purposes without the Lessor's prior written consent. All of the Lessee's activities conducted on the Premises shall be in full compliance with all applicable federal, state, and local ordinances. The Parties recognize and agree that the Lessee manages a for profit business, and that any and all revenue generated on the Premises shall remain

the property of the Lessee. Should alcohol be sold or consumed on the Premises, the Lessee agrees to comply with all laws, rules and regulations regarding the same. Should the Lessee require the Lessor's assistance in obtaining permits to sell alcoholic beverages on the Premises, the Lessor shall reasonably support the Lessee in such efforts. The Lessee may sell and display advertising at the Premises consistent with the Lessor's sign ordinance. All such advertising and signage shall be removed from the Premises upon the termination of this Agreement unless the Parties otherwise agree in writing.

7. **PROHIBITED USES.** The Lessee shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable activities or nuisances. The Lessee agrees not to permit any Hazardous Material (as defined hereinafter) to be installed, brought, kept, used, stored or discharged upon the Premises in violation of any State, Federal or local environmental laws regulating Lessee's use and occupancy of the Premises. The Lessee shall indemnify the Lessor for any losses, damages, liability, claim, or expenses (including reasonable attorneys' fees) resulting from a breach of the aforesaid agreement or resulting from the exercise of the Lessee's rights to store or use any Hazardous Material in accordance with the provisions of this paragraph. For purposes hereof, the term "Hazardous Material" shall include, without limitation, any substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," or "toxic substances" by the Resource Conservation and Recovery Act of 1976, as amended from time to time, or the regulations promulgated thereunder, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or the regulations promulgated thereunder, the Toxic Substances Control Act, as amended from time to time, or the regulations promulgated thereunder, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement or any governmental authority having jurisdiction over the Premises which regulates or imposes liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, as now or at any time hereafter in effect. Without limiting the generality of the foregoing, the term "Hazardous Material" shall include dry cleaning solvents and petroleum products outside sealed containers. Notwithstanding the above, the Lessee shall not be responsible for any claim, demand, cost, damage, injury, loss, liability or change based on or arising out of the presence of any Hazardous Materials or conditions on or about the Premises which existed prior to the Lessee's

occupancy or which was not expressly caused by the Lessee, its agents, employees or representatives.

8. **UTILITIES.** All applications and connections for utility services required by the Lessee in conjunction with the Lessee's use and occupancy of the Premises shall be made in the name of the Lessee only, and the Lessee shall be solely responsible for obtaining such services and for the payment of all charges for such services as they become due. Such utility services include, but are not limited to, sewer, water, gas, electricity, and telephone services.

9. **REPAIR AND MAINTENANCE.** The Lessee accepts the Premises in its current "as is" condition. The Lessee shall maintain the Premises in good condition and repair. The Lessor shall have no obligation whatsoever regarding the repair, maintenance, or improvement of the Premises during the term of this Agreement. The Lessee shall promptly repair, improve, or remove any condition existing on the Premises that presents a risk to the public's safety. The Lessor retains the right to enter all areas of the Premises at any time without notice to the Lessee to ensure compliance with this Agreement or applicable law. In the event that the Premises become in need of repairs, the Lessor shall give prompt written notice to the Lessee, and the Lessee shall have a reasonable time thereafter to complete such repair so long as the Lessee promptly commences and diligently pursues such repair to completion.

10. **CARE OF PREMISES BY LESSEE.** The Lessee shall keep and maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; shall not permit undue accumulations of garbage, trash, rubbish and other refuse, and shall keep such refuse in proper containers in the areas designated therefor by the Lessor; and shall maintain temperatures within the buildings located on the Premises sufficient (and open taps to reduce pressure as needed) to prevent the freezing and bursting of water and sewer pipes serving such buildings. All repairs and replacements shall be of quality and class at least equal to the quality and class of the Premises at the time of entry by the Lessee. The Lessee shall not place or maintain any structures or other articles on the sidewalk or street adjacent to the Premises without Lessor's written consent.

11. **ALTERATIONS AND IMPROVEMENTS.** Lessee may only make changes, alterations or improvements to the Premises with the prior written consent of Lessor. If approved by Lessor, such work shall be done in accordance with the requirements of local ordinances and public authorities having jurisdiction thereof. Lessee shall make no such change, alteration or

improvement which substantially affects the structural integrity of the Premises or substantially decreases the value of the Premises. All changes, alterations or improvements to the Premises shall remain for the benefit of Lessor unless otherwise provided in a writing signed by Lessor. Additionally, all improvements and personal property for which the Lessee proposes as in kind payments of rent, and to which the Lessor agrees, shall remain the property of the Lessor upon the termination of this Agreement.

12. CASUALTY AND LIABILITY INSURANCE. The Lessee, at its sole cost and expense, shall maintain for the benefit of the Lessor and the Lessee, general liability insurance protecting the Lessor and the Lessee against any claim or claims for damage arising by reason of injury, death or damage occasioned in, upon or adjacent to the Premises, and products liability, such insurance to protect the Lessor and the Lessee jointly and severally to the combined limit of no less than One Million and No/100 Dollars (\$1,000,000.00) for injury to or death of any one (1) or more persons by the same accident or for damage to property of other persons. Each policy effecting such coverage shall designate the Lessor, the Lessor's mortgagee, if any, as additional insureds as their respective interests may appear, and shall contain a clause that the insurer will not cancel or materially modify the insurance coverage without first giving the Lessor a minimum of thirty (30) days' advance written notice. Further, each such policy shall be carried with a reputable insurance company authorized to do business in North Carolina and reasonably approved by the Lessor, and a certificate of insurance shall be provided to the Lessor. In the event the Lessee at any time shall fail to maintain such insurance or shall fail to pay any and all premiums therefor, the Lessor shall have the right and option to effect such insurance and pay any and all premiums therefor; and, in the event of any such payment, the Lessee, shall pay to the Lessor a sum equal to the amount which was so paid for such insurance premiums within thirty (30) days of receipt of notice of the same, it being expressly understood that the Lessor shall have no obligation whatsoever hereunder to effect such insurance or to make such premium payments to cure the default of the Lessee. To the extent that the Lessee sells, serves, or authorizes the serving of alcoholic beverages on the Premises, such general liability insurance coverage shall include liquor liability insurance protecting against claims arising out of the sale or distribution of alcoholic beverages at the Premises.

13. WORKERS' COMPENSATION INSURANCE. The Lessee shall maintain workers' compensation insurance as required by law. Such policy shall designate the Lessor, as

an additional insured, and shall contain a clause that the insurer will not cancel or materially modify the insurance coverage without first giving the Lessor a minimum of thirty (30) days' advance written notice. Further, such policy shall be carried with a reputable insurance company authorized to do business in North Carolina and reasonably approved by the Lessor, and a certificate of insurance shall be provided to the Lessor.

14. DAMAGE OR DESTRUCTION. In the event the Premises shall be totally or partially damaged or destroyed by fire, flood, act of God or other casualty, the duties, rights and obligations of the Lessor and the Lessee shall be as follows:

(a) If the Premises shall be destroyed by fire or other casualty or act of God, then this Agreement shall terminate as of the time of such destruction without further action on the part of either party.

(b) If the improvements upon the Premises shall be damaged or destroyed by fire, the elements, or other casualty to the extent the Premises cannot reasonably be used by the Lessee in the conduct of its activities, the Lessor or the Lessee may, at either party's election, terminate this Agreement by written notice to the other party not more than thirty (30) days after the occurrence of such damage or destruction.

15. DEFAULT. If the Lessor or the Lessee shall fail to perform or comply with any of the agreements or covenants of this Agreement and if such nonperformance shall continue for a period of ten (10) days after receipt of notice thereof, or, if such performance cannot be reasonably had within the ten (10) day period, such party shall not in good faith have commenced performance within the ten (10) day period and shall not diligently proceed to the completion of such performance, such event shall constitute a default under this Agreement.

16. REMEDIES. Upon the occurrence of any default, each party shall have all of the rights and remedies that are available under the laws of the State of North Carolina, including, but not limited to the termination of this Lease.

17. ASSIGNMENT OR SUBLETTING. The Lessee may sublet the Premises, or any portion thereof for a Permitted Use as defined in Section 6 for a period not to exceed fourteen (14) days. Otherwise, the Lessee shall not assign this Agreement nor sublet any part of the Premises without written consent of the Lessor.

18. QUIET POSSESSION. The Lessor agrees that the Lessee shall, upon paying the rent and performing the covenants of this Agreement, quietly have, hold and enjoy the Premises during the term of this Agreement.

19. **SURRENDER OF POSSESSION.** Upon expiration of the term of this Agreement, the Lessee shall surrender the Premises to the Lessor in as good condition as the same are at the beginning of the lease term, reasonable wear and tear and casualty excepted. Any improvements that the Lessee has made to the Premises pursuant to the provisions of Section 11 shall remain the property of the Lessor upon the termination of this Agreement.

20. **FIXTURES.** The Lessee shall have the right to install on the Premises such fixtures or equipment deemed necessary by the Lessee for the conduct of the Lessee's operations. So long as the Lessee is not in default of the terms of this Agreement, and provided that such fixtures do not constitute the in kind payment of rent, all fixtures and equipment installed by the Lessee shall remain the property of the Lessee and the Lessee shall have the right to remove such equipment at any time up to and including the expiration date of this Agreement or sooner termination of this Agreement for any reason; provided, however, the Lessee shall give the Lessor ten (10) days' written notice prior to removal of a fixture that has been affixed to the foundation or structural systems of the Premises if the removal would damage in any way the Premises. The Lessee shall be responsible for the cost of repairing any damage to the Premises which is caused by such removal. Any fixtures installed by the Lessee shall automatically become the property of the Lessor, with the Lessee remaining liable for any indebtedness thereon, if such fixtures are not removed by the Lessee within a reasonable time after the expiration date of this Agreement or sooner termination of this Agreement for any reason.

21. **NOTICES.** All notices required to be given with respect to any matter pertaining to this Agreement shall be sent by certified mail, return receipt requested, or other nationally recognized overnight courier and shall be deemed delivered upon receipt or refusal if addressed to Lessee or to Lessor at the following addresses:

Lessor
City of New Bern
Attn: Director of Public Works
P.O. Box 1129
New Bern, N.C. 28560

Lessee
New Bern Baseball, LLC
456 Brady Street Ext.
Ramseur, NC. 27316

Either the Lessor or the Lessee may change the address to which notices are to be sent to them by giving written notice of such change of address to the other party as herein provided.

22. **INDEMNIFICATION.** To the maximum extent allowed by law, the Lessee shall indemnify, protect and save the Lessor and its officers, elected officials, employees, and agents

(each, an "Indemnified Party," and collectively, the "Indemnified Parties"), harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees (collectively, "Indemnified Losses"), arising out of, connected with, or resulting directly or indirectly from this Agreement or the transactions contemplated by or relating to this Agreement, without limitation, provided that no indemnification is provided by the Lessee for Indemnified Losses to the extent they are caused by the intentional act or negligence of any Indemnified Party. The indemnification arising under this Section 22 shall survive the Agreement's termination.

23. **LIENS.** The Lessee agrees that it will not permit the claim of any contractor, subcontractor, mechanic, laborer, or materialmen to become and remain a lien on the Premises or upon the right, title, or interest of the Lessee created by this Agreement after the indebtedness secured by such lien shall become due unless the same is in the process of actually being contested in good faith on the part of the Lessee and in any event the Lessee will protect, indemnify, and save harmless the Lessor from and in respect of any and all such claims

24. **MEMORANDUM OF LEASE.** This Agreement shall not be recorded, but the Lessor and Lessee, at either's request, shall execute a memorandum of lease for recording purposes which shall contain only the information required by Section 47-118 of the North Carolina General Statutes.

25. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties with respect to the Premises, and cannot be changed or terminated except by written instrument subsequently executed by the parties hereto.

25. **BINDING EFFECT.** All the terms and conditions of this Agreement shall be binding upon and shall apply and inure to the benefit of the parties hereto.

26. **CONSTRUCTION OF LEASE.** In construing and interpreting this Agreement, the following rules shall apply:

(a) This lease shall be construed with equal weight for the rights of both parties, the terms hereof having been determined by fair negotiations with due consideration for the rights and requirements of both parties.

(b) Pronouns used in this lease importing any specific gender shall be interpreted to refer to corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require.

(c) Pronouns, verbs and/or other words used in this lease importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.

(d) Paragraph headings appearing in this lease are for purposes of easy reference and shall be considered a part of this lease and shall in no way modify, amend, or affect the provisions thereof.

27. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any differences between the parties as to their several rights or obligations under this Agreement not settled by mutual agreement after thorough discussion shall be submitted for informal mediation. The mediator shall be knowledgeable of the subject matter of the dispute and shall be agreed upon by the parties. The disputing parties shall share equally the cost of the mediator. If the parties cannot resolve their differences by mediation, the parties agree that any action relating to this Agreement shall be instituted and prosecuted in the state courts of Craven County, North Carolina, and each party hereto hereby does waive any and all defenses relating to venue and jurisdiction over the person.

28. **COMPLIANCE WITH NONDISCRIMINATION LAWS.** Lessee agrees to comply with all applicable federal, state, and local laws prohibiting discrimination.

29. **RELATIONSHIP.** This Agreement will not be deemed to give rise to an employment, joint venture, or partnership relationship between the parties.

30. **SEVERABILITY.** If any one or more of the provisions contained in this Agreement or any application thereof is found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and application thereof will not in any way be affected or impaired thereby.

31. **CUMULATIVE REMEDIES, NO WAIVER.** No right or remedy conferred upon or reserved by any of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy given hereunder or now or hereafter legally existing upon the occurrence of any event of default hereunder. Failure of any party hereto to insist at any time upon the strict

observance or performance of any of the provisions of this Agreement or to exercise any right or remedy will not be construed to be a waiver or relinquishment thereof.

32. **TITLE OF PROPERTY.** The Lessor will retain title to all property that is the subject of this Agreement, and the Lessee only acquires the right to use the above-described property in the regular course of its business.

33. **PRESUMPTION.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

34. **PARTIES IN INTEREST.** Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party

35. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The Parties shall accept electronic signatures, documents, notices, and records to the fullest extent provided by law, including in satisfaction of any requirements for documents to be in "writing" or "original." The delivery of an executed signature page by one Party to another via facsimile or e-mail transmission shall bind the transmitting Party to the same extent as service of the original signature page by hand delivery. A Party shall not be required, and the Parties waive any requirement for any Party, to produce the original of this Agreement in connection with any judicial, non-judicial, or other legal proceeding. Any photocopy, microfilm, microfiche or optical image of this Agreement may be presented as evidence in lieu of the original in any legal proceeding and shall have the same validity as the original. The Parties intend the Electronic Signatures in Global and National Commerce Act and North Carolina's version of the Uniform Electronic Transactions Act to apply to this Agreement and the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN TESTIMONY WHEREOF, the City has caused this instrument to be executed as its act and deed by the Mayor, and its corporate seal to be hereunto affixed, and attested by its City Clerk, all by the authority of its Board of Aldermen; and New Bern Baseball, LLC has executed or caused this document to be duly executed, all as of the day and year first above written.

LESSOR: **CITY OF NEW BERN**

By: _____
MAYOR

ATTEST:

City Clerk

(CORPORATE SEAL)

LESSEE: **NEW BERN BASEBALL, LLC**

By: _____
_____, Manager

[SEAL]

NORTH CAROLINA

CRAVEN COUNTY

I, _____, a notary public in and for said county and state, do hereby certify that on the ____ day of January, 2024, before me personally appeared JEFFREY ODHAM with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that she knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this the ____ day of January, 2024.

NOTARY PUBLIC

My Commission Expires:

NORTH CAROLINA

_____ COUNTY

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: _____.

Date: _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____

Exhibit A

Premises



AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Approving the Execution of a General Warranty Deed Between Habitat for Humanity of Craven County, Marc S. Thomas, and the City of New Bern for 1701 Aycock Avenue

Date of Meeting: 1/24/2024	Ward # if applicable: Ward 2
Department: City Attorney	Person Submitting Item: Jamie Bullock
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The City conveyed 1701 Aycock Avenue to Habitat subject to the terms and conditions of a Transfer and Reversion Agreement. The property has been developed, and Habitat requests the City release any rights retained by the agreement by executing a deed to the buyer, Marc S. Thomas.
Actions Needed by Board:	Consider adopting resolution and executing deed
Backup Attached:	Memo, resolution, and general warranty deed
Is item time sensitive? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:

MEMORANDUM

TO: Mayor and Members of the Board
City Manager

FROM: Jaimee Bullock, Assistant City Attorney

RE: Property at 1701 Aycock Avenue conveyed by the City to Habitat for Humanity
of Craven County NC

DATE: January 23, 2024

In September of 2019, the City conveyed numerous properties, including property at 1701 Aycock Avenue (Craven County parcel identification number 8-039-231) 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, Marc S. Thomas, 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 23rd DAY OF JANUARY, 2024.

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

The property herein conveyed DOES NOT include the primary residence of a Grantor.

Parcel No. 8-039-231
Revenue Stamps \$ _____

NORTH CAROLINA
CRAVEN COUNTY

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, dated the _____ day of _____, 2024, 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"); **Marc S. Thomas**, whose address is 1701 Aycock Ave., 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 January 1, 2023, 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 tract or parcel of land lying and being situate in the City of New Bern, Number Eight (8) Township, Craven County, North Carolina, and being more particularly described as follows: Lying, situate and being in Craven County, North Carolina in that certain settlement of subdivision known as Pembroke near the City of New Bern, the lot hereby conveyed being known and designated as Lot No. 438 of said subdivision of Pembroke, a map or plat of which is recorded in Map Book 1 at Page 104 of the Craven County Registry, to which reference is hereby made.

Being one of the lots described in a deed from A.T. Dill et al. to G.S. Waters dated February 20, 1917, and recorded in Book 231, Page 227, Office of the Register of Deeds of Craven County, to which reference is hereby made. Also being that same property described in that certain deed of record in Book 476, Page 275 of Craven County Registry.

This conveyance is made subject to the restrictive and protective covenants which are attached hereto as Exhibit A.

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 March 8, 2016, and recorded in Book 3430, Page 820 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.

****THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK****

**Habitat for Humanity of Craven County NC,
a North Carolina nonprofit corporation**

BY: _____
Rose MacNeal, President

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that **Rose MacNeal** personally appeared before such Notary Public this day in the State of North Carolina and County of Craven

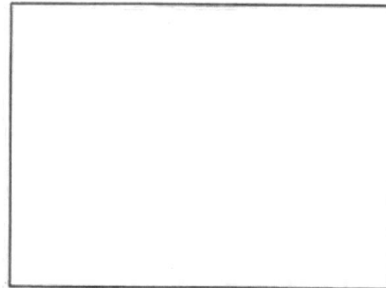
and acknowledged (i) that she is the President of **Habitat for Humanity of Craven County NC, North Carolina nonprofit corporation**, and (ii) that by authority duly given and as the act of such corporation, she signed the foregoing instrument in the name of such corporation on such corporation's behalf as its act and deed.

WITNESS my hand and notarial seal, this _____ day of _____, 2024.

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, _____, a Notary Public for said county and state, do hereby certify that on this day before me personally appeared **Jeffrey T. Odham**, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that **Brenda E. Blanco** is the City Clerk for the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official stamp or seal, this the _____ day of _____, 2024.



Notary Public

My Commission Expires: _____

EXHIBIT A

(Deed: Marc Stephen Thomas)

This Restrictive and Protective Covenants Agreement, entered into this the ____ day of _____, 2024, by and between **Habitat for Humanity of Craven County NC**, a North Carolina non-profit corporation (hereinafter called "Habitat"), and **Marc Stephen Thomas** (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:

1. 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. FENCE RESTRICTION. No fence shall be erected on the Property that does not comply any governing authority or principality's zoning ordianances or historic overlay districts.

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 (5) years 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 (5) years 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:

<u>Year</u>	<u>Percentage</u>
Fifth anniversary to sixth anniversary	6.6%
For each subsequent year through the 14 th 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 sixth 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 sixth 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:

<u>Year</u>	<u>Percentages</u>
Sixth anniversary to seventh 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. **DEFAULT.** 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. **SUCCESSORS AND ASSIGNS.** This agreement shall be binding upon, and inure to the benefit of, the parties hereto, and any subsequent owner of the property described herein.

9. **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.

11. **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.

Marc Stephen Thomas

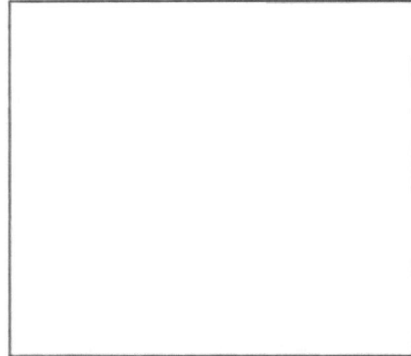
ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that **Marc Stephen Thomas** 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 _____, 2024.

My Commission Expires:

NOTARY PUBLIC



NOTARY SEAL/STAMP MUST APPEAR
LEGIBLY IN BOX TO RIGHT

**Habitat for Humanity of Craven County,
a North Carolina nonprofit corporation**

BY: _____
Rose MacNeal, President

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that **Rose MacNeal** personally appeared before such Notary Public this day in the State of North Carolina and County of Craven and acknowledged (i) that she is the President of **Habitat for Humanity of Craven County NC, North Carolina nonprofit corporation**, and (ii) that by authority duly given and as the act of such corporation, she signed the foregoing instrument in the name of such corporation on such corporation's behalf as its act and deed.

WITNESS my hand and notarial seal, this _____ day of _____, 2024.

My Commission Expires:

NOTARY PUBLIC

NOTARY SEAL/STAMP MUST APPEAR
LEGIBLY IN BOX TO RIGHT



AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider adopting resolution authorizing City Manager to execute change orders related to the construction of the Stanley A. White Recreation Center.

Date of Meeting: 1/23/2024	Ward # if applicable: Ward 2
Department: Public Works	Person Submitting Item: George Chiles, Director of Public Works
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	Consider adopting resolution authorizing the City Manager to execute change orders related to the construction of the Stanley A. White Recreation Center in the amount of \$171,950.84.
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Resolution, Memo, Change Order Requests and Supporting Documents.
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item: \$171,950.84
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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

January 12, 2024

Memo to: Mayor and Board of Aldermen
From: George Chiles, Director of Public Works
Re: Stanley A. White Recreation Center

Background Information:

The Governing Board adopted a resolution on May 23, 2023, authorizing the City Manager to execute contract documents with T.A Loving Company, and any change orders within the budgeted amount of \$13,180,400.00.

As a part of the construction plans and specifications, portions of the new building were to be constructed using delegated designs. During the construction and completion of delegated designs, changes were required related to additional structural steel, addition of step footings to accommodate utility penetrations into building, and testing of excavated soils which the Geotechnical Engineers determined to be unsuitable for use as structural backfill. Additional changes were made to quantities and selections of interior finishes many of which were credits to contract amount. These change orders have been reviewed and considered necessary and appropriate.

Recommendation:

The Director of Public Works of the City of New Bern recommends the City Manager be authorized to execute a change order to the Stanley A. White Recreation Center contract with T.A. Loving Company, in the amount of \$171,950.84.

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

RESOLUTION

THAT WHEREAS, after advertising and receiving bids for Stanley A. White Recreation Center, the Governing Board adopted a resolution on May 23, 2023, authorizing the City Manager to execute contract documents with T.A. Loving Company and any change orders within the budgeted amount of \$13,180,400.00; and

WHEREAS, the Board of Aldermen has since approved and allocated funds for the Stanley A. White Recreation Center; and

WHEREAS, the Director of Public Works of the City of New Bern recommends the City Manager be authorized to execute a change orders to the Stanley A. White Recreation Center contract with T.A. Loving Company in the amount of \$171,950.84 related to additional structural steel, the addition of step footings to accommodate utility penetrations into the building, and testing of excavated soils which the Geotechnical Engineers determined to be unsuitable for use as structural backfill. Additional changes were made to quantities and selections of interior finishes.

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 change orders to the contract with T.A. Loving Company for the Stanley A. White Recreation Center related to changes for necessary additional structural steel, the addition of step footings to resolve utility services into the building, and the determination by Geotechnical Engineers of unsuitable excavate soils necessary for structural backfill, in the amount of \$171,950.84, a copy of which is attached hereto and incorporated herein by reference.

ADOPTED THIS 23RD DAY OF JANUARY 2024.

JEFFERY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

CHANGE ORDER NO. 1

January 15, 2024

Project Name: Stanley A. White Recreation Center
Contractor: T.A. Loving Company
Contractor Address: 400 Patetown Rd.
Goldsboro, NC 27530

Summary of major changes to this contract:

- **STEEL AND JOIST CHANGES** - Structural steel changes from associated ASI's added a total of 24 tons of steel to the project. These changes were generated from structural design changes required for the precast wall panels. Steel and wall connections changed in various locations throughout the building as well as joist sizing to support necessary loads. Included in this summary of changes is cost to engineering and detail, shop fabrication labor, paint labor, and material. These changes total **\$93,867.98**
- **UNSUITABLE SOILS** - Terracon is the 3rd party testing agency employed by the City of New Bern. During density testing of parking lots and storm control measure number two, there were 2,002 cubic yards of soil deemed unsuitable. Soil quantities and areas were identified per Terracon's proof rolling observation report dated 2023-09-12. Unsuitable soil removal and replacement was priced as outlined under "unit prices" within Owner /Contractor contract. These changes total **\$54,948.08**
- **STEP FOOTING CHANGES** - Multiple utilities required the footings to be stepped down to allow a clear path in and out of the building footprint. These utilities were electrical, sewer, plumbing, and roof drains. These step footings required extra excavation, extra rebar, and extra concrete. In these areas of step footings, the specified step footing detail was not wide enough to receive the precast wall panel. The stem walls in these locations increased in size from 12 inches to 18 inches. This was required so the contractor could make necessary weld connections to embeds. These changes total **\$41,889.38**

Original contract amount	\$13,180,400.00
Net change by previous Change Orders	<u>\$0.00</u>
Contract total prior to this Change Order	\$13,180,400.00
Total Adds	\$269,324.62
Total Deducts	(\$97,373.78)
Amount of this Change Order No. 1	<u>\$171,950.84</u>
Revised contract total including this Change Order	\$13,352,350.84

Percent of original contract amount: 1%

**The Contract time is not affected by this change order. **

Contract Items		Quantity	Unit Price	Cost Adjustment
Additional Work Items				
CHANGE ORDER NO. 1				
C1A	System Development Fees	1.00 LS	\$20,832.00	\$20,832.00
C1B	HRU-1B Electrical Credit	1.00 LS	(\$1,183.90)	(\$1,183.90)
C1C	Unsuitable Soils	1.00 LS	\$54,948.08	\$54,948.08
C1D	Rebar and Concrete ASI#006	1.00 LS	\$1,277.82	\$1,277.82
C1E	Water stop at Retaining Wall	1.00 LS	\$7,028.30	\$7,028.30
C1F	Utility Conduit Underground Work	1.00 LS	\$8,775.15	\$8,775.15
C1G	Door and Door Frames ASI#005	1.00 LS	\$15,244.60	\$15,244.60
C1H	Hollow Metal Door Add	1.00 LS	\$1,257.30	\$1,257.30
C1I	Workroom 103 Cabinet Reduction	1.00 LS	(\$814.54)	(\$814.54)
C1J	Step Footing Design Changes	1.00 LS	\$41,889.38	\$41,889.38
C1K	Waterproofing Retaining Wall and Footing	1.00 LS	\$10,603.13	\$10,603.13
C1L	Fire Main Elevation Conflict	1.00 LS	\$13,600.88	\$13,600.88
C1M	Wood Handrail Credit	1.00 LS	(\$13,669.88)	(\$13,669.88)
C1N	Steel Changes ASI# 001-006	1.00 LS	\$74,068.98	\$74,068.98
C1O	Joist Connection Changes	1.00 LS	\$5,096.12	\$5,096.12
C1P	Joist Load Calculations	1.00 LS	\$14,702.88	\$14,702.88
C1Q	Precast Mockup Credit	1.00 LS	(\$26,426.25)	(\$26,426.25)
C1R	Roofing Panel Credit	1.00 LS	(\$30,000.00)	(\$30,000.00)
C1S	Scoreboard Credit	1.00 LS	(\$23,600.00)	(\$23,600.00)
C1T	Emergency Lighting Credit	1.00 LS	(\$1,679.21)	(\$1,679.21)
Totals				\$171,950.84

Accepted and approved:

Foster Hughes, City Manager
City of New Bern

Dated: 01/23/2024

AGENDA ITEM COVER SHEET

Agenda Item Title:

Discussion of old BP building change in scope of work

Date of Meeting: 1/23/2024	Ward # if applicable: 1
Department: Administration	Person Submitting Item: Foster Hughes, City Manager
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	This city owned facility, located at 2602 Oaks Road, was previously used for storage and as a workshop for Public Works staff. This property was substantially damaged during Hurricane Florence. At the Board's November 14, 2023 meeting, several options were discussed but no direction was given. The item has been tabled several times.
Actions Needed by Board:	Provide direction to the City Manager on moving forward with this item.
Backup Attached:	Potential project list
Is item time sensitive? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> 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: January 12, 2024
Subject: Discussion of old BP Building Change in Scope of Work

Background Information:

The City was notified by FEMA that \$955,812.07 was allocated toward the rebuilding of the old BP building, located at 2602 Oaks Road. The building was previously used as a storage and workshop for Public Works staff. This property was substantially damaged during Hurricane Florence. During the November 14th meeting, the Manager reviewed several options. The Aldermen also provided their input on potential projects. The matter was tabled until the December 12th meeting and subsequently tabled twice more until this meeting.

Recommendation:

Provide direction to the City Manager on moving forward with a change in scope of work on the BP project.

DISCUSSION ON BP BUILDING CHANGE IN SCOPE OF WORK



In a previous board meeting, we discussed that FEMA had awarded the city \$955,812.07 to rebuild the old BP building at 2602 Oaks Road. We discussed a change in scope of work for this project. With a change in scope, the City would perform any asbestos abatement, remove the building and parking lot, and seed. The estimated cost would be approximately \$20,000, which would come from the FEMA allocated funds. A variety of projects were discussed at the time. Since then, a few other potential projects have been reviewed. Potential projects are listed below.

Potential Projects:

- Amphitheater – Martin Marietta Park
- Fire Station – West New Bern
- Fire Truck (Fire-Rescue)
- Grounds Maintenance Facility (Parks & Recreation)
- Public Works Facility
- Skid Steer Mulcher (Public Works)

Amphitheater

- An amphitheater is listed in the Master Plan for Martin Marietta Park. When the master plan was written (2018), the estimated cost of an amphitheater was approximately \$1 million. Since that time, the estimated cost is approximately \$2 million.
- Currently there is only a concept plan for an amphitheater.
- There are no construction plans.
- Previously, there was discussion on leasing out the amphitheater to a concert promoter. In speaking with major promoters, they typically perform a market study in areas of interest. No market study has been conducted. Previous discussions with promoters have shown no interest without a firm design and a firm plan to construct a suitable facility.
- If built for the purpose of bringing in regional and national acts, and promoters have no interest in leasing the amphitheater, the City would need additional staff, funding etc. to book the venue and manage it.
- Currently, there is no consistent track record of admission-based concerts in the area.

Fire Station

- Based on current construction costs, the cost to build a new station could be between \$4 and \$6 million.
- There is no designated property for a new fire station.
- Staff has been working on a concept plan to be reviewed by the Board of Aldermen at a future date.
- Estimated time for construction drawings and construction would be approximately two years.

Fire Truck

- The FY24 budget includes one fire truck. During the budget work session, there was discussion on adding a 2nd truck instead of rebuilding the 21-year-old one. We said we would revisit when pricing came in.
- The most recent quote for new truck would cost: \$986,661.00 (*\$870,661 if paid within 30 days of signing contract*)
- FEMA allows funds to be used to purchase fire trucks.
- When the fire truck is sold for surplus at end of life, FEMA would be paid the sales price.

Grounds Maintenance Facility

- Grounds Maintenance – This division of Parks and Recreation is currently located on a ¾ acre tract of land with 2 buildings. The division has outgrown the space with limited room for equipment and vehicle storage.
- Space is limited at Glenburnie Park.
- Suitable land out of the flood zone is limited.
- A concept plan and assessment for future needs is in the beginning stages.

Public Works Facility

- One plan was to build a new Public Works Facility beside Water Resources on Hwy 55. Once built, this would allow Parks and Recreation to move into the old Public Works facility.
- General price estimates to construct a new facility are approximately \$3.5 million.

Skid Steer Mulcher (Public Works)

- Staff are still reviewing the need for this equipment.
- Quote is approximately \$150,000.

City Manager Recommendation:

- Request change in scope of work to purchase an additional fire truck for Fire-Rescue.

Additional projects for consideration:

- Resurface Lincoln Street, Hillmont Rd, Alabama Ave, and Beaufort Street in Ward 5.
- Add additional parking at Pleasant Hill Community Center.
- Use remaining funds to pave additional streets.

AGENDA ITEM COVER SHEET

Agenda Item Title:

Discussion of Governing Board Rules of Procedure

Date of Meeting: 1/23/2024	Ward # if applicable: N/A
Department: City Clerk	Person Submitting Item: Brenda Blanco
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	As requested, a review and discussion of the Board's rules of procedure is to take place. A copy of the current rules is provided for reference.
Actions Needed by Board:	Review and direction for changes, if any
Backup Attached:	Rules of Procedure adopted by resolution on 01/09/2018
Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost of Agenda Item: \$0
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:

Aldermen

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



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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: Brenda Blanco, City Clerk

DATE: January 12, 2024

SUBJECT: Discussion of Governing Board Rules of Procedure

At the January 09, 2024 meeting, the Board voted to discuss its rules of procedure. A copy of the current rules is provided for review. The rules were last amended in January of 2018.

RESOLUTION

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

That the amended Rules of Procedure of the Board of Aldermen of the City of New Bern, a copy of which is 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 9th DAY OF JANUARY, 2018.


DANA E. OUTLAW, Mayor
BRENDA E. BLANCO, City Clerk

Board of Aldermen

of the

City of New Bern

Rules of Procedure

I. Applicability

These rules apply to all meetings of the Board of Aldermen of the City of New Bern at which the board is empowered to exercise any of the executive, quasi-judicial, administrative, or legislative powers conferred on it by law.

II. Regular, Special and Emergency Meetings

Rule 1. Regular Meetings

The board of aldermen shall adopt a schedule of its regular monthly meetings prior to the commencement of each calendar year. Regular meetings of the board of aldermen shall be held at city hall, located at 300 Pollock Street, New Bern, North Carolina, and shall begin at 6:00 p.m. A current copy of the board's regular meeting schedule shall be filed with the city clerk, and available on the city's official website.

Rule 2. Special, Emergency, and Recessed Meetings

(a) **Special Meetings.** The mayor, or two members of the board of aldermen may at any time call a special meeting of the board. At least forty-eight hours before a special meeting called in this manner, written notice of the meeting stating its time and place and the subjects to be considered shall be (1) given to each board member; (2) posted on the board's principal bulletin board or, if none, at the door of the board's usual meeting room; and (3) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the city clerk.

A special meeting may also be called or scheduled by vote of the board in open session during another duly called meeting. The motion or resolution calling or scheduling the special meeting shall specify its time, place, and purpose. At least forty-eight hours before a special meeting called in this manner, notice of the time, place, and purpose of the meeting shall be (1) posted on the board's principal bulletin board or, if none, at the door of the board's usual meeting room and (2) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the city clerk. Only those items of business specified in the notice may be discussed or transacted at a special meeting, unless (1) all members are present; and (2) the board determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

(b) Emergency Meetings. The mayor, or two members of the board of aldermen may at any time call an emergency meeting of the board by signing a written notice stating the time and place of the meeting and the subjects to be considered. Written or oral notice of the meeting shall be given to each board member and to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request with the city clerk, and whose request includes the newspaper's, wire service's, or station's telephone number. Notice to the news media shall be given at the expense of the party notified.

Emergency meetings may be called only because of generally unexpected circumstances that require immediate consideration by the board. Only business connected with the emergency may be considered at an emergency meeting.

(c) Recessed Meetings. A properly called regular, special, or emergency meeting may be recessed to a time and place certain by a procedural motion made and adopted as provided in Rule 16(b), Motion 2, in open session during the regular, special, or emergency meeting. The motion shall state the time and place when the meeting will reconvene. No further notice need be given of such a recessed session of a properly called regular, special, or emergency meeting.

(d) Cancellations. Any regular, special, or recessed meeting of the board of aldermen shall be cancelled upon a declaration of a state of emergency by the Craven County Department of Emergency Services. In the event of such a cancellation, the city shall notify the local media of the cancellation, and to the extent possible, cause a notice of the cancellation to be posted at the door of the board's usual meeting room.

III. Organization of the Board

Rule 3. Organizational Meeting

The board shall hold an organizational meeting at its regular meeting place at 6:00 p.m. on the second Tuesday in December following a regular municipal election, and quadrennially thereafter. Initially, the previous board shall convene, at which time it shall approve any prior minutes and may consider any unfinished business it desires to complete. It shall then adjourn *sine die*. Immediately following, the newly elected board shall convene and take and subscribe the oath of office as the first order of business. As the second order of business, the board shall elect a mayor pro tem, using one of the nomination and voting procedures set out in Rule 25. The mayor pro tem shall act as mayor whenever the mayor shall be absent from the city or be prevented by sickness or other cause from attending to the duties of his office, and he shall possess all the rights and powers of the mayor during the continuance of such vacancy, absence or disability. The mayor shall preside at meetings of the board of aldermen and shall exercise such other powers and perform such other duties as are or may be conferred and imposed upon him by the general laws of North Carolina, by the City Charter, and the ordinances of the city. The mayor shall have the right to vote on any question before the board of aldermen.

IV. Agenda

Rule 4. Agenda

(a) **Agenda.** The city manager shall cause to be prepared an agenda and agenda package for each meeting. A request to have an item of business placed on the agenda may be raised by any board member as 'new business' on the agenda, and upon receiving a majority vote, shall be placed on a future agenda as directed. An agenda package shall include, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce, and shall contain a copy of all proposed resolutions and ordinances as may appear on the agenda. Each board member shall receive a copy of the proposed agenda and agenda package no later than three (3) days prior to each regular meeting in either digital or hard copy form, as requested by each board member. The proposed agenda and agenda package shall also be available for public inspection and appear on the city's official website no later than three (3) days prior to each regular meeting, or as soon as possible if three (3) days is not practical. Nothing in this section shall preclude the city manager from modifying the proposed agenda and agenda package at any time prior to a board meeting as the city's business dictates.

(b) **Adoption of the Agenda.** As its first order of business at each meeting, the board shall, as specified in Rule 6, discuss and revise the proposed agenda and adopt an agenda for the meeting. The board may by majority vote add items to or subtract items from the proposed agenda, except that the board may not add items to the agenda of a special meeting unless (a) all members are present and (b) the board determines in good faith at the meeting that it is essential to discuss or act on the item immediately. If items are proposed to be added to the agenda, the board may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all board members.

The board may designate certain agenda items "for discussion and possible action." Such designation means that the board intends to discuss the general subject area of that agenda item before making any motion concerning that item.

(c) **Open Meetings Requirements.** The board shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the board to understand what is being deliberated, voted, or acted on. However, the board may deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda—sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on—are available for public inspection at the meeting.

Rule 5. Petition of Citizens.

The board shall provide at least one period for public comment per month at its first regular monthly meeting of the board. In compliance with N.C.G.S. §160A-81.1, the board establishes the following policy for monthly public comments at the first regular meeting of the board of

aldermen each month. The clerk shall provide sign-up forms at the entry to the city hall meeting room prior to each meeting for persons who desire to address the board. Forms shall be available until the commencement of the board meeting. The purpose of the time for informal public comments is to allow for public input to the board on issues germane to the city. It is not intended to compel board members or staff to answer questions in an impromptu manner.

Each speaker will speak from the podium, and begin their remarks by giving their name, stating whether or not they are residents of the city, and stating the topic about which they intend to speak. Comments will be directed to the full board, not to an individual board member, staff members, or the audience. 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. Speakers may not yield any of his or her time to another speaker.

Speakers must be courteous in their language and presentation. Personal attacks will not be tolerated. Speakers may leave written comments and/or supporting documents, if any, with the clerk to the board.

If at the beginning of the public comment period, the mayor determines that the time required to hear all speakers on the sign-up sheet would unduly disrupt the conduct of city business or cause undue inconvenience to citizens in attendance for other items on the agenda, the mayor may require the designation of spokesman, or the selection of delegates, for groups of persons supporting or opposing the same positions, whose time shall be limited to a maximum of 4 minutes. The mayor may also move the period for public comment to some time later in the meeting.

Notwithstanding the mayor's prerogatives under this Rule 5, any decision of the mayor may be appealed and overruled by a majority of the Board.

Rule 6. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

1. Discussion and revision of the proposed agenda; adoption of an agenda
2. Public hearings
3. Administrative reports
4. Approval of minutes
5. Appointments
6. Attorney's report
7. City manager's report
8. New Business
9. Closed session, if any

By general consent of the board, items may be considered out of order.

V. Conduct of Debate

Rule 7. Presiding Officer

The mayor shall preside at board meetings if he or she is present, unless he or she becomes actively engaged in debate on a particular matter. In order to address the board, a member must be recognized by the mayor.

If the mayor is absent, the mayor pro tem shall preside. If both the mayor and mayor pro tem are absent, another member designated by majority vote of the board shall preside. The mayor pro tem, or another member who is temporarily presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the presiding officer becomes actively involved in debate on a particular matter, he or she may designate another board member to preside over the debate. The presiding officer shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;

To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;

To entertain and answer questions of parliamentary law or procedure;

To call a brief recess at any time;

To adjourn in an emergency.

A decision by the presiding officer under any of the first three powers listed may be appealed to the board upon motion of any member, pursuant to Rule 16, Motion 1. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

Rule 8. Action by the Board

(a) The board shall proceed by motion, except as otherwise provided for in Rules 3, 4, and 25. Any member, including the mayor, may make a motion

(b) **Attendance via Simultaneous and/or Electronic Communication.** In order to participate in a meeting via simultaneous and/or electronic communication, the following criteria

must be met:

1. The official meeting was properly noticed under G.S. 143-318.12 and under any other requirement for notice applicable to the board.
2. The member or members participating from a remote location by simultaneous communication can fully participate in the deliberations.
3. The member or members of the board participating from a remote location by simultaneous communication can be heard by the other members of the board and any other individual in attendance at the official meeting.
4. The vote of the member or members of the board participating from a remote location by simultaneous communication is not by electronic mail or facsimile.
5. If the Mayor is participating from a remote location by simultaneous communication, the mayor pro temp or some other member of the board who is physically present shall preside at the official meeting. The Mayor or presiding officer of the board participating from a remote location by simultaneous communication shall retain the same voting rights he or she has when presiding.
6. The official meeting, or part of an official meeting with a member or members of the board participating from a remote location by simultaneous communication is not allowed in any quasi-judicial proceeding.
7. No written ballots may be taken at the official meeting with a member or members of the board participating from a remote location by simultaneous communication.
8. If the official meeting involves a member of the board participating from a remote location by simultaneous communication by which the member or members cannot be physically seen by the public body, that member must comply with all of the following:
 - (i) The participation of the member or members must be announced when the meeting is commenced or at the beginning of participation.
 - (ii) The member identifies himself or herself prior to participating in the deliberations during the official meeting.
 - (iii) The member identifies himself or herself prior to voting.
9. The member or members participating from a remote location by simultaneous communication shall have been provided with any documents to be considered during the official meeting.

Rule 9. Second Required

A motion requires a second before the board may proceed with discussion or action on the motion.

Rule 10. One Motion at a Time

A member may make only one motion at a time.

Rule 11. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

Rule 12. Adoption by Majority Vote

(a) A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 22 being present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

(b) A roll call vote shall be required for the following actions:

1. Adoption of an ordinance;
2. Adoption of a written resolution; and
3. Upon the request of the mayor, or at least two (2) other members of the board

Rule 13. Voting by Written Ballot

The board may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the board shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the city clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Rule 14. Debate

The mayor shall state the motion and then open the floor to debate. The mayor shall preside over the debate according to the following general principles:

1. The maker of the motion is entitled to speak first;
2. A member who has not spoken on the issue shall be recognized before someone who has already spoken;
3. To the extent possible, the debate shall alternate between proponents and opponents of the measure.

Rule 15. Ratification of Actions

To the extent permitted by law, the board may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Rule 16. Procedural Motions

(a) Certain Motions Allowed. In addition to substantive proposals, only the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

(b) Order of Priority of Motions. In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the board, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn. This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess to a time and place certain shall also comply with the requirements of Rule 2(c).

Motion 3. To Take a Brief Recess. This motion allows the board to pause briefly in its proceedings rather than to recess to a time and place certain.

Motion 4. Call to Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

Motion 5. To Suspend the Rules. The board may not suspend provisions of the rules that state requirements imposed by law on the board. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the board rather than of a quorum present.

Motion 6. To Go into Closed Session. The board may go into closed session only for one or more of the permissible purposes listed in G.S. 143-318.11(a):

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning

of Chapter 132 of the General Statutes;

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award;

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded;

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session;

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract;

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting;

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct;

(8) To formulate plans by a local board of education relating to emergency response to

incidents of school violence or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team; or

(9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318(a)(3) shall identify the parties in each existing lawsuit concerning which the board expects to receive advice during the closed session, if in fact such advice is to be received.

Motion 7. To Leave Closed Session. This motion is made to return from a closed session to an open meeting.

Motion 8. To Divide a Complex Motion and Consider It by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 9. To Defer Consideration (also, To Table). The board may defer a substantive motion for later consideration at an unspecified time. A substantive motion the consideration of which has been deferred expires one hundred (100) days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending (has not expired). A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 16(b), Motion 14], or else move to suspend the rules [Rule 16(b), Motion 5].

Motion 10. Motion for the Previous Question. The motion is not in order until there have been at least twenty (20) minutes of debate and every member has had an opportunity to speak once.

Motion 11. To Postpone to a Certain Time or Day. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules [Rule 16(b), Motion 5].

Motion 12. To Refer a Motion to a Committee. The board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty (60) days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire board, whether or not the committee has reported the matter to the board.

Motion 13. To Amend.

(a) An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend.

(b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.

(c) Any amendment to a proposed ordinance or resolution shall be reduced to writing before the vote on the amendment.

Motion 14. To Revive Consideration. The board may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 16(b). The motion is in order at any time within one hundred (100) days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires one hundred (100) days after the deferral unless a motion to revive consideration is adopted.

Motion 15. To Reconsider. The board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority, except in the case of a tie; in that case the "nos" prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Motion 16. To Rescind or Repeal. The board may vote to rescind actions it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.

Motion 17. To Prevent Reintroduction for Six Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to a majority of the entire membership of the board, rather than of a quorum. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the board, whichever occurs first.

Rule 17. Renewal of Motion

A motion that is defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

Rule 18. Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first.

Rule 19. Duty to Vote

Every member must vote unless excused by the remaining members of the board. A member who wishes to be excused from voting shall so inform the presiding official, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest, as defined by the board or by law, or the member's official conduct, as defined by the board. In all other cases, a failure to vote by a member who is physically present in the board chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Rule 20. Conflicts of Interest

(a) Implicit in the operations and conduct of city government is the constant expectation that the board recognize that in all their transactions and at all times they are subject to the duty of undivided loyalty to the city. The nature of their obligations is such that it demands positive action on their part to affirmatively protect and promote the interest of the city committed to their care, and at all times to avoid situations where their self-interests, actual or apparent, may be of such nature or extent as to conflict with performance of that primary responsibility.

(b) The scope of human activity is so broad that it is unadvisable to attempt to enumerate here all possible areas in which a conflict of interest might arise. Consequently, the following is an illustrative list only, and is not intended to proscribe all aspects of the conduct of the board in their capacity as city elected officials:

1. No member of the board should use their positions or the knowledge gained therein in such manner that a conflict between the city's interests and their personal interests arise. Both the fact and the appearance of the conflicting interests are to be avoided.

2. Members of the board should refrain from transmitting any knowledge of city considerations or decisions or any other information which might be prejudicial to the interest of the city to any person other than in connection with the discharge of their responsibility.

3. If any applicable statutes or laws exist, strict compliance with the provisions of such statutes or laws is expected, whether local, state or federal.

4. Whenever a board member has a personal interest, whether individually or through another party that has or may have business dealings with the city, he or she shall disclose that interest to the city manager for proper consideration and action.

5. Whenever a board member has an opportunity to engage in a transaction in which the city would otherwise wish to engage in, he or she shall disclose that interest to the city manager chair for proper consideration and action.

6. If a board member is in a position where access to the city's confidential information may materially influence his or her decisions in another party engaged in business with the city, he or she shall decline that information.

7. If a board member is in a position where access to the city's confidential information may materially influence his or her personal financial or investment decisions, he or she shall decline that information.

8. Board members shall at all times fully comply with the board's code of ethics.

(c) Members of the board shall comply with all laws and requirements governing conflicts of interest, self-benefiting, gifts and favors, and misuse of confidential information, as required by N.C.G.S. §§14-234, 14-234.1, and 133-32.

(d) If at any time an elected official finds that they are in doubt as to the proper application of the city's policy on conflicts of interest with respect to any particular situation, or they find that they might have a financial interest or outside relationship which might involve a conflict of interest, they should immediately make all the facts known to the city manager for proper consideration and action.

Rule 21. Closed Sessions

The board may hold closed sessions as provided by law. The board shall commence a closed session only after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session. The motion to go into closed session must be approved by the vote of a majority of those present and voting. The board shall terminate the closed session by a majority vote, using Motion 7 of Rule 16(b).

Only those actions authorized by statute may be taken in closed session. A motion to adjourn shall not be in order during a closed session.

Rule 22. Quorum

(a) A majority of the actual membership of the board, excluding vacant seats shall constitute a quorum. A majority is more than half. The mayor shall be considered a member of the board in determining the number on which a majority is based and in counting the number of members actually present. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

(b) A member or members of the board participating from a remote location by simultaneous communication shall be counted as present for quorum purposes, and all votes of members of the board made during an official meeting with simultaneous communication shall be counted as if the member were physically present in the place of the official meeting, provided all of criteria outlined in this Rule 22, and Rule 20 above, are met.

Rule 23. Public Hearings

Public hearings required by law or deemed advisable by the board shall be organized by a resolution that sets forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted for each speaker, and other pertinent matters. The resolution shall be adopted by a majority vote. Its specifications may include, but are not limited to, rules fixing the maximum time allotted to each speaker; providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the open meetings law, for those excluded from the hall to listen to the hearing); and providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the open meetings law applicable to board meetings shall also apply to public hearings at which a majority of the board is present; such a hearing is considered to be part of a regular or special meeting of the board. These requirements also apply to hearings conducted by appointed or elected committees of board members, if a majority of the committee is present. A public hearing for which any required notices have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the board, or of a board committee, as applicable, is present.

At the time appointed for the hearing, the presiding official or his or her designee shall call the hearing to order and then preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall entertain a motion to end the hearing.

Rule 24. Minutes

Full and accurate minutes of the board proceedings, including closed sessions, shall be kept. The board shall also keep a general account of any closed session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection of the public, except as otherwise provided in this rule. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the board, the entire board shall be polled by name on any vote.

Members' and other persons' comments may be included in the minutes if the board approves.

General accounts of closed sessions are sealed upon approval by the board. Such sealed general accounts shall be withheld from public inspection until the city attorney makes a determination that public inspection of such general accounts would frustrate the purpose of the closed session, at which point they shall be unsealed by the city clerk.

Rule 25. Appointments

(a) The board may consider and make appointments to other bodies, including its own committees, if any, only in open session. The board may not consider or fill a vacancy among its own membership except in open session. Appointments will be made according to the North Carolina General Statutes, when applicable.

(b) The board shall at all times comply with the North Carolina Constitutional and statutory prohibitions on dual-office holding.

(c) If an appointee has unexcused absences which constitute more than 25% of the Board meetings in any calendar year which he or she is required to attend pursuant to his or her appointment, he or she may be asked to resign by majority vote of the board, commission or committee. Excused absences are defined as absences caused by events beyond one's control. If the individual refuses to resign when asked he or she may be dismissed by action of the Board of Aldermen subject to state or local law. A calendar year is to be defined as a 12-month period beginning on the date of appointment.

(d) Appointees must uphold city policies pertaining to the board, commission, or committee on which he or she serves.

(e) The city shall cause the following appointment information to be published on the city's official website for each board, commission or committee where the city has an official appointment:

1. The name.
2. A brief summary of its function.
3. The total number of members and terms of office.
4. The requirements for office and duties of each appointed position.
5. The current members, including names and terms served.
6. The regular meeting day, time, and location, if available.
7. The method by which each appointment is made.

(f) The board shall use the following procedure to make appointments to various other boards and committees:

1. Notification of available appointments. A list of available positions stating terms of office, requirement for office, and duties of positions shall be available for public inspection in the

office of the city clerk, and published on the city's official website at the beginning of each calendar year.

2. Selection Process.

(i) Individuals interested in applying for appointment shall submit a written application on a form provided by the city to the city clerk and available on the city's official website.

(ii) The city clerk shall provide the board with written notification that vacancies exist on the various boards, commissions and committees appointed by the board or its members. This notification along with applications of interested citizens shall be provided to the board at a regular meeting.

(iii) Nominations for vacancies may be made at the same meeting at which the vacancy is considered; provided, however, that upon a motion and second, nominations may be delayed until a subsequent meeting upon a simple majority vote. Once the floor is opened for nominations, the member or members shall put forth nominations with no second required, and debate such nominations where necessary. When the debate has ended, and if only one nomination is made, the appointment shall be approved by a voice vote of a majority of the board. If more than one nomination is made, the city clerk shall call the roll of the members and each member shall cast a vote. The nominee who receives the highest votes shall be the nominee appointed.

3. Applications. All applications for appointments shall remain active and on file with the city clerk for a period of one (1) year.

Rule 26. Committees and Boards

(a) Establishment and Appointment. The board may establish and appoint members for such temporary and standing committees and boards as are required by law or needed to help carry on the board's work. Any specific provisions of law relating to particular committees and boards shall be followed.

(b) Open Meetings Law. The requirements of the open meetings law shall apply to all elected or appointed authorities, boards, commissions, councils, or other bodies of a local governmental unit that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions. However, the law's requirements shall not apply to a meeting solely among the city's professional staff.

Rule 27. Amendment of the Rules

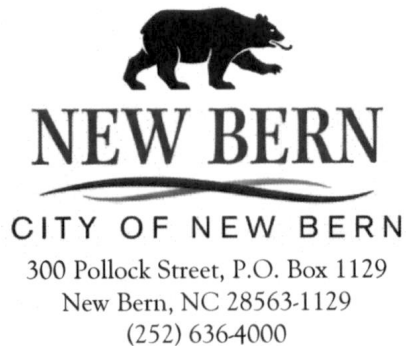
These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of the stated purposes of the meeting, unless a statute or a rule of the board provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum.

Rule 28. Reference to *Robert's Rules of Order*

The board shall refer to the current edition of *Robert's Rules of Order Newly Revised* to answer procedural questions not resolved in these rules so long as *RONR* does not conflict with North Carolina law or with the spirit of these rules.

Aldermen

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



Jeffrey T. Odham

Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

Memorandum

TO: Mayor and Board of Aldermen

FROM: Brenda Blanco, City Clerk

DATE: January 18, 2024

SUBJECT: Appointment to Municipal Service District Advisory Committee

The resolution establishing the Municipal Service District Advisory Committee provides for one at-large appointment from the Board of Aldermen to serve as an ex officio, non-voting member. This official will serve in addition to the Ward 1 Alderman.