

**City of New Bern  
Board of Aldermen Work Session  
January 05, 2021 – 11:30 A.M.  
City Hall Courtroom  
300 Pollock Street**

Mayor Outlaw opened the meeting with prayer. The pledge of allegiance was recited.

**Roll Call:** Mayor Dana Outlaw; Aldermen Sabrina Bengel, Jameesha Harris (via telephone), Robert Aster, Johnnie Ray Kinsey, Barbara Best (via telephone), and Jeffrey Odham. Absent: None. A quorum was present.

**Also in Attendance:** Mark Stephens, City Manager; Michael Scott Davis, City Attorney; and Brenda Blanco, City Clerk.

Alderman Bengel expressed condolences to the family of Lonnie Pridgen and reflected upon Mr. Pridgen's contributions to the City.

Mr. Stephens provided an overview of the agenda, noting a desire to present items to the NC General Assembly at their upcoming long session.

**1. Discussion of Election Process.**

The City's elections are held every four years on an odd year. Noting 2021 is an election year, Mr. Stephens stated the latest census data would likely not be ready in time for redistricting to take place. Alice Wilson, GIS Coordinator, shared a PowerPoint presentation reviewing the census results and procedures for redistricting. The Equal Protection Clause requires districts be substantially equal in population. With respect to staying under the 10% deviation rule, Alderman Bengel questioned whether that rule was actually 3% or 5%. Mrs. Wilson stated it had always been 10%, but she would research whether the percentage had changed.

Based on changes in the number of housing units, Mrs. Wilson predicted Ward 3 would need to be redrawn to include only residents of Township 7. Existing residents in other areas of Ward 3 would likely be split between Wards 1 and 2. Noting the timeline for making changes, Mr. Stephens again said it was highly unlikely that changes would be made in time for the 2021 election. Mrs. Wilson pointed out the previous redistricting took approximately one year from start to finish.

Mayor Outlaw inquired as to whether the census took into consideration the residents who had temporarily been displaced because of Hurricane Florence. Noting she was the Chair of the Local Government Committee for the State GIS, Mrs. Wilson responded that was a big concern and she has pushed for that information to be taken into consideration.

Referring to Mr. Stephens' comments, Alderwoman Harris questioned whether the current board or next board would vote on the redistricting. Mr. Stephens explained if the census data were not received until May, June, or July, that would not provide time for the ballots to be adjusted for the 2021 election. Alderman Bengel then asked if the current Board would decide the new boundaries before its term ended, even if it were after this year's election. Mr. Stephens recalled in 2012, it took a year for the results to be finalized following a challenge of the 2012 Census figures. Alderwoman Harris voiced favor in letting the next Board decide the wards. Based on the information she heard, Alderman Best said she too felt it best to let the next Board make the decision. Alderman Bengel said she was not pushing one way or the other, and if the information was not ready during the current Board's term, she had no issue with waiting for the next Governing Board to consider the topic of redistricting.

Alderman Odham asked Mrs. Wilson to define residency district and explain the difference between that and a true electoral district. Mrs. Wilson confirmed the City operates under a true electoral district, and the only requirement under a residency district is that the voter must reside within the city limits.

Meloni Wray, Director of Craven County Elections, explained the cost savings that would be associated with moving the elections to November without a runoff and the savings associated with holding the election in even years. Alderman Bengel inquired about Trent Woods' plans, and Mrs. Wray stated she was not aware that the town had voted for any changes yet. If New Bern moved its election to even years, that meant the next Board's term would either be a one-year or a five-year term.

With 2021 being an election year, Alderwoman Harris said she respectfully felt the new Board should be the ones to consider whether the election needed to be changed. She did not feel it was a decision to be made by the current Board. Alderman Odham agreed, stating the Board had discussed this topic a couple of years ago and it was a bit late for the current Board to be considering a change. However, he did believe there was a better and cheaper way to hold the elections. He asked the City Attorney to confirm that the current Board could start the process to change the election, but the next Board could reverse the decision. Mr. Davis confirmed that was a possibility, and he explained a local bill could give the municipality the flexibility of a fifth option that is outside of the current statutes, although he cautioned that legislators may not like that.

Delane Jackson, Town Manager of River Bend, was in the audience as a spectator. Mayor Outlaw asked him whether River Bend intended to make any changes. Mr. Jackson responded River Bend's council had not officially discussed the issue or taken any action, and he was in attendance to observe New Bern's considerations. Mr. Jackson said he felt it would be beneficial for all Craven County municipalities to collaborate on the topic and move to even years.

Alderman Bengel expressed concern about the cost of elections and said the savings would show the City was being good a steward of its money. Mrs. Wray said by moving the election to even-numbered years, the City would only pay for ballots; if the election was moved to November, it would share costs with other municipalities. Attorney Davis pointed out that if a November election were chosen, it would be a plurality election with no runoff; to have a runoff would require a local bill and would involve additional costs.

Alderwoman Harris felt it was unethical for the current Board to make any changes at this time, and she again reiterated her desire that the new Board consider the matter. Alderman Kinsey voiced agreement with Alderwoman Harris. Noting the City conducts a nonpartisan election, he too agreed the next Board should be the one to contemplate any change. Considering the City's overall budget of approximately \$127 million, he stated election costs would not impact the City's finances.

Alderman Odham asked if it were possible to preserve the runoff, but have the election on an even year when the County has its partisan primary. Mayor Outlaw expressed concern that the Supreme Court's ruling with respect to Kinston may preclude that. Alderman Odham asked what other municipalities were holding elections in 2021. Mrs. Wray replied all other municipalities in Craven County except Cove City and Vanceboro, although their elections would be held in November and not in October.

Alderman Best concurred that a November election in an even year would have a better turnout and cost less, although she did not feel the current Board should initiate that process. Mayor Outlaw said the current Board should have acted when the topic first arose, but it addressed other issues that took precedence.

Mr. Stephens stated his sense from the discussion was that the current Board would not initiate any changes. Alderman Bengel asked if the current Board wanted to move the 2021 election from October to November whether that could be done without legislative approval. Mr. Davis confirmed the Board could move the election to November after conducting a public hearing and following the statutory process. Alderwoman Harris asked if moving the 2021 election to November meant there would not be a runoff, and Mr. Davis confirmed that as well. Alderman Odham expressed support for a runoff and recommended the City Manager encourage the next Board to discuss the election process at their first retreat, to which Alderwoman Harris voiced agreement. Alderman Bengel asked if the next Board could change the length of their term so that it would end in an even year. Mr. Davis was not sure, but expressed political concerns about doing that.

Alderman Aster said \$40,000 would be a good down payment on a firefighter, police officer, or other employee and would help cover the cost of cleaning out ditches. He stated if New Bern was only one of a few North Carolina cities holding elections in its current manner, he did not see why the City should not move to a

November election. Alderwoman Harris said the City had sufficient fund balance to cover the things that needed to be done, and she again voiced her opinion that a decision should be considered by the next Board. She repeated that changing to a November election would remove the runoff. Alderman Aster said there were only 15 of 550 cities in North Carolina that hold a runoff, and Alderwoman Harris asked why it was necessary to compare New Bern to other cities. She again expressed moral concerns about the current Board making a change. Alderman Bengel suggested the Board digest the information it had received and pointed out that Mrs. Wray stated the City had until May to make any change. Alderman Odham asked Mr. Davis about the statutory deadlines, and Mr. Davis responded that there would be 4-8 weeks of procedural steps. Mr. Stephens thought April or May would be a good time to make a decision. Alderman Bengel stated she would research whether a Board could change its term in the middle of a term.

## **2. Discussion of Charter and Any Other Topics Requiring Legislative Action.**

Mr. Stephens said several items had been brought up that would require legislative action, such as removal of boats in waterways, payment in lieu of sidewalks, and potential changes to the Police Civil Service Board. Each of those items were reviewed and discussed as follows:

- Removal of boats from waterways: Mr. Davis suggested the Board ask the legislature for a local bill to authorize the City to remove boats and regulate them much like minimum housing is regulated. This would be similar to local bills obtained by the Towns of Beaufort and Manteo. Alderman Aster asked if it would be easier for the City to ask Craven County to join in the efforts. Mr. Davis recalled that the County already has a statute that allows it to take some action.

After brief discussion, Mr. Davis stated a resolution would be prepared for the Board to consider at its next meeting. The resolution will seek a local bill to allow the City to address concerns in the navigable waterways.

- Payment in lieu of sidewalks: Mr. Davis said the question arises from time to time as to whether cities have the legal authority to charge developers for sidewalks that will not immediately be installed on their property. The City currently has the authority to require the installation of sidewalks as part of a development's approval process. The problem is there may be sections of sidewalks that connect to nothing. This occurs when a development is required to build a sidewalk, but the sidewalk does not link to an existing sidewalk. The Board could consider asking for a local bill that allows the City to charge a developer for the sidewalk that they were going to install, and then the City systematically construct the sidewalk in a manner that provides continuity.

Mayor Outlaw said this would essentially be an impact fee, and the NC Association of Realtors and NC Builders were totally against impact fees.

If implemented, Mayor Outlaw suggested developers be provided with an option and that any fees paid by developers should stay in the ward in which the property was developed. The details of the program could be worked out later, if the legal methodology is made available.

Mr. Davis proposed that the City ask for a local bill to create statutory authority for the Board to adopt an ordinance whenever it desires. He explained once the Board had that authority, it may choose to wait several years before taking action. Aldermen Bengel and Aster suggested moving forward so the option would be available. Mr. Davis stated he would draft a resolution to be presented at the Board's next meeting. Alderman Best voiced a need for sidewalks.

- Police Civil Service Board ("PCSB") – There are five cities in North Carolina that have PCSBs. Asheville has a Civil Service Board that is available to all its employees. That Board can potentially reverse actions of reprimand, demotion, or termination. Charlotte, Wilmington, and Statesville have a similar board that is available to fire and police employees. New Bern is the fifth City with a civil service board, and that board is only available to police officers and is part of New Bern's charter. The only way to eliminate it is to have a local bill to amend the charter.

New Bern's PCSB was implemented around 1965 right after the Civil Rights Act of 1964. It was likely designed to ensure that minorities could serve and not be fired inappropriately. The PCSB historically vetted all applicants and heard appeals for suspensions and terminations. The Governing Board removed the first step a few years ago to eliminate the board's involvement in hiring because it made New Bern uncompetitive by lengthening the process for hiring officers. New Basic Law Enforcement Training ("BLET") grads were getting jobs much quicker at other cities. Currently, the PCSB only functions as an appeal process for police and not any other department in the City. Mr. Davis said it is hard to verbalize why the Police Department would be treated differently than other departments. If the PCSB is a great idea, it should be available to all employees.

Noting he was not privy to any PCSB hearing, Mayor Outlaw stated his opinion was that the scope of the PCSB hearings were not in the spirit of the original creation of the PCSB. He further stated that, in his opinion, if the PCSB was refined to exclude non-civil rights matters then the PCSB could operate more efficiently. Politically, he did not think that removing New Bern's PCSB would happen any time soon. Mayor Outlaw and Mr. Davis both felt that at the time of its creation, reform was only needed in the Police Department.

Alderman Odham asked whether an employee in another department could sue the City since the Police Department has an extra layer of protection that is not provided to them. Mr. Davis said that was a good question, but

he did not know the answer. Alderman Odham then asked if there was any department in the City that had the backup of a union, and Mr. Davis was unaware of such.

For clarification, Mr. Davis explained the PCSB does not correlate to the new social movement over the last few years to form police department review committees. The mission of those committees is to improve transparency and ensure that departments are operating fairly. The PCSB is simply an employment-related appeals board.

Mayor Outlaw reiterated his position that the PCSB was created in the spirit of the 1964 Civil Rights Act and did not have anything to do with hiring or non-civil rights matters. Alderwoman Harris sought clarification on the Mayor's position. Mr. Davis explained his interpretation of the Mayor's comment was that of a proposal to amend the charter to limit the PCSB's jurisdiction to address only matters of civil rights instead of every issue outside of that. Alderman Odham asked were civil rights not already protected, and Mr. Davis confirmed federal laws were now in place to protect those rights. Alderman Kinsey agreed with the Mayor's position.

Mr. Davis said he would speak with colleagues to see if an amendment could establish a meaningful difference from the PCSB's current function. Mayor Outlaw questioned whether the PCSB had taken on cases in the last five years that were not within the spirit of the PCSB. During his entire career, Mr. Davis said he had not witnessed a civil rights issue. Mr. Davis said the City's charter was not narrow and specific to civil rights, but instead was very broad. Alderman Aster announced that he had been contacted by many police officers who all wanted to keep the board intact. Mayor Outlaw raised the question as to why the City would offer a civil service board only for police officers and not all employees, and he suggested the board be expanded to include all City employees. Alderman Aster rebutted that if such an amendment were made then the City might as well get rid of its department heads because the civil service board would then run the City, and the City would never be able to terminate an employee.

Alderman Odham confirmed with Mr. Davis that if an employee's termination were reversed by the PCSB then the PCSB had overruled staff's decision with no questions asked. If the City did not have a PCSB and an officer were terminated, the police officer's union or representative then could sue the City for wrongful termination. Thus, the police officer would still have legal rights. Mr. Davis noted every employee has legal rights with respect to wrongful termination. The Police Department is the only part of the City that has a group to solely represent them. Noting the City was interviewing for the position of Chief of Police, Alderman Odham said if he were interviewing for the position that New Bern would be at the bottom of his list if he knew it had a PCSB. Mr. Stephens said the topic had not arisen in the interviews thus far, and he was not sure any candidates

were aware of the PCSB, especially since there are only 5 out of 550 cities in North Carolina. Chief Summers said he had no idea when he came to New Bern that the PCSB existed.

Mayor Outlaw noted his earlier comments were not about eliminating the PCSB, but refining and reidentifying its purpose. He said he would be interested in knowing if someone from the School of Government could help the City determine what would be equitable to all City employees, not just some of the employees. He again suggested the PCSB only hold hearings related to the 1964 Civil Rights Act.

Alderwoman Harris asked if a public hearing would be required to make a change in the PCSB. Mr. Davis said a hearing was not required, but the Board could have one if desired. Alderwoman Harris suggested a hearing be held as there may be community members with concerns.

Alderman Aster questioned whether the PCSB would have an effect on hiring a police chief. Mr. Stephens responded that if a candidate knew about the board's existence, it probably would have an effect unless that candidate was used to working with unions. Mayor Outlaw reiterated his concerns about all employees not having the same opportunities.

Mr. Davis noted the PCSB hears one appeal every one to two years. It has only overturned a decision twice, per his recollection. Alderman Kinsey questioned whether additional appeal boards should be created for all the other employees, and Mr. Davis stated he did not recommend that and noted it would require at least the addition of one or two more attorneys because of the process. Alderman Odham felt the PCSB undermined leadership, and Mr. Davis concurred that it created an obstacle for the Chief to run the department with respect to personnel decisions. Mr. Davis then noted that a Chief's decision to terminate an officer is not one that is made lightly, and he pointed out the investment the City has in an officer. Alderman Aster asked about the possibility of waiting to obtain an opinion from the new chief. Alderwoman Harris said she did not agree with refining the PCSB and cited the example of an officer who made disturbing public comments last year, yet the officer remains employed. She said the community has a right to state their peace about such incidents, which is why she felt the board should remain in place.

(Alderman Kinsey momentarily stepped out of the room at 1:26 p.m.)

Mr. Stephens noted that was not the intent of the PCSB, and he clarified that the public did not have an opportunity to speak at PCSB hearings. Mr. Davis explained that PCSB hearings are held in confidentiality. Alderwoman Harris said citizens had spoken under Request and Petition of Citizens at the Governing Board's meetings to ask for oversight of the police. Mr. Stephens explained that was a completely different topic and was like the

community advisory board Mr. Davis mentioned earlier for transparency and improvement in policing.

(Alderman Kinsey returned to the room at 1:28 p.m.)

Alderman Aster commented that he was at a loss as to how to proceed. He said officers had reached out to him, but as a department head there is a process that is followed for terminations and it would be difficult to have a board overturn that decision. Mayor Outlaw asked if the Governing Board would be in favor of changing the function of the PCSB to be in line with the spirit of its original intentions regarding civil rights. Alderman Aster did not feel issues of civil rights should be heard by a group of civilians, but instead should be handled by attorneys. Alderman Odham suggested the Board consider at a future meeting a resolution asking the state for permission to amend the charter to remove the PCSB. Mayor Outlaw said if the Board did not approve such action then each board member should ask themselves why they are giving employees in one department a chance that employees in other departments are not given. Alder Aster recalled a time when the General Assembly required municipalities to give police officers a 401k fund, but no other city employees. New Bern stepped up to the plate to say that if it were going to offer a 401k to its police officers, that it was also going to offer it to the rest of the employees.

If a police officer does something in public for which the officer needs to be reprimanded, Alderwoman Harris questioned why the public did not have the right to know the outcome. She voiced a need to retain the PCSB with respect to civil rights, and she also felt as if the public should have an opportunity to express their opinions regarding an officer's actions. Mr. Davis explained a state statute existed that made it a crime to disclose personnel actions to the public.

In concluding the discussion, Mr. Davis said he would keep traction on the issue to allow the Board time to reflect and give direction later. It is possible the Board may miss the upcoming legislative deadline with respect to this topic. Alderman Aster asked for an example resolution to be circulated. Mr. Davis stated the resolution would simply indicate a desire to remove section 5 of the charter with respect to the PCSB. Mayor Outlaw said he would appreciate input from the School of Government, even if there was a cost for their service.

- Alderman Odham asked about the goal and purpose of the Appearance Commission. Mr. Davis indicated he would email the statute that establishes the functions of such a commission. Mr. Davis felt sure there was an option to disband it. Alderman Bengel said the Commission was created in the 1980's, and she offered to share a folder of information that belonged to her mother-in-law, Mayor Ella Bengel.



**3. Adjourn.**

Alderman Bengel made a motion to adjourn, seconded by Alderman Aster. The motion carried unanimously 7-0, time being 1:38 p.m.

The attached documents are incorporated herewith and are hereby made a part of these minutes.

NOTE: For additional details and information on the Board of Aldermen meetings, please visit the City of New Bern's website at [www.newbernnc.gov](http://www.newbernnc.gov). Video and audio recordings of the meeting have been archived.

Minutes approved: January 26, 2021



Dana E. Outlaw, Mayor



Brenda E. Blanco, City Clerk