

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40561-LMx-134 (01/11)

Short Title: New Bern Charter/Revised & Consolidated. (Local)

Sponsors: Representative Speciale.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF NEW BERN.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the City of New Bern is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF NEW BERN.

"ARTICLE I. ORGANIZATION AND POWERS

"Section 1.1. Incorporation and corporate powers. The City shall continue to be a body politic and corporate by the name of "City of New Bern." Under that name, the City shall continue to have and may exercise all of the powers, duties, rights, privileges, and immunities which are now or hereafter may be conferred, either expressly or by implication, upon the City of New Bern specifically or upon municipal corporations generally by this Charter, by the State constitution, or by general law.

"Section 1.2. Existing corporate boundaries. The corporate boundaries of the City shall be those existing at the time of ratification of this Charter and as the same may be altered from time to time in accordance with applicable laws.

"ARTICLE II. MAYOR AND BOARD OF ALDERMEN

"Section 2.1. Governing body. The Mayor and Board of Aldermen, elected and constituted as set forth in this Charter, shall be the governing body of the City of New Bern. On behalf of the City, and in conformity with applicable laws, the mayor and board of aldermen may provide for the exercise of all municipal powers, and shall be charged with the general government of the City, except that the City Manager shall have the authority specified in Section 4.2 of this Charter.

"Section 2.2. Mayor; term of office; duties; right to vote. The Mayor shall be elected, by and from the qualified voters of the City, for a term of four years in the manner provided for in Article III of this Charter. The Mayor shall be the official head of City government for all ceremonial purposes, shall preside at all meetings of the Board of Aldermen, and shall have the powers and duties of Mayor, as prescribed by this Charter and general or local law. The Mayor shall have the right to vote on all matters before the Board of Aldermen, and shall do so as if the Mayor were a member of the Board of Aldermen.

"Section 2.3. Board of Aldermen; terms of office. The Board of Aldermen shall be composed of six members, each of whom shall be elected for terms of four years in the manner provided for in Article III of this Charter. Members of the Board of Aldermen shall serve until their successors are elected and qualified.

"Section 2.4. Mayor Pro Tempore. At its first meeting in the month of December, the Board of Aldermen shall choose one of its members as Mayor Pro Tempore to serve for a term of one year.



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1 The Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or
2 disability, as prescribed by this Charter and general or local law.

3 "Section 2.5. Board of Aldermen rules of procedure. The Board of Aldermen shall determine
4 its own rules of procedure for all meetings of the Board of Aldermen. The rules of procedure
5 adopted shall not be inconsistent with the provisions of this Charter or general or local law.

6 "Section 2.6. Meetings of the Board of Aldermen. In accordance with the provisions of
7 G.S. 160A-71, the Board of Aldermen shall establish a suitable time and place for its regular
8 meetings. Special meetings, organizational meetings, and emergency meetings shall also be held
9 in accordance with G.S. 160A-71.

10 "Section 2.7. Introduction and passage of ordinances and resolutions. Ordinances and
11 resolutions shall be introduced in the Board of Aldermen only in written or printed form. All
12 ordinances, except ordinances making appropriations and ordinances codifying or rearranging
13 existing ordinances or enacting a code of ordinances, shall be confined to one subject, and the
14 subject or subjects of all ordinances shall be clearly expressed in the title. Ordinances making
15 appropriations shall be confined to the subject of appropriations. The yeas and nays shall be taken
16 upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings
17 of the Board of Aldermen. Notwithstanding the provisions of G.S. 160A-75, an ordinance or any
18 action having the effect of an ordinance may be finally adopted on the date on which it is
19 introduced by the affirmative vote of a majority of the members of the Board of Aldermen. All
20 ordinances and resolutions shall take effect upon adoption unless otherwise provided therein, and
21 shall be entered unto an official code of ordinances or other record as prescribed by the Board of
22 Aldermen. The enacting clause of all ordinances shall be: "Be it ordained by the Board of
23 Aldermen of the City of New Bern." All ordinances heretofore adopted by the City of New Bern
24 shall remain in full force and effect unless and until any shall be repealed.

25 "ARTICLE III. ELECTIONS

26 "Section 3.1. Method of election. Regular municipal elections shall be held in the City every
27 four years in odd-numbered years, and shall be conducted in accordance with general laws of the
28 State governing municipal elections. The Mayor and members of the Board of Aldermen shall be
29 elected according to the nonpartisan election and runoff method, as provided in G.S. 163-293.

30 "Section 3.2. Election of the Mayor. A Mayor shall be elected for a term of four years by and
31 from the qualified voters of the City voting at large.

32 "Section 3.3. Election of Aldermen. The qualified voters of each ward shall elect one
33 alderman who shall be a resident of the ward for which he or she is elected.

34 "Section 3.4. City divided into election wards. The City shall continue to be divided into six
35 election wards. Once established by the Board of Aldermen, the boundaries of the wards may be
36 changed as provided by general or local law. The current ward boundaries, at all times, shall be
37 shown on a map to be retained permanently in the Office of the City Clerk and to be designated, as
38 the case may be, "Map of New Bern Ward Boundaries." Alterations in these boundaries shall be
39 indicated by appropriate entries upon or additions to the map. The entries or additions shall be
40 made by or under the direction of the City Manager. The Board of Aldermen may provide for the
41 redrawing of the map. A redrawn map shall supersede for all purposes the earlier map or maps
42 which it is designated to replace.

43 "Section 3.5. Assignment to wards of area annexed. In the event the limits of the City of New
44 Bern shall hereafter be extended to include additional territory, the Board of Aldermen shall have
45 the power, authority, and duty to assign the annexed territory to any ward, or to apportion the
46 annexed territory among the wards, by ordinance duly adopted. Thereafter, the annexed territory
47 shall be and become a part of the ward or wards to which the annexed territory shall be assigned as
48 provided in this section.

49 "ARTICLE IV. ORGANIZATION AND ADMINISTRATION

50 "Section 4.1. Form of government. The City shall operate under the council-manager form of
51 government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

1 "Section 4.2. City Manager; appointment; duties. The Board of Aldermen shall appoint a City
2 Manager. The City Manager shall be the administrative head of the City government, and shall
3 have the powers and duties provided by general law and any additional powers and duties
4 specifically delegated by the Board of Aldermen in accordance with general or local law. The City
5 Manager shall serve at the pleasure of the Board of Aldermen, and shall reside in the City during
6 his or her tenure.

7 "Section 4.3. City Clerk; Deputy Clerk. The City Manager shall appoint a City Clerk to keep a
8 journal of the proceedings of the Board of Aldermen, to maintain in a safe place all records and
9 documents pertaining to the affairs of the City, and to perform other duties as may be required by
10 general or local law or as may be directed by the City Manager. The City Manager may also
11 appoint a Deputy City Clerk to exercise and perform any of the powers and duties of the City
12 Clerk.

13 "Section 4.4. City Attorney. The Board of Aldermen shall appoint a City Attorney to serve at
14 the pleasure of the Board. The City Attorney shall be licensed to practice law in North Carolina.
15 The City Attorney shall be the chief legal advisor of and attorney for the City and all departments
16 and officers of the City in matters relating to their official powers and duties. It shall be the City
17 Attorney's duty, either personally or by any assistants as may be designated, to perform all
18 services incident to the department of law, and perform other duties required by law or as the
19 Board of Aldermen may direct.

20 "Section 4.5. Finance Director. The Board of Aldermen shall appoint a City Finance Director
21 to serve at the pleasure of the Board. The Finance Director shall plan, organize, and direct the
22 overall financial management functions of the City, to include general accounting, tax
23 administration, payroll, accounts receivable and payable, utility billing, and perform any other
24 duties as may be required by law or directed by the Board.

25 "ARTICLE V. POLICE CIVIL SERVICE BOARD

26 "Section 5.1. Civil Service Board continued; members; terms of office. There is hereby
27 continued a Police Civil Service Board for the City of New Bern, which shall consist of five
28 members. Members shall serve staggered two-year terms. Terms shall begin on the first day of
29 July and shall expire on the last day of June.

30 "Section 5.2. Appointment of members; vacancies; reappointments. All members of the Board
31 shall be appointed by the Board of Aldermen based upon relevant professional experience.
32 Vacancies on the Board shall be filled by appointment in the same manner, and any member
33 appointed to fill a vacancy shall serve the remainder of the unexpired term. No member of the
34 Board after having served a full two-year term shall be eligible for reappointment to the next
35 succeeding term, but that person may be reappointed after being off the Board for a period of at
36 least two years.

37 "Section 5.3. Qualifications; removal from office; quorum. Any person who is a qualified
38 voter in the municipal election in the City shall be eligible for membership on the Board, except
39 the following: (i) a member of the Board of Aldermen; (ii) an elective officer; (iii) a member or
40 employee of the police department; (iv) a person who has served as a volunteer in the police
41 department within the previous 36 months; or (v) an employee of the City. Each member of the
42 Board shall take an oath or affirmation for the faithful discharge of the duties of the office.
43 Members of the Board shall be subject to removal from office by a two-thirds vote of the Board of
44 Aldermen, with or without cause. A majority of the Board shall constitute a quorum.

45 "Section 5.4. Election of chair; clerk duties. The Board shall elect from its membership a chair
46 who shall preside at all meetings of the Board. The City Clerk shall act as secretary to the Board
47 and shall be custodian of all papers and records pertaining to the business of the Board. The City
48 Clerk shall keep the minutes of the Board's meetings and shall perform such other duties as the
49 Board may require.

50 "Section 5.5. Authority of police chief. (a) Promotions and demotions of officers of the police
51 department shall be within the discretion of the chief of police.

1 (b) Each new officer of the police department shall serve in a probationary status for a
2 period of 12 months, during which period the officer may be dismissed by the chief of police, with
3 or without cause. The officer so dismissed shall have no opportunity for a hearing before the
4 Board, or otherwise, on the subject of the officer's dismissal.

5 (c) The chief of police may suspend any member of the police department for violating the
6 rules and regulations of the police department for a period of time not to exceed 30 days at any
7 one time. The suspension shall be without pay, and shall not be subject to review by the Board, but
8 may be appealed to the City Manager consistent with the provisions of the City's personnel
9 ordinance. However, if the officer is subjected to another suspension within 90 days of the first
10 suspension, the officer shall have the right to appeal the additional suspension to the Board, and
11 any hearing conducted by the Board pursuant to the appeal shall be covered by the rules provided
12 in subsection (d) of this section.

13 (d) If the chief of police determines that an officer of the police department should be
14 discharged or subjected to disciplinary action not within the power of the chief of police under the
15 provisions of subsections (a), (b), or (c) of this section, the chief of police shall reduce the charges
16 against the officer to writing, including the chief of police's recommendation relative to discharge,
17 fine, or suspension without pay, shall file a copy of the writing with the Clerk to the Board, and
18 shall deliver a copy to the officer personally or by certified mail, return receipt requested. Upon
19 delivery of the written charges and recommendations to the officer, if the chief's recommendation
20 is that the officer be discharged or suspended, the chief of police shall immediately suspend the
21 officer from duty. If the charged police officer does not file a request for hearing by the Board
22 with the Clerk within five days after delivery of the charges and recommendations to the officer,
23 the chief's recommendation shall become effective as of the date of the discharge or suspension. If
24 the charged officer requests a hearing within the time provided for in this subsection, the hearing
25 by the Board shall be conducted as soon as is reasonably possible, but in no event shall the hearing
26 be conducted later than 30 days after the written charges have been filed with the Clerk, unless the
27 suspended officer files with the Clerk a written request for delay beyond the 30-day time period
28 which states the reason for the proposed delay. In the event of a request for delay, the Board shall
29 grant a reasonable postponement if, in its opinion, it is merited by the request, keeping in mind the
30 welfare of the officer and the police department. If a charged officer who has requested a hearing
31 under this subsection withdraws the request, the recommendation of the chief of police shall
32 become effective immediately, and no hearing shall be conducted by the Board. The provisions of
33 this subsection do not apply to the chief of police. The City Manager shall be responsible for the
34 hiring, firing, discipline, and termination of the chief of police.

35 "Section 5.6. Board powers and duties. (a) The Board shall have the power to subpoena
36 witnesses, administer oaths, and compel the production of evidence. The subpoenas may be
37 directed to any law enforcement officer within the State of North Carolina for service. If a person
38 fails or refuses to obey a subpoena issued pursuant to this section, the Board may apply to the
39 General Court of Justice, Superior Court Division, for an order requiring that its subpoena be
40 obeyed, and the court shall have jurisdiction to issue these orders after notice to all parties.

41 (b) The Board, in its discretion, may make rules and regulations, from time to time, with
42 respect to the manner in which hearings authorized under this Article shall be conducted. The
43 hearings shall be closed to spectators. Witnesses who are to appear before the Board may be
44 sequestered. Testimony offered before the Board shall be recorded by mechanical process or by
45 court reporter. The ordinary rules of evidence shall not apply, but the hearing shall be conducted
46 with decorum. The decision of the Board shall be final.

47 (c) In the event the charged police officer is found guilty of violating the rules and
48 regulations of the police department, the Board may discharge, fine, or suspend the officer without
49 pay for a period not to exceed 90 days. In addition, the Board may attach any conditions to the
50 officer's reinstatement to duty as it deems advisable, as long as those conditions are not otherwise

1 prohibited by law. If the Board discharges the officer, the date of discharge shall be the effective
2 date of the suspension from duty imposed by the chief of police.

3 "Section 5.7. Employment of officers of police department; equal opportunity. Officers of the
4 police department shall be hired consistent with the City's hiring policies. The Board shall
5 maintain a program to insure that all employment decisions made by any person under this Article
6 shall be made without regard to race, religion, color, creed, national origin, sex, age, or disability.

7 "Section 5.8. Compensation. The members of the Board shall serve without compensation.

8 "Section 5.9. Decisions final. Decisions regarding disciplinary actions made by the chief of
9 police, where no right to appeal exists, and all decisions of the Board under this Article shall be
10 final and not subject to judicial review.

11 "Section 5.10. Position elimination. This Article shall not apply to position eliminations due to
12 workforce reductions."

13 **SECTION 2.** The purpose of this act is to revise the Charter of the City of New Bern
14 and to consolidate certain acts concerning the property, affairs, and government of the City. It is
15 intended to continue without interruption those provisions of prior acts which are expressly
16 consolidated into this act so that all rights and liabilities which have accrued are preserved and
17 may be enforced.

18 **SECTION 3.** This act does not repeal or affect any acts concerning the property,
19 affairs, or government of public schools or any acts validating official actions, proceedings,
20 contracts, or obligations of any kind.

21 **SECTION 4.** The following acts, having served the purposes for which they were
22 enacted or having been consolidated into this act, are expressly repealed:

23 Chapter 1281 of the 1957 Session Laws

24 Chapter 934 of the 1959 Session Laws

25 Chapter 1111 of the 1961 Session Laws

26 Chapter 1162 of the 1963 Session Laws

27 Chapter 693 of the 1965 Session Laws

28 Chapter 213 of the 1969 Session Laws

29 Chapter 324 of the 1969 Session Laws

30 Chapter 785 of the 1971 Session Laws

31 Chapter 1104 of the 1973 Session Laws

32 Chapter 170 of the 1981 Session Laws

33 Chapter 1168 of the 1981 Session Laws

34 Chapter 174 of the 1983 Session Laws

35 Chapter 266 of the 1983 Session Laws

36 Chapter 364 of the 1983 Session Laws, Section 2 only

37 Chapter 64 of the 1985 Session Laws

38 Chapter 177 of the 1993 Session Laws

39 Chapter 605 of the 1993 Session Laws, Section 1 only

40 Chapter 629 of the 1993 Session Laws

41 Chapter 630 of the 1993 Session Laws

42 Chapter 118 of the 1995 Session Laws

43 Chapter 231 of the 1995 Session Laws

44 S.L. 2000-42

45 S.L. 2011-101.

46 **SECTION 5.** Notwithstanding any other provision of this act, the following acts
47 (including any amendments thereto) are not repealed and the provisions of these acts remain
48 effective as to the City of New Bern as if this act had not been enacted:

49 Chapter 115 of the 1983 Session Laws

50 Chapter 364 of the 1983 Session Laws, except Section 2

51 Chapter 876 of the 1985 Session Laws

- 1 Chapter 838 of the 1985 Session Laws
2 Chapter 291 of the 1987 Session Laws
3 Chapter 382 of the 1989 Session Laws
4 Chapter 93 of the 1993 Session Laws
5 Chapter 277 of the 1993 Session Laws, as amended by Chapter 553 of the 1993
6 Session Laws
7 Chapter 605 of the 1993 Session Laws, except Section 1
8 S.L. 1998-29
9 S.L. 2007-32.
- 10 **SECTION 6.** This act does not repeal by implication any local acts otherwise
11 applicable to the City of New Bern.
- 12 **SECTION 7.** The Mayor and Board of Aldermen serving on the date of ratification of
13 this act shall serve until the expiration of their terms or until their successors are elected and
14 qualified. Thereafter, those offices shall be filled as provided in Articles II and III of the Charter of
15 the City of New Bern, as enacted in Section 1 of this act.
- 16 **SECTION 8.** The members of the Police Civil Service Board for the City of New
17 Bern serving on the date of ratification of this act shall continue to serve until their terms expire in
18 order for the terms to be staggered, with two terms expiring in even-numbered years and three
19 terms expiring in odd-numbered years.
- 20 **SECTION 9.** This act does not affect any rights or interests that arose under any
21 provisions repealed by this act.
- 22 **SECTION 10.** All existing ordinances, resolutions, and other provisions of the City of
23 New Bern not inconsistent with the provisions of this act shall continue in effect until repealed or
24 amended.
- 25 **SECTION 11.** No action or proceeding pending on the effective date of this act by or
26 against the City or any of its departments or agencies shall be abated or otherwise affected by this
27 act.
- 28 **SECTION 12.** Whenever a reference is made in this act to a particular provision of
29 the General Statutes, and the provision is later amended, superseded, or recodified, the reference
30 shall be deemed amended to refer to the amended General Statute or to the General Statute that
31 most clearly corresponds to the statutory provision which is superseded or recodified.
- 32 **SECTION 13.** This act is effective when it becomes law.