

DRAFT

**LEBANON CITY COUNCIL
MINUTES, REGULAR SESSION
Wednesday, June 16, 2021, 7:00 p.m.
Council Chambers - City Hall OR
Remote Via Webex: [LebanonNH.gov/Live](https://lebanonnh.gov/Live)**

MEMBERS PRESENT: Mayor Tim McNamara, Assistant Mayor Clifton Below, Erling Heistad, Karen Liot Hill, George Sykes, Douglas Whittlesey, Devin Wilkie, Jim Winny and Karen Zook

MEMBERS ABSENT: None

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager Paula Maville, City Clerk Kristin Kenniston, City Manager Executive Assistant Beth Beraldi, City Consultant Shelley Hadfield

1 **1. CALL TO ORDER:** Mayor McNamara called the meeting to order at 7:00 p.m.

2
3 This was the first in-person meeting to take place in the last 15 months since the NH Governor allowed
4 the State's Emergency Order for the COVID-19 pandemic to expire.

5
6 Mayor McNamara gave Councilor Liot Hill permission to attend this meeting remotely and a roll call vote
7 was taken. All Councilors attending the meeting are listed above.

8
9 **2. PLEDGE OF ALLEGIANCE:** Councilor Winny led the Council in the Pledge.

10
11 **3. PUBLIC FORUM:** Mayor McNamara made the Public Forum announcement.

12
13 **4. OPEN TO PUBLIC:** No one came forth.

14
15 **5. RECOGNITIONS:** None.

16
17 **6. ACCEPTANCE OF MINUTES:**

18 **A. June 2, 2021 (Regular Session)**

19 *Councilor Heistad MOVED to approve the June 2, 2021 (Regular Session) minutes as written and*
20 *presented in the June 16, 2021 City Council agenda packet.*

21 *Seconded by Councilor Winny.*

22
23 **Roll Call Vote:**

24 Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and
25 Mayor McNamara all voting Yea.

26 None voted Nay.

27 **The Vote on the MOTION was unanimously approved (9-0).*

28
29 **7. APPOINTMENTS:**

30 • Tina Van Kley- Appointment as an alternate to the Library Board of Trustees

31 *Councilor Winny put forth the NOMINATION of Tina Van Kley as an alternate to the Library Board*
32 *of Trustees. One Year Term (6/21 – 6/22)*

33

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

****The Vote on the NOMINATION was unanimously approved (9-0).***

8. PUBLIC HEARING ITEMS:**A. MID-GRANT UPDATE HEADREST REHABILITATION PROJECT –**

A public hearing for the purpose of receiving public input and apprising Lebanon residents on the progress of the rehabilitation project of the Headrest Facility at 14 Church Street, Lebanon.

Ms. Vickie Davis (Upper Valley Lake Sunapee Regional Planning Commission) came forth and spoke about the project's background, funding, the bidding process, and construction.

In 2019, the City of Lebanon was awarded \$496,500 in Housing and Public Facility CDBG funds to support the rehabilitation of the Headrest facility located at 14 Church Street, Lebanon. The purpose of these funds were to support the Headrest residential and outpatient treatment facility renovation project and provide a multi-functional meeting space/hot line space, counseling space, greater accessibility, energy efficiency improvements and facilities for residents. The building is used as a low-intensity residential treatment facility for people dealing with substance abuse disorders and also provides the only accredited suicide crisis phone line in New Hampshire.

The funds, less administrative costs, were sub-granted to Headrest to complete the needed renovations which included both structural and energy upgrades. The project is behind schedule but expected to be completed by the end of the year. Unfortunately, COVID 19 hit just as the project went out to bid. After multiple bid attempts resulting in few bids and much higher than anticipated costs, the project applied to CDFA to Sole Source and has been working with subcontractors to develop a plan. COVID also impacted the project financially with the increased cost of materials currently estimated at \$60,645. The project is applying to CDFA for GAP funding to offset the materials costs and to increase the administration budget by \$3,032.

Mayor McNamara opened the Public Hearing. Hearing no comments from the public, the Public Hearing was closed.

ACTION:

No action was required by the Council. Item is for informational purposes only.

B. CDBG APPLICATION AMENDMENT HEADREST REHABILITATION PROJECT

A public hearing for the purpose of receiving public input and taking action on a proposed Housing and Public Facilities grant application amendment for up to \$63,677 in CDBG funds (to be sub-granted to Headrest); and to authorize the City Manager to sign, submit, and execute any documents which may be necessary to effectuate the CDBG application amendment.

The City scheduled this public hearing at their June 2, 2021, regular meeting. The public hearing was properly noticed in the *Valley News* on June 5, 2021, in accordance with City Code and State Law. **A handout describing the request was available for interested members of the public.**

Included in the agenda packet:

- Project Description: Headrest CDBG Housing and Public Facilities Application Request for Amendment May 24, 2021 (Pages 41-43, agenda packet).

Ms. Vickie Davis (Upper Valley Lake Sunapee Regional Planning Commission) once again came forth representing the Headrest Rehabilitation Project.

CDFA has made funds available for projects experiencing increased construction costs due to the COVID 19 pandemic. Up to \$900,000 is available for counties and communities on existing projects facing hardship due to the pandemic and which may be prevented from moving forward.

Headrest was awarded a CDBG grant of \$496,500 to complete the rehabilitation of the 14 Church Street facility in Lebanon. The 2019 grant award was finalized in early 2020 just as the COVID 19 pandemic hit. The impact of the pandemic on the construction industry has been significant with many projects experiencing dramatic cost increases in materials and labor. Headrest is now requesting that the Council support an application amendment to its current Community Development Block Grant for up to \$63,677 to offset the increased cost of materials due to COVID 19 and a small increase in administration.

Mayor McNamara opened the Public Hearing. Hearing no comment from the public, the Public Hearing was closed.

ACTION:

Councilor Liot Hill MOVED that the Community Development Block Grant funds are available to municipalities for economic development, public facility and housing rehabilitation projects and feasibility studies that primarily benefit low and moderate-income persons. The purpose of the public hearings required for CDBG funding is to solicit the view of the citizens on community development; furnish the citizens with information concerning the amount of funds available and the range of community development activities which may be undertaken under the Community Development Act.

The City of Lebanon is eligible for up to \$500,000 per year for public facility/housing rehabilitation, up to \$500,000 per year for economic development projects, as well as up to \$500,000 per year in emergency funds. Feasibility Study funds are available for up to \$12,000 per year.

This application Amendment is specific to the up to \$900,000 that CDFA is making available for housing and public facilities projects impacted by COVID 19.

**BE IT HEREBY MOVED, that the Lebanon City Council approves the submittal of the CDBG application amendment to the existing HEADREST CDBG project and authorizes the City Manager to sign, submit, and execute any documents which may be necessary to effectuate the CDBG contract amendment for Headrest in the amount of up to \$63,677.
*Seconded by Councilor Winny.***

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

1 ***The Vote on the MOTION was unanimously approved (9-0).**

2
3 **9. OLD BUSINESS:**

4 **A. Presentation of Second Reading to Amend Ordinance #18, Salary Plan**

5 as follows:

- 6 1. Amend Article II, Non-Affiliated & LPASE Employees, Section A - Regular Full-time and
7 Part-time Benefit Eligible Positions to reclassify the position of Human Services Director
8 from a Grade 10 to a Grade 12; and o add the position of Deputy Assessor (Grade 9).
9
10 2. Amend Article II, Non-Affiliated & LPASE Employees, Section B – Seasonal/Temporary
11 & Stipend Employees to increase the wage ranges for Seasonal Laborers and CDL Seasonal
12 Drivers.
13

14 **RECLASSIFY THE POSITION OF HUMAN SERVICES DIRECTOR**

15
16 The Human Services Director supervises the Assistant Human Services Director and works closely with
17 staff of outside Human Services Agencies to create and maintain a wrap-around set of services, referred
18 to as a “safety net” for the betterment of jointly served clients. This position coordinates partnerships to
19 comprehensively address issues that may adversely affect/impact the ability to serve clients (i.e.,
20 homelessness, lack of affordable housing, access to medical services, etc.)
21

22 Over the past few years, the Human Services Director’s responsibilities have expanded in several
23 different directions caused by configurations of geographical circumstances. These configurations
24 included the lack of affordable housing, homelessness, economics, and the effects of COVID 19. This
25 position has assumed additional duties and responsibilities due to the changing demographics of the
26 Upper Valley and the effects placed on the changes in the housing market, and the global pandemic.
27

28 Additionally, the Human Services Director represents the City Manager and acts as the representative of
29 the City on statewide and regional coalitions, committees and working groups focusing on human
30 services issues.
31

32 Due to the evolution of the position and supervisory duties not previously considered, a review of the job
33 description was conducted, and revisions were made to accurately reflect the additional duties and
34 responsibilities. This resulted in the reclassification of the position from a Grade 10 to a Grade 12.
35

36 **ADD DEPUTY ASSESSOR**

37
38 Due to the reorganization of the Finance Department - encapsulating the Assessing Department and
39 contracting with Municipal Resources, Inc., to oversee the physical assessment changes to residential and
40 commercial property values, we have discovered a need for elevated assessing functions in the day-to-day
41 administration of the department. For this reason, we are recommending the position of Deputy Assessor
42 be added to the department. A job description has been created and is classified as a Grade 9 position.
43

44 We are fortunate to have an experienced Assessing Clerk with the knowledge and credentials needed to
45 fill the position. Therefore, we are proposing that our existing Assessing Clerk be promoted to Deputy
46 Assessor and the position of Assessing Clerk be vacated. While the role of the Assessing Clerk is needed,
47 the Deputy Assessor would be charged with those duties while taking on the more elevated tasks required
48 to manage the upper-level needs of the department adequately and efficiently. For example, incorporating
49 a Deputy position will enable the department to communicate effectively and more timely with the State
50 Department of Revenue and other State or outside agencies; process the necessary tax, property, and

exemption changes more efficiently, and better manage difficult tax situations posed by members of the public.

SEASONAL/TEMPORARY & STIPEND EMPLOYEES

Due to the nationwide shortage and difficulties hiring and attracting seasonal, temporary and stipend staff; the City is recommending increasing the hourly wages and/or stipends of seasonal CDL drivers and seasonal laborer positions identified in red below.

Process to Amend Ordinance No. 18

Amending Ordinance No. 18 requires three separate presentations (see City Charter subsections 419:22, 419:24, 419:25, 419:52) followed by a public hearing and the vote of at least two-thirds (2/3) of all members of the City Council – six (6) members - to adopt.

The first presentation was recognized by the Council on June 2, 2021. The Council is now asked to recognize the second of three presentations on June 16 to amend the Ordinance. The third presentation will follow on July 7, along with a public hearing to adopt the amendments as proposed.

1. ACKNOWLEDGE SECOND PRESENTATION:

Councilor Wilkie MOVED, that the Lebanon City Council acknowledges the second of three presentations to amend Ordinance No. 18, Salary Plan, as follows:

1. Amend Article II, Non-Affiliated & LPASE Employees, Section A – Regular Full-time and Part-time Benefit Eligible Positions to reclassify the position of Human Services Director from a Grade 10 to a Grade 12; and to add the position of Deputy Assessor, (Grade 9); and

2. Amend Article II, Non-Affiliated & LPASE Employees, Section B – Seasonal/Temporary & Stipend Employees to increase the wage ranges for Seasonal Laborers and CDL Seasonal Drivers

Changes in the table below shown in red.

REGULAR FULL-TIME/REGULAR PART-TIME NON-AFFILIATED & LPASE EMPLOYEES – 2021 SALARY & GRADES					
<u>Grade</u>	<u>Position Title</u>	<u>Hourly</u>		<u>Weekly</u>	
		<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
1	General Intern II	\$16.77	\$22.64	-	-
2	Custodian	\$17.78	\$23.99	-	-
	Department Secretary	-	-	-	-
3	Airport Maintenance Worker	\$18.84	\$25.44	-	-
	Custodian I	-	-	-	-
	Accounting Clerk				
4	Library Assistant	\$19.98	\$26.97	-	-
5		\$21.17	\$28.57	-	-
6	-	\$22.44	\$30.29	-	-
7	Administrative Assistant	\$23.78	\$32.45		
	Administrative Secretary			-	-

	Assessing Clerk	-	-	-	-
	Assistant City Clerk	-	-	-	-
	Assistant Human Services Director	-	-	-	-
	Communications Specialist	-	-	-	-
	Library Administrative/Technical Assistant	-	-	-	-
8	Administrative Assistant	\$25.21	\$34.04	-	-
	Benefits Coordinator/Payroll Specialist	-	-	-	-
	Deputy City Clerk	-	-	-	-
	Deputy Tax Collector	-	-	-	-
	Field Inspector**	-	-	-	-
	Electrical Inspector**	-	-	-	-
	Utility Billing Clerk	-	-	-	-
	Outreach Librarian	-	-	\$1,008.55	\$1,361.65
	Young Adult Librarian	-	-	-	-
9	Code Health Inspector**	\$27.73	\$37.43	-	-
	Executive Assistant	-	-	-	-
	Deputy Assessor	-	-	-	-
	Digital Media Officer	-	-	-	-
	Cyber Services Technical Specialist	-	-	-	-
	Real Estate Appraiser II**	-	-	-	-
	Children's Librarian			\$1,109.20	\$1,497.36
	Associate Planner**	-	-	-	-
	Systems Librarian	-	-	-	-
	Information Technology Librarian	-	-	-	-
10	Assistant City Engineer**	\$30.50	\$41.18	-	-
	Cemetery Sexton**	-	-	-	-
	Financial Analyst	-	-	-	-
	Fleet Maintenance Supervisor**	-	-	-	-
	Maintenance Superintendent**	-	-	-	-
	Utilities Maintenance Superintendent**				
	Police Communications Supervisor**	-	-	-	-
	Human Services Director	-	-	\$1,220.15	\$1,647.20
	Recreation Program Coordinator**	-	-		
11	Technical Advisor I	\$33.59	\$45.34	-	-
	Administrative Services Manager**	-	-	\$1,343.60	\$1,813.60
	Airport Operations Supervisor**	-	-	-	-
	Assistant Recreation Director**	-	-	-	-
	Code Enforcement Director**	-	-	-	-
	Deputy Library Director	-	-	-	-
	Fire Marshal**	-	-	-	-
	Planner/GIS Coordinator**	-	-	-	-
	Senior Planner**	-	-	-	-
12	Wastewater Treatment Superintendent**	\$35.60	\$48.05	-	-
	Water Treatment Superintendent**	-	-	-	-
	City Assessor**	-	-	\$1,424.00	\$1,922.00
	City Clerk/Tax Collector	-	-	-	-
	City Engineer**	-	-	-	-
	City Planner**	-	-	-	-

	Deputy Finance Director	-	-	-	-
	Energy & Facilities Manager**	-	-	-	-
	Human Services Director	-	-	-	-
	Police Lieutenant**	-	-	-	-
	Prosecuting Attorney	-	-	-	-
	Solid Waste Manager**	-	-	-	-
13	Airport Manager	-	-	\$1,509.21	\$2,037.39
	Assistant Fire Chief	-	-	-	-
	Deputy Fire Chief	-	-	-	-
	Deputy Police Chief	-	-	-	-
	Human Resources Director	-	-	-	-
	Information Systems Manager**	-	-	-	-
	Maintenance Manager**	-	-	-	-
	Recreation Director	-	-	-	-
	Police Captain**	-	-	-	-
	Systems and Information Technology Administrator				
14	Assistant Director/Public Works	-	-	\$1599.77	\$2,159.70
	Chief Assessor	-	-	-	-
	Library Director	-	-	-	-
15	Cyber Services Director	-	-	\$1,695.84	\$2,289.20
16	Technical Advisor II	\$44.93	\$60.66		
	Chief of Police	-	-	\$1,797.42	\$2,426.40
	Director of Planning and Zoning	-	-	-	-
	Director of Public Works	-	-	-	-
	Finance Director	-	-	-	-
	Fire Chief	-	-	-	-
	Deputy City Manager	-	-	-	-

**denotes LPASE Positions.

Changes to the compensation and classification schedules are shown in *red* below. Strikeout text represents a deletion of the position due to consolidation or to remove duplicates.

Deletion of the position due to consolidation or to remove duplicates.

POSITION TITLE	HOURLY	
ELECTION POSITIONS (HOURLY)		
Ballot Clerk		\$10.15
Election Assistant		\$10.15
Supervisors of the Checklist		\$10.15
Moderator		\$12.69
Ward Clerk		\$12.69
FIRE DEPARTMENT POSITIONS		
Call Firefighter	\$11.25	\$28.54
PARK AND RECREATION POSITIONS		
Front Desk Attendants – Pool	\$10.15	\$15.25
Lifeguards	\$10.15	\$17.50
Head/Lead Counselors	\$13.20	\$16.24
Head & WSI Lifeguards	\$12.18	\$18.25
Head Front Desk Attendant - Pool	\$12.18	\$15.50
Outdoor Adventurer - Educator	\$12.69	\$16.24
Softball Coordinator	\$12.69	\$16.24

Camp Director	\$13.20	\$20.00
Day Camp Counselors	\$10.15	\$15.25
Arts & Craft Director	\$13.20	\$17.00
Farmers Market Coordinator	\$14.21	\$18.27
Market Assistant	\$12.18	\$15.23
Tennis Instructor	\$15.23	\$19.29
Stomp & Romp	\$15.23	\$19.29
Asst. Pool Director	\$15.23	\$21.00
Pool Director	\$16.24	\$24.00
LIBRARY POSITIONS		
Circulation Substitutes		\$13.41
Reference Librarian Substitutes		\$22.65
PUBLIC WORK POSITIONS		
Engineering Clerk	\$11.17	\$14.21
GIS Clerk - (or Intern) These are the landfill interns	\$15.23	\$17.26
Seasonal Laborers – Summer & Fall DPW, Parks & Rec. & Airport	\$16.24	\$19.29 \$20.52
CDL Seasonal Drivers	\$22.81	\$27.30 \$50.00
PLANNING POSITIONS		
Park Ranger	\$15.23	\$17.26
POLICE DEPARTMENT POSITIONS		
Crossing Guard		\$16.53
Communications Specialist	\$23.78	\$32.45
Police Administrative Aide	\$20.30	\$23.35
Parking Control Officer	\$20.30	\$23.35
Police Officers	\$26.86	\$32.39
CITY CLERK POSITIONS		
Assistant City Clerks (Part-Time/Temp. <20)	\$23.41	\$31.61
Recording Secretary	\$21.82	\$23.85
Recording Secretary Coordinator	\$22.82	\$24.36
SHARED POSITION		
General Intern I	\$13.20	\$16.75
STIPEND POSITIONS		
Sport Coaches – Seasonally (Lacrosse, Track, Youth – Basketball, Field Hockey, Football, Cheerleader Coach etc. – may vary due to Programs)	\$205	\$715
(Chair) Supervisors of the Check List	\$155	\$255
Supervisor of the Voter Checklist	\$155	\$255

Seconded by Councilor Heistad.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

***The Vote on the MOTION was unanimously approved (9-0).**

**B. Rescission of Prior Funding Authorization & Appropriation for 2017 WWTP
Underground Fuel Storage Tank in the amount of \$6,440**

City Manager Shaun Mulholland explained the purpose of this agenda item is to request the City Council rescind a prior authorization and appropriation for unissued bonds or notes that are no longer required,

and therefore will not be issued. Total amount to be rescinded is \$6,440.00 and includes prior funding authorization for the 2017 WWTP Underground Fuel Storage Tank project.

A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations and appropriations for nine (9) capital projects totaling \$1,602,723.62 was held on Wednesday, May 19, 2021.

At the hearing it was noted that the resolution for the 2017 WWTP Underground Fuel Storage Tank in the amount of \$6,440.00 was inadvertently omitted.

<u>Date Authorized</u>	<u>Total Authorization</u>	<u>Project Authorization</u>	<u>Balance of Amount Authorized by City to be rescinded</u>	<u>Project</u>
12/21/2016	\$ 8,030,000.00	\$ 90,000.00	\$ 6,440.00	2017 WWTP Underground Fuel Storage Tank

Councilor Whittlesey MOVED the following:

RESOLUTION

WHEREAS, the Lebanon City Council on December 21, 2016, authorized the issuance of bonds or notes in the amount of \$8,030,000 including \$6,440.00 to finance the 2017 Wastewater Treatment Plant Underground Fuel Storage Tank project; and

NOW, THEREFORE BE IT RESOLVED, by the Lebanon City Council, that unissued bonds or notes in the amount of \$6,440.00, authorized on December 21, 2016, to finance the 2017 Wastewater Treatment Plan Underground Fuel Storage Tank project is hereby rescinded (as noted on the chart, page 50, Council's agenda packet).

This resolution shall take effect upon its passage.

Seconded by Councilor Winny.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

***The Vote on the MOTION was unanimously approved (9-0).**

C. Action to Rescind Emergency Ordinance #2020-11, Face Masks

Items included in agenda packet:

1. Emergency Ordinance 2020-11 (as amended June 2, 2021)

Information available but not included in this section:

1. State of NH COVID-19 Response Website: <https://www.covid19.nh.gov/dashboard>

The Council held a public hearing on June 2nd regarding a rescission of or amendment to Emergency Ordinance 2020-11.

1 At the close of the public hearing, the Council opted to retain the ordinance, but amended Provision #2 as
2 follows (changes in bold text):
3

4 2. Members of the public entering or queued to enter; remaining in or exiting from, any business,
5 governmental or non-profit owned premises including without limitation any outdoor area where
6 business of any sort is conducted, work site, workplace, or government building, must wear a face
7 covering, such as a fabric mask, scarf, or bandana over their nose and mouth. This requirement
8 shall also apply to persons traveling on public transportation such as Advance Transit buses.
9 Policies regarding face coverings in governmental buildings within the geographical boundaries
10 of the City of Lebanon adopted by the governmental entity having jurisdiction over such
11 buildings are hereby recognized by this ordinance and shall control in such buildings. Property
12 owners shall have the authority to regulate the requirement to wear masks by any person, while
13 on the premises of their property, by allowing persons to temporarily remove their masks while
14 remaining on the premises when it is practical or becomes necessary to do so based upon the
15 requirements of the services provided. **In addition, building owners, operators, managers,**
16 **lessees, employers, businesses and nonprofit organizations, as appropriate, shall have the**
17 **authority to waive masking and social distancing requirements for employees and**
18 **volunteers who are known to be fully vaccinated against Covid-19 while within the**
19 **workplace or building space managed by them, provided however that mask requirements**
20 **shall not be waived for employees and volunteers who are not fully vaccinated or whose**
21 **vaccination status is unknown or who are interacting in person with members of the public.**
22

23 Action on whether and how to rescind Ordinance 2020-11, Face Masks (pages 52-56, agenda packet) was
24 postponed to this meeting.
25

26 The purpose of this meeting is for the Council to determine if they wish to retain this Ordinance for some
27 time; set-up criteria to be achieved before a rescission is made; or, take action to rescind the ordinance
28 tonight.
29

30 As a follow-up on data from previous Council meetings, Assistant Mayor Below shared and updated the
31 Council on the data from the NH COVID-19 Interactive Map, the COVID Act Now website, Dartmouth
32 College's data analytics, and reviewed the NH Medical Association criteria as listed below:

- 33 1) COVID-19 vaccination levels should reach a community-wide immunity of at least 70%.
34 2) Community spread of COVID-19 should be less than 50 new infections per 100,000 population over
35 the prior 14 days.
36 3) 7-Day PCR test positivity levels should be below 5%.
37

38 Grafton County has been below the 5% for the 7-day PCR test positivity levels by a factor of 10 or more
39 for over a month. We are now at 69.6% (70%) in terms of the total population for the vaccination rate,
40 noting Vermont has reached 80% of the eligible population which is little under 70% of the total
41 population. New York has completely rescinded all of their state-wide mandates. In terms of New
42 Hampshire, Grafton County is down to 32 new infections per 100K population over the prior 14 days,
43 which is well below the suggested 50 new infections per 100K and in the Upper Valley region we are at
44 8.9%. However, it is significant to note that even the major counties of Rockingham and Hillsborough
45 are down in the 25%-26% range and the active cases in Lebanon, Plainfield, Enfield, Grantham, Hanover,
46 and Lyme are at zero. Cornish and Canaan are somewhere between 1-4 cases. The data from the
47 catchment areas that DHMC serves shows the entire Northeast New England Region has no hotspots at
48 all.
49

1 It was Assistant Mayor Below's view that the time has come for Lebanon to safely rescind the Mask
2 Ordinance. Ms. Alice Ely, Executive Director of the Public Health Council of the Upper Valley, also felt
3 that since Lebanon's infection rates are down at the moment, with zero community transmission in the
4 immediate area, it makes sense to rescind the Mask Ordinance. The problem being seen now is that there
5 are non-compliance issues, and the ordinance is very problematic to enforce because businesses are
6 making up their own rules. He didn't feel it was helpful to have something on the books that people are
7 starting to ignore. Also, there will always be people in the community who are vulnerable to virus-type
8 transmissions, such as the flu, but Lebanon is not even seeing flu-type transmission levels. However, due
9 to the variants in COVID, we still need to encourage people who have not been vaccinated to get
10 vaccinated and continue to wear masks. The good news is that the legislature is not passing anything that
11 says businesses cannot require masking, so a business can still say, "don't enter if you do not have a
12 mask," and if someone does enter a business without a face mask, the Lebanon Police are prepared to
13 respond and arrest the person(s), if necessary, for criminal trespass if they do not abide by the rules of a
14 business establishment.

15
16 Mayor McNamara noted that one of the topics discussed at the last meeting was comparing data in the
17 Upper Valley to that of Sullivan County. Grafton County has a populations of approximately 90K and
18 Sullivan County has a population of about 42K, which does tend to color the data. The greater Sullivan
19 County Public Health Region, as of today, had 125.2 new cases per 100K over the last 14 days compared
20 to 13 for us, which is a significant difference. Their positivity rate over the past 7 days was 2.4%
21 compared to 0/.01% for us. Sullivan County's total population vaccination rate was 57.7% as of this
22 morning. He understands there may be some alarm expressed that Sullivan County's rate of new cases is
23 significantly higher than ours, but if their rate of new cases were spilling into our area we would be seeing
24 a dramatic difference than what we are seeing now. He agreed with Assistant Mayor Below that the time
25 has come to set a date for rescission of the Mask Ordinance and felt it should take place in the very near
26 future, noting he has also seen the level of compliance going down.

27
28 Councilor Whittlesey expressed his concern that about 10% of Lebanon's population are aged 0-9 years
29 old (10-19 year-olds adds another 10-12%) who are not vaccinated. These percentages do not include
30 those who are unable to be vaccinated due to medical conditions and those who choose not to get
31 vaccinated. He felt the Council was discounting their safety, but recognized the data/statistics for Grafton
32 County show the risk of infections is quite low.

33
34 Councilor Winny shared some of Councilor Whittlesey's concerns, especially dealing with the underaged
35 people who do not even have the option of vaccination yet, and this could take up to 6-months or more to
36 get them vaccinated once an option is available. He was encouraged by the fact that what he has seen
37 from the statistics in younger populations is essentially the same as the flu, and we certainly do not have a
38 Mask Ordinance to handle the flu. He supported ending the mask mandate, noting nothing is 100% safe.

39
40 Councilor Heistad supported ending the mask mandate but spoke about the COVID Delta variant's
41 transmission rate and his concern about a potential spike in infections coming further down the road,
42 especially in teenagers.

43
44 Councilor Wilkie concurred with the comments made by Councilors Whittlesey, Winny and Heistad. He
45 supported rescinding the Mask Ordinance because there are a number of businesses who are not abiding
46 by the Ordinance, noting we are not protecting people if businesses in our area are not actually following
47 the ordinance. Furthermore, he did not feel the Mask Ordinance was protecting us, as this one
48 community, while other communities who do not have a Mask Ordinance.

49
50 In response to Councilor Sykes' question about rescinding the Mask Ordinance, City Manager
51 Mulholland noted that the City's recommendation will be that of the CDC's: If a person is not fully

vaccinated, they should be wearing a mask. He also noted that if a business requires a mask to be worn, and if a person(s) do not wear a mask, they can be removed and charged with criminal trespassing. With this clarification, Councilor Sykes supported rescinding the Mask Ordinance.

Assistant Mayor Below MOVED that the City of Lebanon rescind Ordinance #2020-11, Face Masks effective immediately.

Seconded by Councilor Wilkie.

Assistant Mayor Below spoke to his motion noting he takes great comfort in the fact that other regions around us have similar declines, and even Southern New Hampshire and Massachusetts who have done away with their mask ordinances for a longer period of time are continuing to go down in their infection rates.

Councilors Sykes, Zook, Whittlesey, Liot Hill, and Wilkie spoke about their reasons for extending the Mask Ordinance another 1-2 weeks, or until June 30th, noting this would give people/businesses enough time to make necessary adjustments, like signage, and would allow those aged 12-15 years, and other unvaccinated persons, to either start or complete their vaccinations.

Councilor Sykes MOVED to amend the original MOTION by replacing “effective immediately” with “effective June 30, 2021.”

Seconded by Councilor Heistad.

City Manager Shaun Mulholland informed the Council that Article 7 of the Ordinance never required children under the age of 10 to wear face masks. Also, three of the WHEREAS statements at the bottom of the Ordinance will no longer apply.

Roll Call Vote to Amended Motion:

Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, and Zook all voting Yea.

Councilors voting Nay: Assistant Mayor Below and Mayor McNamara

***The Vote on the MOTION was approved (7-2).**

The MOTION was amended to read:

Assistant Mayor Below MOVED that the City of Lebanon repeal Ordinance #2020-11, Face Masks effective on June 30, 2021.

Seconded by Councilor Heistad.

Roll Call Vote on Amended Main Motion:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

***The Vote on the AMENDED MOTION was unanimously approved (9-0).**

10. NEW BUSINESS

- A. Warrant for Civil Forfeiture Notice (pages 58- 60, agenda packed – to be signed by Councilors)**

Included in agenda packet:

- 1. Warrant for Civil Forfeiture Notice

2. NH RSA Applicable to Dog Licensing

City Clerk Kristin Kenniston came forth and explained that per statute (RSA 466:14), dogs are required to be licensed annually by April 30th. To procure a dog license, a current rabies vaccination must be on file with the City Clerk's Office. The month of May is a grace period which allows dog owners to follow up on expired rabies vaccinations in order to obtain a license. Any dog that remains unlicensed as of June 1st is assessed with a \$25.00 Civil Forfeiture fine and \$1.00 late fee which accumulates each month that the dog remains unlicensed. She noted that approximately 190 dogs remain unlicensed and would like to bring back the dog vaccination clinic next year.

ACTION:

Councilor Winny MOVED, that the Lebanon City Council hereby issues a warrant to City Clerk, Kristin Kenniston, authorizing the issuance of a civil forfeiture for each dog which remains unlicensed at the close of business on June 16, 2021.

Seconded by Councilor Whittlesey.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

****The Vote on the MOTION was unanimously approved (9-0).***

B. Approval of "Juniper Circle" as the street name for the roadway to serve a 309 unit residential development at 401 Mount Support Road, Lebanon

Included in agenda packet:

1. May 25, 2021 letter and attachment from Kristina Vagen on behalf of the Trustees of Dartmouth College
2. NH RSA 231:133

A residential graduate housing development located at 401 Mt. Support Road, Lebanon, New Hampshire is currently under construction with the expectation to begin leasing units in August 2021 and occupying units in July 2022. Trustees of Dartmouth College request Lebanon City Council approve the street name "Juniper Circle" for the private drive located within the development site (see letter and map on pages 62-65, agenda packet).

In accordance with NH RSA 231:133, Street Names and Markers, the governing body has the responsibility of naming and renaming streets.

ACTION:

Councilor Sykes MOVED, that the Lebanon City Council hereby names the private drive within the 401 Mt. Support Road Graduate Housing Development as "Juniper Circle".

Seconded by Councilor Winny.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

****The Vote on the MOTION was unanimously approved (9-0).***

C. Discussion & Direction to City Administration: Preparation of Regulations to Permit Natural Burials in Old Pine Tree Cemetery

The discussion of Natural Burials in Lebanon Cemeteries has been with the Board of Cemetery Trustees for the past several months. The topic is new for Lebanon and is charged with passion on both sides of the discussion (for and against). A motion made and voted upon by the Board of Trustees has stalled development of regulations in favor of more study over the next 5 years.

Administration is willing to consider the option of natural burials but wishes to do so at a pace that allows opportunity to learn as we go. Old Pine Tree Cemetery is the one cemetery in the city where (more than likely) all burials were natural, and there is room for more burials to occur. Should natural burials be permitted, administration would opt to only allow them in Old Pine Tree Cemetery.

The regulation of municipal cemeteries is contained in City Code Chapter 46, Cemeteries. While the Board of Cemetery Trustees has the authority to adopt bylaws, regulations, and forms consistent with Chapter 46, when it comes to actually amending the Chapter, they are only advisory to the Council.

A point of discussion (confusion) during review of possible regulations centered around the question of whether the Council had previously “directed” the Board of Trustees to bring forth a recommendation on natural burials in the City. Minutes have been researched and there was no past direction.

In order to facilitate further review and discussion on natural burials, Administration was requesting the Council direct the City Manager to develop regulations for presentation to the Cemetery Board of Trustees for their review and recommendation to the Council, hopefully by October 2021.

Councilor Zook noted the Cemetery Board of Trustees received lots of public input about the Old Pine Cemetery being used for Green Burials.

Mayor McNamara thought that it was a good idea to allow the staff to completely vet this and to make some recommendations to the Council, noting it is important to get something before Council. He understands there was a motion passed by the Cemetery Board of Trustees to basically put natural/green burials in hiatus for a period of five (5) years, but felt this was too long a period of time.

The Council held discussions regarding where the appropriate location(s) should be for green/natural burials, including locations in all of Lebanon’s cemeteries.

Mayor McNamara said the purpose of this item is for the Council to take a vote on whether to authorize City Staff to draft recommendations for natural/green burials for the Council’s consideration later in the year. While this is not a Public Hearing, Mayor McNamara opened up this discussion to the public and the following came forth to speak:

Ms. Fran Hatchett (Chair, Cemetery Board of Trustees): She said that even though the Council did not task the CBT to check into green burials, they researched them for potential implementation in Lebanon. Based on various information, a rough draft was drawn up. The CBT wanted to protect Lebanon, our City workers and their unions, and our City residents from any problems that may arise in the future. She talked with Corner Stone, a company that has been repairing the School Street Cemetery and taking care of three (3) green burial cemeteries in the Bedford area for many years. Unfortunately, their green burial people were not receptive to any of the rules and regulations that were drafted by the CBT.

Ms. Judith Brown (Ward 1): She spoke about her reasons for supporting green burials and the need to come up with options as to where they could be located.

Ms. Linda Secord: She spoke about her support in favor of establishing a place for green burials and felt this topic could not wait for 5-years.

ACTION:

Assistant Mayor Below *MOVED*, that the City Manager is hereby directed to develop regulations to permit natural burials in one or more City cemeteries for review and recommendation by the Board of Cemetery Trustees.

***BE IT FURTHER MOVED*, that such proposed regulations and recommendations shall be presented to the Council no later than October 2021.**

Seconded by Councilor Sykes.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

****The Vote on the MOTION was unanimously approved (9-0).***

D. Discussion & Set Public Hearing for July 7, 2021: Ordinance #2021-05 to amend City Code Chapter 68, Fees, Article III, Miscellaneous Fees, §68-15, Enumeration of Fees to correct the water rate charge approved as part of Ordinance #2020-20 for a four-inch water meter

Included in agenda packet: Proposed Ordinance 2021-05

On December 2, 2020, the Council authorized an 8.0% increase in water service rates through the passage of Ordinance 2020-20. As part of this ordinance, the rate for a four-inch water meter was inaccurately provided due to a transposition of numbers in the previously approved rate.

Four water accounts were affected by this error in the amounts of \$457.20 each (total overcharge of \$1,828.80). Each account holder will be reimbursed accordingly.

Administration is requesting the Council approve an adjustment in the rate for a four-inch water meter from \$2,629.90 to \$2,532.70 to accurately reflect the 8.0% increase as shown in red on the attached Ordinance.

CITY OF LEBANON ORDINANCE #2021-05

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 68 FEES, Article III, Miscellaneous Fees, Section 68-15 Enumeration of Fees, to amend the fixed meter charge for a Four-inch water meter.

BE IT ORDAINED, by the City Council of the City of Lebanon, as follows:

Section 1

The Code of the City of Lebanon is hereby amended to revise Chapter 68 FEES, Article III,

Miscellaneous Fees, Section 68-15 Enumeration of Fees, for the purpose effecting a change to the fixed meter charge for a Four-inch water meter:

B. Public utilities (water/sewer) fees shall be as follows:

§68-15 B(1) Water service rates:

§68-15 B(1)(b) Fixed charge per quarter: [7] Four-inch: ~~\$2,629.90~~ \$2,532.70

Section 2. Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 3. Effective Date

This Ordinance shall become effective upon passage.

ACTION:

Councilor Winny MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 7, 2021, beginning at 7:00pm, in Council Chambers, City Hall, Lebanon, and Remote via City's Virtual Platform, for the purpose of receiving public input and taking action on proposed Ordinance #2021-05 to amend City Code Chapter 68, Fees, §68-15, Enumeration of Fees to correct the water rate charge for a four-inch water meter.

Seconded by Councilor Whittlesey.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

****The Vote on the MOTION was unanimously approved (9-0).***

E. Authorization for the City Manager to enter into a lease agreement with Townsend Family Trust for property to house a tower anchor and guywire for a communication tower at 125 Storrs Hill Road, Lebanon

The City presently has an agreement with the Townsend Family regarding the placement of a tower anchor and guy wire for a public safety communications tower located on public property. The tower anchor and guy wire are located on the Townsend property. The property has been subdivided to another member of the Townsend family. This agreement addresses the subdivision of the property and the proper lessor. The amount of the lease is \$2,000 per year. The agreement is for five years after which it can be renewed.

Authorization from the Council is required for the City Manager to execute a lease agreement with Townsend Family Trust.

ACTION:

Assistant Mayor Below MOVED, that the Lebanon City Council hereby authorizes the City Manager to enter into and execute a lease agreement with Townsend Family Trust for use of a portion of their property to house a tower anchor and guy wire for an existing communication tower located at 125 Storrs Hill Road, Lebanon.

Seconded by Councilor Heistad.

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

***The Vote on the MOTION was unanimously approved (9-0).**

F. Request by Rock Ridge Lebanon, LLC for an abatement of Sewer Development Charges pursuant to City Code Chapter 136, Sewer Service, §136-124

Included in agenda packet:

1. March 19, 2021 letter from Attorney Barry Schuster re: Sewer Fees *(pages 72-75)*
2. April 7, 2021 letter from Attorney Matthew Decker re: Sewer Development Charges at Rock Ridge Development – 36, 38 & 39 Dogwood Circle *(pages 76-79)*
3. May 24, 2021 letter from Manager Todd Westhaver, Rock Ridge Lebanon, LLC re: Sewer Development Charge *(pages 80-83)*
4. May 25, 2021 letter from City Manager Shaun Mulholland re: Request to Abate Sewer Development Charge *(pages 84-86)*
5. Rock Ridge Exhibits submitted by Attorney Barry Schuster (06-09-2021) *(pages 87-297)*

Information available but not included in agenda packet:

1. Link to City Code Chapter 136, Article XV, Sewer Development Charge
<https://ecode360.com/36134591>

Councilor Heistad recused himself from this discussion/vote.

The City received a letter dated March 19, 2021 from Attorney Barry Schuster representing Rock Ridge Lebanon, LLC disputing the imposition of a sewer development charge (SDC) within the Rock Ridge Development. Attorney Matthew Decker, on behalf of the City, responded to Attorney Schuster on April 7, 2021 stating the “City stands on its position that pending sewer use permits for new homes in the Rock Ridge subdivision will not be issued until the sewer development charges have been paid”.

On May 24, 2021, Todd Westhaver, the Manager of Rock Ridge Lebanon, LLC submitted a letter objecting to the imposition of the Sewer Development Charge on the construction of buildings in the Rock Ridge Development off of Old Pine Tree Cemetery Road. Mr. Westhaver stated that the Rock Ridge Development was approved prior to the City amending Chapter 136 of the City Code by adopting Article XIV and Article XV.

The City adopted the provisions of Chapter 136 Articles XIV and XV on December 4, 2019. The Sleeper Village subdivision, now known as Rock Ridge, was approved on July 7, 2005. (See the letter to Attorney Schuster by Attorney Decker on April 7, 2021) The provisions of Article XIV regard the issue of sewer allocation and sewer permits. When this Article was developed, the City had limitations regarding

capacity in the main sewer interceptor that prohibited new sewer connections other than for those developments already approved. Rock Ridge was one of those projects that was previously approved.

Subsequently, the City has made considerable progress in the renovation of the City's main sewer interceptor which allows for additional capacity in the sewer collection system. Whether this work was completed or not, the capacity needed for the Rock Ridge development had already been calculated for the capacity needed in the sewer interceptor pre-renovation. In other words, Rock Ridge would have received an allocation and sewer permits.

However, Article XV, a separate article, applies to the implementation of a sewer development charge. The SDC applies to any new application for a building permit for which City sewer service is needed. The legal analysis is detailed in the letter from Attorney Decker to Attorney Schuster.

Mr. Westhaver, on behalf of Rock Ridge Lebanon, LLC, is requesting the City find that the sewer development charge is not applicable to the Rock Ridge Development as it is presently approved. Mr. Westhaver is requesting the Council to agree to abate the present sewer development charge which has been assessed and paid by Rock Ridge Lebanon, LLC as shown on page 71, agenda packet and listed below.

38 Dogwood Circle	\$	2,404.80
36 Dogwood Circle	\$	3,907.80
39 Dogwood Circle	\$	3,907.80
43 Dogwood Circle	\$	2,404.80
42 Dogwood Circle	\$	3,006.60
44 Dogwood Circle	\$	3,907.80
<u>45 Dogwood Circle</u>	<u>\$</u>	<u>2,404.80</u>
TOTAL:	\$	21,944.40

Further, Mr. Westhaver is requesting a decision by the Council regarding the abatement of future assessment of the sewer development charge regarding structures in the approved development which have yet to be constructed (94 units). Chapter 136, Article XV, Section 124 provides for a process to review abatement requests.

§ 136-124 Abatement of sewer development charges. The City Council may abate, for good cause shown, any sewer development charge assessed on any person or organization pursuant to this article. Such abatements may be made on such terms and conditions as the City Council shall deem equitable under the circumstances.

City Manager Shaun Mulholland came forth stating this is an abatement hearing, and spoke about the unauthorized use of abatements for certain things, such as a leaky toilet. However, he does not have the authority to issue an abatement in this particular case. This is solely within the purview of the Council.

When the Council passed the Ordinance changes, there were two components: 1) The permitting and allotment process, and 2) The sewer development charge. A number of developments were approved by the Planning Board, prior to the limitations placed in effect by the Council, for hookups to the new sewer

1 system. Rock Ridge was one of those developments and the understanding was they were going to get
2 the full (capacity) amount they requested to access the system and be able to deposit sewer wastewater
3 into the City's system. We have a separate article that requires a sewer development charge, and this
4 applies to everyone at the time they hook into the system, whether they have Planning Approval prior to
5 (hooking up) or not, which was referenced by the City's attorney in the agenda packet.

6
7 The purpose of the SDC was so people who would be entering/hooking up to the City's (sewer) system
8 would be buying into that system and the users that presently exist have paid for the improvements in the
9 system. While the SDC is similar to an impact fee, it is different. Impact fees are established on a
10 development because of the future impact it is going to have. The SDC is, again, people who are buying
11 into the system and helping to pay their share of the costs that have already been expended by the sewer
12 users to create/maintain the system that already exists.

13
14 City Manager Mulholland suggested it is inappropriate to issue an abatement under this circumstance for
15 a number of reasons (i.e., setting a precedent) to the Council. The intent of the Ordinance was very clear
16 when it was established and the SDC is appropriate.

17
18 Attorney Barry Schuster and his client Mr. Todd Westhaver (Manager for Rock Ridge Lebanon, LLC)
19 came forth and handed out documents and shared screen shots, to the Council. *(Please Note: All 255*
20 *pages of Attorney Schuster's presentation documents were included in the June 16, 2021 agenda packet.)*

21
22 Attorney Schuster made his, and his client's, arguments against the Sewer Development Charge (SDC),
23 noting this is not an issue of allocation and is also not an impact fee. The issue is whether this specific
24 process under (Chapter) 136 applies to Rock Ridge because everything presented to the Council for its
25 consideration and deliberations to adopt the ordinance only provided records of those developments for
26 which there was already adequate capacity. Rock Ridge was always included in this. This issue
27 illustrates the dilemma that an existing project faces with an after-the-fact assessment to a development
28 charge. He highlighted and reviewed the following documents with the Council:

- 29
30
- Memo from the City Engineer in 2016 showing that the water plant has supplied capacity to serve
31 the proposed development and the wastewater treatment facility has the capacity to treat the
32 proposed design.
 - The Weston/Sampson report to the city which occurred in 2018/19 that talks about the sewer
33 modeling.
 - The City Council's Work Session in 2018 that shows Rock Ridge with permitted sewer flows of
34 56K gallon.
 - The proposed regulator changes, noting the new processes for water & sewer connections and
35 extensions as listed in the chart on page 168, agenda packet.
 - His interpretation of § 136-124 Abatement of sewer development charges: "All future customers
36 of the City System." Attorney Schuster stated Rock Ridge is not a future customer, it has been a
37 customer since at least 2016 for phase II/III.
 - Application for Phase III, signed by Christina Hall on November 25, 2019.
 - The chronology for Rock Ridge: Attorney Schuster stated that Rock Ridge has actually paid well
38 over \$100K to the City in inspection services, and part of what the sewer charges are looking to
39 do is charge for some of that as well. Rock Ridge has paid a substantial amount to the City for
40 its installation of its entire sewer system already.
- 41
42
43
44
45
46

- 1 • The Sewer connection permits that have been sent to DES (NH Department of Environmental
- 2 Services) that were signed by the City dating from November 2015.
- 3 • The City Council’s approval of the extension of water/sewer units for Phase III, where the City
- 4 Engineer determined that capacity is available for both water/wastewater treatment plans to
- 5 supply, accept and treat the projected flows.
- 6

7 Attorney Schuster also noted that the Rock Ridge project is a development that was calculated into the
 8 planning before this ordinance was enacted and to now take it out of that planning runs contrary to the
 9 basis for how this ordinance was established. We are not talking about Rock Ridge being required to
 10 build capacity for something else in the future. Rock Ridge had already bought into the capacity that
 11 existed, noting the City Council’s authorization motion for the extension of water/sewer service for Phase
 12 III in 2016. As a follow-up to that approval, the State gave its approval as well.

13
 14 The purpose of the SDC in all of the minutes and records that the Council had when it considered the
 15 ordinance always included a number of developments in its base calculations. The projects that were
 16 listed, specifically Rock Ridge (being the largest of them) were built into the analysis as to why a SDC
 17 might be necessary, but it was never applied to them. The language of the Sewer Development Ordinance
 18 talks about “future customers.” Rock Ridge is not a future customer – it has its allocations. This is a
 19 serious charge to Rock Ridge that will affect the cost of housing in Lebanon. This (abatement request) is
 20 not a precedent-setting move, it is a situation that effects a developer for whom you (City Council) gave
 21 permission years ago to operate a sewer system and now you are adding another charge. He agrees with
 22 City Manager Mulholland that there is another section, but it all refers to future customers and Rock
 23 Ridge is not a future customer.

24
 25 Councilor Whittlesey questioned how much City sewer usage is going on at Rock Ridge right now.

26
 27 Mr. Westhaver stated he did not have a total amount in his head, but in response to Councilor
 28 Whittlesey’s other question about how often those abatements are being requested, Mr. Westhaver
 29 referred to the City Manager’s letter stating there were seven (7) building permits being charged the
 30 SDCs. We have been through the process and are connected to the City sewer system already for Phase
 31 II. The abatement we are asking for is for the seven (7) building permits we have applied for since the
 32 imposition of this new code. Attorney Schuster added that Rock Ridge owns their sewer system, and runs
 33 it down to Old Pine Tree Cemetery Road where it joins the City system so everything in Rock Ridge is
 34 private, and while it is inspected by the City they have paid the inspectors.

35
 36 Councilor Whittlesey asked if those seven (7) CDC abatement requests were connected to the City right
 37 now, noting that whether or not Rock Ridge is considered an existing or a future customer, those
 38 buildings would still be using new capacity. Even though the allotment was made, that allotment is not
 39 currently being used for those specific properties.

40
 41 Mr. Westhaver stated that all of the connections for Phase II are already in the ground, and we have
 42 already connected to the system. Yes, there will be new flows once all of the houses are complete.

43
 44 Councilor Sykes asked if their abatement requests would only apply to the new construction building
 45 permits for those single family homes.

46

1 Mr. Westhaver said yes, the SDCs are being imposed on Rock Ridge for every building permit we put in
2 on those individual single family homes being built, since Rock Ridge did not apply for all of the building
3 permits for Phase II prior to the imposition of the change in the statute.

4
5 Councilor Sykes questioned how any application for a building permit by Rock Ridge was different from
6 an application by some other homeowner who wants to put up an addition to their house that would then
7 require a sewer development charge, noting he did not see the distinction.

8
9 Attorney Schuster again explained the building permit process required by the code. Mr. Westhaver
10 added that Rock Ridge has gone through the process for sewer development prior to doing all the building
11 permits for individual homes and explained what he believed the intent is for subdivisions and gave
12 examples.

13
14 Councilor Sykes stated he was not talking about a brand new home that is being built, he was talking
15 about an existing home who has been paying for their portion of the sewer work and their taxes and fees
16 for years and years and now they add a bathroom to their house and now they pay a SDC. There is an
17 inherent unfairness to give an abatement for a project on new buildings that are now being added after this
18 ordinance was passed.

19
20 Mr. Westhaver, after going through the building process once again, reiterated the SDCs were for new
21 developments, not something that has already had its usage allocated.

22
23 City Manager Mulholland clarified the purpose of this process was to prevent someone from grabbing all
24 the capacity that was available. That process is not required for Rock Ridge because they already had the
25 allotment. Nowhere (in the ordinance) did it say that you do not have to pay the SDC. Everybody has to
26 pay this SDC. The allocation (of capacity) has nothing to do with the SDC.

27
28 Councilor Liot Hill asked how water/sewer charges work at Rock Ridge? Is it a Homeowners'
29 Association where members pay water/sewer to the association and then the association pays the City?
30 Mr. Westhaver stated water/sewer is billed directly to the homeowner from the City.

31
32 Attorney Schuster again reiterated that the SDC language applies to new developments, future customers
33 of the City system, who seek to enlarge their sewer system. Rock Ridge is not a future customer because
34 it is not enlarging the existing sewer system. It already has an allocation and was already approved for
35 that allocation.

36
37 Councilor Whittlesey asked if, for the specific plots (listed above), Rock Ridge applied for sewer permits
38 and if they have been issued for those areas. Mr. Westhaver said yes, noting they have paid the SDC.
39 Council Whittlesey then questioned at what point were those permits issued. Mr. Westhaver stated they
40 were issued when they were told to pay the SDC or they would not get the permits. When questioned by
41 Councilor Whittlesey about the date the permits were issued, Mr. Westhaver said they were issued in
42 April of this year (2021), noting that construction began around February 2021.

43
44 City Attorney Matt Decker came forth and referred to his letter (pages 77-79, agenda packet). Rock
45 Ridge is arguing their sewer allocation is vested, and he respectfully disagrees. The law makes it clear
46 that water/sewer is not a vested property right and referred to the Supreme Court Case of 1991 as
47 mentioned in his letter. Because there are no vested rights, the Council has the right to revoke sewer

1 service entirely and has the right to include a SDC that requires new users, or existing users who want to
2 expand their service, to pay for that privilege as reflected in the Ordinance itself. As described in City
3 Code §136-105, an allocation merely reserves sewer capacity for an applicant's use so that available
4 capacity is not inadvertently consumed by other projects before a developer is able to connect to the
5 system. This is not an Impact Fee, but there are similarities and he referred to RSA 674:39, I and RSA
6 674:39, II. Consistent with these laws, and a City planning staff memorandum presented to the Planning
7 Board on January 13, 2020 to review Rock Ridge's request for an extension of time for completion of the
8 Phase III development, he noted the impact fees instituted in September 2010 would not apply for future
9 building permits "as more than 5 years has elapsed since the date of the Planning Board's final approval
10 of the plat on July 6, 2006." SDCs would apply in the same way. When he looked at the Ordinance, the
11 language seemed clear to him that the Council, as the legislative body, had the right to impose SDCs on
12 all future customers and on all existing customers who seek to enlarge existing sewer services.

13
14 Mayor McNamara agreed that capacity was allocated, but moving forward every new house built (in
15 Rock Ridge) is a new customer and would require the payment of the SDC to ensure the system going
16 forward has both the durability and the capacity to continue to accept the wastewater flows.

17
18 Attorney Schuster respectfully disagreed with Attorney Decker, noting that while Rock Ridge may be
19 applying for building permits, it is still a current customer. It is the customer to whom this allocation was
20 granted and is not seeking to enlarge the existing sewer system because the sewer was defined at the
21 moment it was granted that allocation.

22
23 The Council, Attorneys Schuster and Decker, and Mr. Westhaver continued to have discussions regarding
24 what would be considered a new customer versus an existing customer; capacity allocations versus flow;
25 and hypothetical development situations that would need/ would not need to pay a SDC.

26
27 City Manager Mulholland read §136-121(A) that states: "A SDC (Sewer Development Charge) is hereby
28 imposed on all future customers of the City's sewer system and on all existing customers who seek to
29 enlarge existing sewer services." There are a certain number of homes that were built in Rock Ridge,
30 which is their existing service. Now, there are new services being added, which are the new homes.
31 These words were chosen very carefully because we considered those projects that already had an
32 allotment.

33
34 Assistant Mayor Below asked if Rock Ridge would continue to own the development and Mr. Westhaver
35 responded by saying that once the development is completed the owner will turn over the properties to the
36 Homeowners' Association who will then own the sewer system.

37
38 The Council continued extensive discussions regarding the purpose of SDCs for existing versus future
39 developments; capacity allocations; flow versus demand; protecting the capacity for Rock Ridge; the
40 language in §136-121(A); splitting the SDC cost between the City and Rock Ridge and potential
41 precedent-setting issues this might cause with other property owners in the City and the surrounding area,
42 including Enfield's SDC agreement with the City of Lebanon.

43
44 **Councilor Liot Hill MOVED to extend the meeting to 10:15 p.m.**
45 **Seconded by Councilor Sykes.**
46

Roll Call Vote:

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

None voted Nay.

**The Vote on the MOTION was unanimously approved (9-0).*

The meeting was extended to 10:15 p.m.

ACTION:

Councilor Whittlesey MOVED, that the Lebanon City Council, after hearing the request by Rock Ridge Lebanon, LLC for abatement of Sewer Development Charges in the amount of \$21,944.40 and any future Sewer Development Charges regarding sewer permits in the presently approved Rock Ridge development, hereby denies the request for abatement. Seconded by Councilor Winny.

Roll Call Vote:

Councilors Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and Mayor McNamara all voting Yea.

Voting Nay: Assistant Mayor Below

Recused: Councilor Heistad

**The Vote on the MOTION was approved (7-1). Councilor Heistad was recused.*

Councilor Heistad returned as a regular member of the Council.

11. City Manager Report:

City Manager Shaun Mulholland updated the Council on the following:

- Downtown Beautification Projects: City funds will be used to put in auto irrigation on the small traffic islands. Businesses are being asked to adopt an island and help plant flowers, etc. Similar beautification plans are being worked on for West Lebanon.
- Downtown Mall Improvements.
- Tunnel Opening: July 8, 2021.
- Landfill testing phase for permits: Almost ready to be implemented.
- Twin Pines Housing: Has now signed off on the Welcoming Lebanon Ordinance.
- SeeClickFix App: This is a new app being implemented that will allow residents to submit and keep track of their reports regarding issues in the City (i.e., trees down, potholes, dead animal in the road, etc.).
- Email Phishing Attacks: The City is receiving an abundance of phishing emails which are being compiled and sent to Homeland Security. Everyone is urged to be diligent about not clicking on suspicious links sent to them and to report any suspected phishing emails.
- Vaccinations: Many vaccination efforts have been taking place, such as at the Farmers' Market, in schools, for the homeless, at construction sites, etc.

12. Council Representatives to Other Bodies Reports: None

13. Future Agenda Items: None

14. Non-Public Session: None

1 **15. Adjournment:**

2
3 ***Councilor Heistad MOVED for adjournment.***

4 ***Seconded by Councilor Whittlesey.***

5
6 **Roll Call Vote:**

7 Assistant Mayor Below, and Councilors Heistad, Liot Hill, Sykes, Whittlesey, Wilkie, Winny, Zook and
8 Mayor McNamara all voting Yea.

9 None voted Nay.

10 ****The Vote on the MOTION was unanimously approved (9-0).***

11
12 **The meeting was adjourned at 10:07 PM.**

13
14 Respectfully submitted,

15 Dona E. Gibson

16 Recording Secretary