



LEBANON FAIR & IMPARTIAL POLICING TASK FORCE
OCTOBER 13, 2020 - 7:00 PM
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE

1. Call to Order

The October 13, 2020 Fair & Impartial Policing Task Force Meeting is hereby called to order.

2. Approval of Minutes

- A. August 4, 2020
- B. September 1, 2020
- C. September 15, 2020
- D. September 29, 2020
- E. October 6, 2020

3. Discussion Items

- A. Fair & Impartial Policing Task Force Report and Vote on Recommended Changes to Lebanon Welcoming Ordinance

4. Open to the Public

5. Other Business

6. Adjournment

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Microsoft Teams. Members of the public are encouraged to attend by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the Microsoft Teams software or by phone. Please visit LebanonNH.gov/Live for full details.

THE AGENDA, IN ITS ENTIRETY IS AVAILABLE ON THE CITY'S WEBSITE AT [LEBANONNH.GOV](https://LebanonNH.gov)

Implementation and Enforcement: Attorney H.B. Waugh's January 13, 2020 Opinion Regarding the Welcoming Lebanon Ordinance.

Attorney Waugh's opinion provided a basis for City Council deliberations and decision making during the January 22, 2020 Public Hearing for the Ordinance and informed the decisions of voters to approve the Welcoming Lebanon Ordinance in the March 10, 2020 Municipal election.

Under Wording And Implementation Issues, Attorney Waugh provided the following statement.

1. One general concern arises from the unusual fact that the only persons subject to this ordinance would be City officers/personnel, and that the only persons who would be enforcing the ordinance would also be City personnel. A police department, for example, may naturally be reluctant to bring enforcement actions against its own members under an ordinance such as this — particularly for violations which may seem to be "minor." For this reason, and also because portions of the proposed ordinance leave quite a bit of ambiguity, ***I would strongly recommend that the City take measures to assure that enforcement is as uniform and impartial as possible. Otherwise there could be a risk of discrimination or Equal Protection claims.*** Such measures could include amending those areas of wording which are overbroad or ambiguous, or at least developing specific implementation guidelines, to take the guesswork out of which types of actions are subject to the ordinance and which are not.

During the current work of the task force, Attorney Waugh suggested creating an Enforcement Provision modeled after Sections VIII and IX of Hanover's Fair and Impartial Policing Ordinance. The Enforcement Provision for the Welcoming Lebanon Ordinance would include all agents for the city.

Sections VIII and IX of Hanover's Fair and Impartial Policing Ordinance

VIII. Duties of Department Officers:

- A. Any employee who believes there is or is made aware of any violation of this Ordinance shall immediately inform his/her immediate supervisor.
- B. All complaints of bias policing or discriminatory practices will be investigated in accordance with established internal affairs procedures.
- C. Each supervisor is responsible for continually monitoring and examining all officers under their direct supervision to ensure that officers' actions and activities adhere to this Ordinance and to discover any indications of bias or discriminatory practices.
- D. Traffic enforcement, detention, and search procedures will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness and lawfulness in conducting such activities.

IX. Complaints of Bias and/or Discrimination:

- A. The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- B. Any person may file a complaint with the Department if they believe they have been stopped or searched based on any alleged act of biased policing.

C. Any person who tells a Department officer that they wish to file such a complaint shall be provided with the name of the officer's immediate supervisor. Any officer who is accused on scene of discrimination, racial profiling, an illegal stop, frisk, and/or search by any person, shall report the incident to their immediate supervisor as soon as practicable at the conclusion of the contact.

D. Supervisors who receive official complaints shall follow Department procedures. Supervisors shall review bias/profiling accusations and complaints, formal or informal.

Following a discussion with me, Attorney Waugh then provided a version of Provision 9 Implementation and Enforcement based in part on the Hanover ordinance.

Respectfully Submitted,

Kathleen Beckett

10/9/20

Response to Shaun Mulholland's Email Regarding 625:9

Here is the complete quote from Attorney Waugh's October 2019 review of the draft Welcoming Lebanon Ordinance submitted to the City Clerk.

4. Penalty? An additional aspect of this draft is that it proposes to create a number of prohibitions, but does not contain any penalty if those prohibitions are violated. I do not see this as a formatting defect.

- a. For one thing, the proposed ordinance affects primarily agents of the City, and violations would likely be handled as personnel issues.
- b. Secondly, RSA 625:9 says that **offenses for which neither statute nor ordinance specifies a penalty** are deemed to be "violations." (Emphasis added.)

Attorney Waugh stated that the Welcoming Lebanon Ordinance submitted for his review did "not contain any penalty" and added that "RSA 625:9 says that offenses for which neither statute nor ordinance specifies a penalty are deemed to be "violations"."

It is fair to say that Attorney Waugh did not advocate for RSA 625:9. Rather, he provided the Welcoming Lebanon Ordinance Committee with the information/facts regarding an ordinance with no penalty and with the applicable statute regarding a penalty when that is the case.

The Welcoming Lebanon Ordinance Committee subsequently added the following wording to the ordinance in order to provide language regarding a penalty.

"Failure by agents of the City to comply with the Welcoming Lebanon Ordinance, while not a criminal offense, shall be a violation according to NH RSA 625:9."

RSA 625:9 would apply whether or not it was stated in the ordinance. Including the statement notified the City Council, the voters, the employees of the city, and the community as a whole that this was the case.

It must be noted that during the January 22, 2020 public hearing regarding the Welcoming Lebanon Ordinance and until the very recent concern expressed by City Manager Mulholland, no Council member, no member of the public, no employee or official of the city raised a concern regarding the inclusion of the statement.

During his current work with the FIP/Welcoming Lebanon Ordinance task force, Attorney Waugh suggested a change in the wording of the statement to:

"Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be deemed a violation offense, as set forth in RSA 625:9, V-a."

This statement is included as statement A in the recommended Implementation and Enforcement Provision of the revised Welcoming Lebanon Ordinance. (Provision 9) It appears that since the current ordinance revision does not include a penalty, NH RSA 625:9 continues to apply.

Respectfully Submitted,

Kathleen Beckett

October 9, 2020

WELCOMING LEBANON ORDINANCE

working draft - as of 10/9/20

discussed revisions are in italic

comments by Attorney Waugh in red

Proposed Revision of the Purpose/intent

Whereas The City Council of Lebanon wishes to act in accord with the City's Master Plan, Principles for Sustainability and Guiding Principles in preserving the public trust and promoting community identity, civic pride, and quality of life for all residents regardless of race, skin color, national or ethnic origin, gender identity, sexual orientation, mental or physical disability, religious or political opinion or activity, immigration status or housing status; and,

Whereas The City Council of Lebanon wishes to take a leading role in protecting civil liberties, promoting tolerance, and providing equal protection under the law to all persons in the City."

Proposed Purpose/Intent

The people of Lebanon voted by Citizens' Initiative Ballot measure to enact the Welcoming Lebanon Ordinance. The purpose of this Ordinance is to establish the City's procedures concerning its residents' immigration status and its responsibilities and powers regarding federal civil immigration enforcement.

This Ordinance gives substance to the sentiments in the City of Lebanon's "Resolution for Inclusiveness" proclaimed by the City Council on June 20, 2018 and commits the City to preserve the public trust, affirm human rights and constitutional rights, and promote community identity, civic pride, and quality of life for all people regardless of race, skin color, national or ethnic origin, cultural group, language, gender identity or expression, sexual orientation, mental or physical ability, age, religious or political opinion or activity, economic status, immigration status, or housing status. The City of Lebanon commits to protecting civil liberties, promoting tolerance, and providing equal protection under the law to all persons in the city. Such protections strengthen trust and collaboration among community members in keeping all residents and visitors safe.

Furthermore, the City recognizes that a person's presence in the United States without documents is not a crime and that the City presently lacks the legal authority to enforce noncriminal civil violations of federal immigration law.

Due to the City's limited resources; the complexity of immigration laws; the clear need to foster the trust of and cooperation from the public, including members of the immigrant communities; and to effectuate the City's goals, we find that there is a need to articulate guidelines regarding the relationship between the City and the federal government and to clarify the federal Constitutional protections Lebanon has against federal agencies commandeering its resources.

Definitions

As used in this ordinance, the following words and phrases shall mean and include:

Administrative warrant. "Administrative warrant" means an immigration warrant issued by a federal agency charged with the enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

Agency. "Agency" means every department, agency, division, commission, council, committee, board, or other body of the City of Lebanon established by authority of state law, the Lebanon City Charter, or an ordinance, executive order, or order of the Lebanon City Council.

Agent. "Agent" means any person employed by or acting on behalf of an Agency, whenever any such person is acting within the scope of that person's employment or agency capacity, or when utilizing or disclosing any information that may be learned in the course of that person's employment or agency capacity. The term includes any volunteer acting on behalf of an Agency, as well any person with access to Agency information which is not available to the general public.

Citizenship or immigration status. "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country or of the authority to reside in or otherwise be present in the United States.

Federal immigration authorities. "Federal immigration authorities" means federal agencies, departments, or employees tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

Immigration detainer. "Immigration detainer" means an official request issued by ICE, or another federal agency charged with the enforcement of civil immigration laws ~~concerning the custody or detention of any individual, to another federal, state, or local law enforcement agency to detain an individual~~ based on a violation of a civil immigration law ~~or notify ICE or other federal immigration agency of a person's release from custody.~~

"Physical or mental ability." The term "physical or mental ability" includes, but is not limited to, "disability" as defined in RSA 354-A:2, IV.

[The following Provisions 1 - 5 are proposed to replace Provisions 1-3 of the proposed ordinance]

Provision 1

No law enforcement agent or other agent or agency of the City of Lebanon, ~~or any volunteer assisting the efforts of such agent or agency,~~ shall profile, target, detain, or otherwise discriminate against any person because of any of the following, whether actual or perceived: age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental

disability, national origin, sexual orientation, ethnicity or culture, language or religion, economic or housing status, or citizenship or immigration status.

Provision 2

No person shall be questioned in a manner which is biased or discriminatory, as described in Provision 1, and no personal information may be collected, retained, utilized, or disclosed in any discriminatory manner or to any discriminatory purpose or effect by any agent or agency of the City.

Provision 3

No agent or agency of the City of Lebanon shall request, collect, or retain information about, or otherwise investigate or assist in the investigation of the United States citizenship or immigration status of any person in the City of Lebanon.

Provision 4

No agent or agency of the City shall disclose information regarding the U.S. citizenship or immigration status of any person, unless such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individual's parent or guardian.

Provision 5

Notwithstanding Provisions 1-4 above, agents of the City may question about, collect, retain, utilize, and disclose information concerning the criteria listed in Provisions 1-4 in the following circumstances, as long as that is done on an impartial basis and in a non-discriminatory manner:

A. Where collection, retention, utilization, or disclosure of the specific information is mandated in order to implement a municipal program, process, or function **which is performed by the City** unrelated to the enforcement of federal immigration law, **which is performed by the City**, but whose rules and parameters are imposed by state or federal law or authority, including but not limited to federal and state laws governing employment and elections.

[To be discussed]

B. Where collection, retention, utilization, or disclosure of the specific information is required by statute, court order or judicial warrant.

B. Where collection, retention, utilization, or disclosure of the specific information is required **by statute or court order** or ***[suggested]*** *judicial warrant* ***[suggested]*** *procedurally necessary as part of an ongoing investigation of a violation of law unrelated to immigration law or citizenship status. including but not limited to a violation of this ordinance itself, or as part of litigation or a quasi-judicial administrative proceeding unrelated to the enforcement of federal immigration law, or by statute or court order.*

Where collection, retention, utilization or disclosure of the specific information is required by statute or court order or when information sharing is necessary to an ongoing investigation of a violation of this Ordinance or a felony, for which there is probable cause,

*and the investigation is unrelated to the enforcement of federal civil immigration law.
[From Kathy Beckett 9-28-20]*

C. Where the information is being collected or retained solely for purposes of evaluating and improving the performance of the Police Department or other City agency with respect to its compliance with the impartiality and non-discrimination requirements of Provision 1 and 2 above.

D. Where relevant economic information is being collected, retained, or utilized in the course of administering a program of benefits based on financial need, including but not limited to general assistance under RSA Ch. 165.

Provision 6

[formerly paragraph 4]. No Agent or Agency shall condition the provision of City of Lebanon benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision. Where presentation of a New Hampshire driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a New Hampshire driver's license or identification card, except that this subsection shall not apply to the completion of the federally mandated 1-9 forms.

Provision 7

[formerly paragraph 5]. No Agent or Agency of the City of Lebanon, including Law Enforcement, shall aid or participate in immigration enforcement actions. An Agent or Agency is authorized to communicate with Federal immigration authorities in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law. No Agent or Agency shall:

- A. arrest, detain, or continue to detain a person based solely on suspected or actual civil immigration violation.
- B. arrest, detain, or continue to detain a person on an Administrative warrant or upon an Immigration detainer based solely on a violation of immigration law.
- C. accept requests by Federal immigration authorities to support or assist in operations that are for civil immigration enforcement.
- D. permit Federal immigration authority access to a person being detained by, or in the custody of, the Agent or Agency.
- E. permit Federal immigration authorities use of agency facilities for investigative interviews or other investigative purpose.
- F. respond to Federal immigration authorities' inquiries or share information about an

individual with Federal immigration authorities. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations. For the purpose of aiding an individual who may qualify for a U, S, or T Visa, information may be shared if such disclosure has been authorized in writing by the individual to whom such information pertains.

Attorney Waugh's comment - In Provision #7 (former 5), Paragraph 6, there remains the question of whether the use, by the City, of the nationwide law enforcement database which is also accessible to federal authorities violates this section. *Assuming* that the intent is *not* to prohibit the City from participating in such a database, I would suggest adding something like the following at the end of that paragraph: ***“Nothing in this Section shall be construed as prohibiting participation in an inter-agency data bases such as the National Crime Information Center, so long as its utilization by City agents is not biased or discriminatory, and does not violate the prohibitions in Provisions 3 and 4 above.”*** (If, on the other hand, the Task Force believes the Ordinance's intent is to prohibit such database use altogether, I would strongly urge another talk with Chief Mello.)

Suggested Revised Par 8 [formerly 6].

In order to maintain public safety and the orderly processes for all citizens traveling in and through the city of Lebanon, if any Agent of the City confirms that there exists a delay or obstruction in the normal flow of traffic including, for instance, a Federal immigration authority checkpoint, such information shall be reported to the office of the City Manager who shall promptly cause the City to notify the public which may be done through the LebAlert system. [Barry]

~~*the presence of checkpoints along our roads and highways that interfere with the flow of traffic should be reported to the public. If any Agent of the City becomes aware of a Federal immigration authority's presence at said checkpoint in the City for the purposes of questioning, detaining or gathering immigration status information from any person or persons, or other enforcement action, the City shall act to notify the public as soon as they become aware. This should be done by both the City of Lebanon and community organizations once they become aware. Notification can be made through the LebAlert system. [and other organizations?] as well as partner organization communications protocols.*~~

8 [formerly original paragraph 6]. If any Agent or Agency becomes aware of a Federal immigration authority's presence in the City for the purposes of questioning, detaining or gathering immigration status information from any person or persons, or other enforcement action, the Agent or Agency shall immediately act to inform residents of the City of that presence through any reasonable means and channels available to the City, such as LebAlert and other media.

Severability

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this Ordinance would have been adopted had such invalid provision, clause, section, part or application not been included herein.

To be discussed]

[Attorney Waugh suggestion 9-28-20]

Section 9 - Implementation and Enforcement.

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be deemed a violation offense, as set forth in RSA 625:9, V-a.

~~Failure by agents of the City to comply with the Welcoming Lebanon Ordinance shall be addressed under the terms of the City's personnel policies,; while not a criminal offense, shall be a violation according to NH RSA 625:9.~~
[Barry]

B. Any person who believes that they have been subjected to a violation of this Ordinance by a City employee, or who otherwise has personal knowledge of such a violation, may submit a complaint in whatever form or manner the complainant chooses, to the employee or department involved, or to the City Manager, or may submit such a complaint anonymously. Reasonable efforts shall be made to accommodate any language barriers. Such complaints shall be handled in accord with applicable City complaints and investigations policies; provided, however, that at the discretion of the Manager the complaint may be referred to the appropriate law enforcement agency having jurisdiction, and any internal investigation may be delayed pending the outcome of the law enforcement agency's involvement.

C. Complaints alleging violations of this Ordinance by non-employee agents of the City, including appointed or elected officials, shall be filed with or forwarded to the City Manager, who may take such action as is appropriate in light of the nature of the complaint, including referral to the law enforcement agency having jurisdiction, and/or referral to the Council for such action as it deems justified.

D. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of liability on the part of the City or its agents. *However, nothing herein shall be deemed to pre-condition or restrict any person from pursuing a violations complaint in court pursuant to Paragraph A above, or from seeking such alternative remedies as may be available under existing state or federal laws. [last sentence suggested by Attorney Waugh on 9-1-20 but removed by Attorney Waugh on 9-28-20].*

Section 9 - Implementation and Enforcement.

D. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of liability on the part of the City or its agents. Nothing herein shall be deemed to pre-condition or restrict any person from pursuing a complaint in court or from seeking such alternative remedies as may be available under law.

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be enforced in accordance with City of Lebanon Policy ADM-126, effective September 1, 2020.

B. Any person who believes that they have been subjected to a violation of this Ordinance, or who otherwise has personal knowledge pertaining to such a violation, may submit a complaint to the City Manager according to the process laid out in City of Lebanon Policy ADM-126 or anonymously via the City of Lebanon website.

C. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of civil liability on the part of the City or its agents.

Provision 9: Implementation and Enforcement

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be deemed a violation offense, as set forth in RSA 625:9, V-a.

B. Any person who believes that they have been subjected to a violation of this Ordinance, or who otherwise has personal knowledge pertaining to such a violation, may submit a complaint to the department involved, or to the City Manager or Director of Human Resources. Upon adoption of this Ordinance, the City shall develop a complaint form, which shall be readily available to the public, but whose use shall not be deemed mandatory. Reasonable efforts shall be made to accommodate any language barriers.

C. Any employee of the City who has reason to believe a violation of this Ordinance has occurred shall immediately report it to their supervisor. All supervisors are responsible for continued oversight of employees under their supervision to assure compliance with this Ordinance.

D. Any person accusing a City employee of a violation, or otherwise expressing a wish to file a complaint, shall be given the name of the relevant supervisor and access to a complaint form. The employee involved shall report the accusation or incident to their supervisor as soon as practicable

E. All reports or complaints, formal or informal, against City employees filed with or communicated to the City under this Ordinance shall be investigated in accordance with

applicable internal affairs procedures and personnel policies. Violations of this Ordinance, including failure to report violations under C above or accusations under D above, may result in disciplinary action as outlined in such policies and procedures.

F. Complaints alleging violations of this Ordinance by non-employee agents of the City, including appointed or elected officials, shall be filed with or forwarded to the City Manager, who may, depending on the nature of the complaint, either initiate an investigation or refer the matter to the Council for such action as it deems justified.

G. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of civil liability on the part of the City or its agents. However, nothing herein shall be deemed to pre-condition or restrict any person from pursuing a violations complaint in court pursuant to Paragraph A above, or from seeking such alternative remedies as may be available under existing state or federal laws.

Proposed Provisions on Enforcement (paragraphs A through G of Provision #8 or #9 depending on what happens to the original #6), as submitted by Beckett/Waugh with the 9/1 agenda. (I have yet to hear from the City Manager with respect to any potential practical problems with this draft.)

WELCOMING LEBANON ORDINANCE

working draft - as of 10/9/20

Proposed Purpose/Intent

The people of Lebanon voted by Citizens' Initiative Ballot measure to enact the Welcoming Lebanon Ordinance. The purpose of this Ordinance is to establish the City's procedures concerning its residents' immigration status and its responsibilities and powers regarding federal civil immigration enforcement.

This Ordinance gives substance to the sentiments in the City of Lebanon's "Resolution for Inclusiveness" proclaimed by the City Council on June 20, 2018 and commits the City to preserve the public trust, affirm human rights and constitutional rights, and promote community identity, civic pride, and quality of life for all people regardless of race, skin color, national or ethnic origin, cultural group, language, gender identity or expression, sexual orientation, mental or physical ability, age, religious or political opinion or activity, economic status, immigration status, or housing status. The City of Lebanon commits to protecting civil liberties, promoting tolerance, and providing equal protection under the law to all persons in the city. Such protections strengthen trust and collaboration among community members in keeping all residents and visitors safe.

Furthermore, the City recognizes that a person's presence in the United States without documents is not a crime and that the City presently lacks the legal authority to enforce noncriminal civil violations of federal immigration law.

Due to the City's limited resources; the complexity of immigration laws; the clear need to foster the trust of and cooperation from the public, including members of the immigrant communities; and to effectuate the City's goals, we find that there is a need to articulate guidelines regarding the relationship between the City and the federal government and to clarify the federal Constitutional protections Lebanon has against federal agencies commandeering its resources.

Definitions

As used in this ordinance, the following words and phrases shall mean and include:

Administrative warrant. "Administrative warrant" means an immigration warrant issued by a federal agency charged with the enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

Agency. "Agency" means every department, agency, division, commission, council, committee, board, or other body of the City of Lebanon established by authority of state law, the Lebanon City Charter, or an ordinance, executive order, or order of the Lebanon City Council.

Agent. "Agent" means any person employed by or acting on behalf of an Agency, whenever any such person is acting within the scope of that person's employment or agency capacity, or when

utilizing or disclosing any information that may be learned in the course of that person's employment or agency capacity. The term includes any volunteer acting on behalf of an Agency, as well as any person with access to Agency information which is not available to the general public.

Citizenship or immigration status. "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country or of the authority to reside in or otherwise be present in the United States.

Federal immigration authorities. "Federal immigration authorities" means federal agencies, departments, or employees tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

Immigration detainer. "Immigration detainer" means an official request issued by ICE, or another federal agency charged with the enforcement of civil immigration laws concerning the custody or detention of any individual based on a violation of a civil immigration law.

"Physical or mental ability." The term "physical or mental ability" includes, but is not limited to, "disability" as defined in RSA 354-A:2, IV.

Provision 1

No law enforcement agent or other agent or agency of the City of Lebanon, shall profile, target, detain, or otherwise discriminate against any person because of any of the following, whether actual or perceived: age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental ability, national origin, sexual orientation, ethnicity or culture, language or religion, economic or housing status, or citizenship or immigration status.

Provision 2

No person shall be questioned in a manner which is biased or discriminatory, as described in Provision 1, and no personal information may be collected, retained, utilized, or disclosed in any discriminatory manner or to any discriminatory purpose or effect by any agent or agency of the City.

Provision 3

No agent or agency of the City of Lebanon shall request, collect, or retain information about, or otherwise investigate or assist in the investigation of the United States citizenship or immigration status of any person in the City of Lebanon.

Provision 4

No agent or agency of the City shall disclose information regarding the U.S. citizenship or immigration status of any person, unless such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individual's parent or guardian.

Provision 5

Notwithstanding Provisions 1-4 above, agents of the City may question about, collect, retain, utilize, and disclose information concerning the criteria listed in Provisions 1-4 in the following circumstances, as long as that is done on an impartial basis and in a non-discriminatory manner:

A. Where collection, retention, utilization, or disclosure of the specific information is mandated in order to implement a municipal program, process, or function which is performed by the City unrelated to the enforcement of federal immigration law, but whose rules and parameters are imposed by state or federal law or authority, including but not limited to federal and state laws governing employment and elections.

[To be discussed]

B. Where collection, retention, utilization, or disclosure of the specific information is required by statute, court order or judicial warrant.

B. Where collection, retention, utilization, or disclosure of the specific information is required **by statute or court order** or ***[suggested]*** *judicial warrant* ***[suggested]*** *rocedurally necessary as part of an ongoing investigation of a violation of law unrelated to immigration law or citizenship status. including but not limited to a violation of this ordinance itself, or as part of litigation or a quasi-judicial administrative proceeding unrelated to the enforcement of federal immigration law, or by statute or court order.*

C. Where the information is being collected or retained solely for purposes of evaluating and improving the performance of the Police Department or other City agency with respect to its compliance with the impartiality and non-discrimination requirements of Provision 1 and 2 above.

D. Where relevant economic information is being collected, retained, or utilized in the course of administering a program of benefits based on financial need, including but not limited to general assistance under RSA Ch. 165.

Provision 6

No Agent or Agency shall condition the provision of City of Lebanon benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision. Where presentation of a New Hampshire driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a New Hampshire driver's license or identification card, except that this subsection shall not apply to the completion of the federally mandated 1-9 forms.

Provision 7

No Agent or Agency of the City of Lebanon, including Law Enforcement, shall aid or participate in immigration enforcement actions. An Agent or Agency is authorized to communicate with Federal immigration authorities in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law. No Agent or Agency shall:

- A. arrest, detain, or continue to detain a person based solely on suspected or actual civil immigration violation.
- B. arrest, detain, or continue to detain a person on an Administrative warrant or upon an Immigration detainer based solely on a violation of immigration law.
- C. accept requests by Federal immigration authorities to support or assist in operations that are for civil immigration enforcement.
- D. permit Federal immigration authority access to a person being detained by, or in the custody of, the Agent or Agency.
- E. permit Federal immigration authorities use of agency facilities for investigative interviews or other investigative purpose.
- F. respond to Federal immigration authorities' inquiries or share information about an individual with Federal immigration authorities. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations. For the purpose of aiding an individual who may qualify for a U, S, or T Visa, information may be shared if such disclosure has been authorized in writing by the individual to whom such information pertains. Nothing in this Section shall be construed as prohibiting participation in an inter-agency data bases such as the National Crime Information Center, so long as its utilization by City agents is not biased or discriminatory, and does not violate the prohibitions in Provisions 3 and 4 above.

Provision 8

In order to maintain public safety and the orderly processes for all persons traveling in and through the City of Lebanon, if the City Manager or designee learns of and confirms that there exists a delay or obstruction in the City of the normal flow of traffic including, for example, due to a Federal immigration authority checkpoint, such information shall be reported to the office of the City Manager who shall promptly cause the City to notify the public which may be done through the LebAlert system.

Severability

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this

Ordinance would have been adopted had such invalid provision, clause, section, part or application not been included herein.

[To Be Discussed]

Section 9 - Implementation and Enforcement.

A. Failure by agents of the City to comply with the Welcoming Lebanon Ordinance shall be addressed under the terms of the City's personnel policies.

B. Any person who believes that they have been subjected to a violation of this Ordinance by a City employee, or who otherwise has personal knowledge of such a violation, may submit a complaint in whatever form or manner the complainant chooses, to the employee or department involved, or to the City Manager, and may submit such a complaint anonymously. Reasonable efforts shall be made to accommodate any language barriers. Such complaints shall be handled in accord with applicable City complaints and investigations policies; provided, however, that at the discretion of the Manager, the complaint may be referred to the appropriate law enforcement agency having jurisdiction, and any internal investigation may be delayed pending the outcome of the law enforcement agency's involvement.

C. Complaints alleging violations of this Ordinance by non-employee agents of the City, including appointed or elected officials, shall be filed with or forwarded to the City Manager, who may take such action as is appropriate in light of the nature of the complaint, including referral to the law enforcement agency having jurisdiction, and/or referral to the Council for such action as it deems justified.

D. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of liability on the part of the City or its agents. Nothing herein shall be deemed to pre-condition or restrict any person from pursuing a complaint in court or from seeking such alternative remedies as may be available under law.

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be enforced in accordance with City of Lebanon Policy ADM-126, effective September 1, 2020.

B. Any person who believes that they have been subjected to a violation of this Ordinance, or who otherwise has personal knowledge pertaining to such a violation, may submit a complaint to the City Manager according to the process laid out in City of Lebanon Policy ADM-126 or anonymously via the City of Lebanon website.

C. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of civil liability on the part of the City or its agents.

WELCOMING LEBANON ORDINANCE
(AS PROPOSED BY CITIZENS BINDING INITIATIVE)

Purpose and Intent

The purpose of this Ordinance is to establish the City's procedures concerning immigration status and enforcement of federal civil immigration laws. This Ordinance builds on the City of Lebanon's "Resolution for Inclusiveness" proclaimed by the City Council on June 20, 2018.

The cooperation of all persons, citizens and non-citizens, regardless of immigration status, is essential to achieve the City of Lebanon's goals of protecting life and property, preventing crime, and resolving problems. Assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents.

Due to the City's limited resources; the complexity of immigration laws; the clear need to foster the trust of and cooperation from the public, including members of the immigrant communities; and to effectuate the City's goals, we find that there is a need to articulate guidelines regarding the communications and enforcement relationship between the City and the federal government.

Provisions:

1. No Law Enforcement Agent, or other Agent or Agency of the City of Lebanon, or any informants or volunteers assisting their efforts shall profile, target, detain, collect or retain information, or question any person on the basis of race, ethnicity, language, religion, citizenship or immigration status.

2. No Agent or Agency of the City of Lebanon shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person in the City of Lebanon. Notwithstanding this provision, the City Council may investigate and inquire about immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

3. No Agent or Agency shall disclose information regarding the Citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individual's parent or guardian. This section shall not apply when such information sharing is necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.

4. No Agent or Agency shall condition the provision of City of Lebanon benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision. Where presentation of a New Hampshire driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not

subject the person to a higher level of scrutiny or different treatment than if the person had provided a New Hampshire driver's license or identification card, except that this subsection shall not apply to the completion of the federally mandated 1-9 forms.

5. No Agent or Agency of the City of Lebanon, including Law Enforcement, shall aid or participate in immigration enforcement actions. An Agent or Agency is authorized to communicate with Federal immigration authorities in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law. No Agent or Agency shall

1. arrest, detain, or continue to detain a person based solely on suspected or actual civil immigration violation.

2. arrest, detain, or continue to detain a person on an Administrative warrant or upon an Immigration detainer based solely on a violation of immigration law.

3. accept requests by Federal immigration authorities to support or assist in operations that are for civil immigration enforcement.

4. permit Federal immigration authority access to a person being detained by, or in the custody of, the Agent or Agency.

5. permit Federal immigration authorities use of agency facilities for investigative interviews or other investigative purpose.

6. respond to Federal immigration authorities' inquiries or share information about an individual with Federal immigration authorities. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations. For the purpose of aiding an individual who may qualify for a U, S, or T Visa, information may be shared if such disclosure has been authorized in writing by the individual to whom such information pertains.

6. If any Agent or Agency becomes aware of a Federal immigration authority's presence in the City for the purposes of questioning, detaining or gathering immigration status information from any person or persons, or other enforcement action, the Agent or Agency shall immediately act to inform residents of the City of that presence through any reasonable means and channels available to the City, such as LebAlert and other media.

Failure by agents of the City to comply with the Welcoming Lebanon Ordinance, while not a criminal offense, shall be a violation according to NH RSA 625:9.

Severability

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this Ordinance would have been adopted had such invalid provision, clause, section, part or application not been included herein.

TO: FAIR & IMPARTIAL POLICING / WELCOMING LEBANON ORDINANCE TASK FORCE
FROM: KAREN LIOT HILL, CHAIR
SUBJECT: PREPARATION OF A CONSENSUS RECOMMENDATION TO THE LEBANON CITY COUNCIL
DATE: OCTOBER 13, 2020
CC: SHAUN MULHOLLAND, CITY MANAGER;
BERNIE WAUGH, LEGAL COUNSEL FOR THE CITY OF LEBANON

CHARGE OF THE TASK FORCE

On October 15, 2019, an Initiative Petitioners' Committee filed a petition to the City Clerk in accordance with Lebanon City Charter § C419:23a and Chapter 89 of the Lebanon City Code. Legal counsel for the City of Lebanon reviewed the proposed ordinance accordingly, and a copy of Attorney Waugh's legal analysis was provided to the Petitioners' Committee. Having reached the number of signatures required for placement on the March 2020 ballot, the Lebanon City Council discussed the proposed ordinance at a meeting on January 23, 2020. Attorney Waugh provided a legal opinion outlining concerns with specific provisions, as well the lack of a specific enforcement process. The City Council endorsed the spirit of the ordinance and indicated that a collaborative effort between the Council and the Petitioners' Committee to address these areas of legal concern would be undertaken if voters passed the Ordinance in March 2020.

By a vote of 1221-1015, the Welcoming Lebanon Ordinance was adopted by Lebanon voters on March 10, 2020. The Mayor of Lebanon subsequently appointed the Fair & Impartial Policing Task Force, consisting of two city councilors, two members of the petitioners' committee, and three at-large Lebanon residents. The charge of the Task Force adopted by the City Council was to:

1. Propose amendments to the ordinance recently passed which would make it compliant with applicable Federal and State laws, rules and regulations. Further, that the original purpose of the measures remain intact to the extent possible.
2. Reformat the ordinance so it is easily codified as part of the Code of the City of Lebanon, to be known as "Chapter 65 Fair and Impartial Policing". The proposed amended language should include the following sections;
 - a. Declaration of Purpose
 - b. Definitions
 - c. Application (who the code provisions apply to)
 - d. Specific provisions of the code

WORK OF THE TASK FORCE

The Fair & Impartial Policing / Welcoming Lebanon Task Force has met regularly over the summer and early fall, engaging to date in 11 public meetings remotely via Microsoft Teams due to the COVID-19 pandemic. The Task Force has benefited from the participation and advice of Attorney Bernie Waugh, Legal Counsel for the City of Lebanon, as well as Attorney Kira Kelly, Legal Counsel for the Petitioners' Committee. At each of its meetings, the Task Force has dedicated a portion of time to accepting public testimony. Meetings have all been recorded and are available on the City website.

At the beginning of its work, the Task Force identified the specific provisions of the Ordinance that would require substantial work, and members of the Task Force each volunteered to work on specific provisions and return to the Task Force with proposed revisions. The Task Force proceeded to address each of these provisions over the course of the Summer and early Fall 2020, with the goal of providing a consensus recommendation to the Lebanon City Council in time for the Council to review the recommendation, hold a public hearing, and vote on the proposed recommendation prior to January 1, 2021, the date that the Welcoming Lebanon Ordinance goes into effect.

SUMMARY OF WORK TO DATE

PURPOSE/INTENT

The proposed Purpose/Intent section is very similar to what was passed by the Citizens Binding Initiative. The modifications augment references to the City of Lebanon's "Resolution for Inclusiveness" of 2018 and its dedication to protecting civil liberties, promoting tolerance, and providing equal protection under the law to all persons in the City. The proposed language also articulates the intent of the local community for its government not to engage in enforcement of federal civil immigration law. The Police Chief testified to the Task Force that it is not presently the practice of the Lebanon Police Department to enforce federal civil immigration law and shared evidence of internal policies indicating such. Part of the purpose of this Ordinance is to codify these internal policies into local law.

DEFINITIONS

This is a new section, based on a recommendation from Attorney Waugh that the Ordinance include definitions to make it more enforceable.

PROVISIONS 1-5

Provisions 1-5 are proposed to replace Provisions 1-3 of the Ordinance.

PROVISION 1 & 2

After substantial discussion and having reached unanimous agreement that the main purpose of the original provisions is to prohibit discrimination, the Task Force agreed to divide former Provision 1 into two new provisions. The new Provision 1 articulates protected categories, and the new Provision 2 specifically addresses non-discrimination in the collection of personal information.

Protected categories in Provision 1 formerly comprised: race, ethnicity, language, religion, citizenship or immigration status. Protected categories are expanded in the proposed

language to include “the following, whether actual or perceived: age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental ability, national origin, sexual orientation, ethnicity or culture, language or religion, economic or housing status, or citizenship or immigration status.”

PROVISIONS 3 & 4

These provisions are based on former Provisions 2 & 3 and articulate specific prohibitions on collecting information regarding immigration status and participating in immigration-related investigations. This language is almost identical to what the voters passed.

PROVISION 5

A major issue of concern raised by members of the Task Force, by the City Administration, and by the City’s legal counsel was around collection, retention, utilization, and disclosure of information. The Police Chief and City Manager both offered testimony about numerous instances where collection, etc. of data was legitimately required for certain municipal functions, e.g. conducting fingerprinting for the public, running background checks on police officer candidates, and registering people to vote. The Task Force asked many questions and engaged in substantive discussion about this issue. The Task Force agreed that it was not the intention of the Ordinance to interfere with these types of legitimate municipal functions. The primary intent is to prohibit discrimination and to prohibit local law enforcement from participating in enforcement of federal civil immigration law.

Exceptions to Provisions 1 through 4 were therefore compiled in Paragraph 5 and tailored as narrowly as possible. Paragraph A refers specifically to employment and election functions. Paragraph C creates an exception for purposes of evaluating and improving performance of the Police Department and other city departments with regard to impartiality and non-discrimination. Paragraph D refers to administering benefits based on financial need where collection of specific information may be required.

TO BE ADDRESSED: Paragraph B addresses circumstances in which disclosure of information is required by court order, judicial warrant, or investigation of a violation of law unrelated to immigration law or citizenship status. The Task Force has agreed that the exceptions in Provision 5 should be tailored as narrowly as possible. Petitioners have suggested language that would create an exception based at minimum on a judicial warrant. The City Manager has stated that creating an exception conditioned on a judicial warrant could interfere with critical criminal investigations that are unrelated to immigration law.

PROVISION 6

Provision 6 replaces the former Provision 4. The language is identical.

PROVISION 7

Provision 7 replaced the former Provision 5. The language is identical, except for the addition of one sentence at the end of Paragraph F.

TO BE ADDRESSED: The proposed Provision includes the following sentence: “Nothing in this Section shall be construed as prohibiting participation in an inter-agency database such as the National Crime Information Center, so long as its

utilization by City agents is not biased or discriminatory, and does not violate the prohibitions in Provisions 3 and 4 above.” The Police Chief testified that the Lebanon Police Department uses a nationwide law enforcement database, which is also accessible to federal authorities, and that access to this database is critical to carrying out the functions of the police department. Attorney Waugh suggested addition of the foregoing language if the intent of the Ordinance is not to prohibit the City from participating in such a database.

PROVISION 8

Formerly Provision 6, this provision is known as the “notification” provision and was the focus of significant time and attention for the Task Force. Attorney Waugh reiterated his legal concerns on several occasions, particularly around possible claims against the municipality for interference with federal law and potential personal liability of municipal agents. Waugh stated that based on his admittedly extremely conservative approach to advising municipal clients, there was no version of this provision that he would be able to recommend to the City Council for adoption. The Task Force engaged in substantial discussion of this and agreed that some version of the notification provision should remain in the Ordinance, based on the voters’ intent. Therefore, the Task Force focused its efforts on reducing possible legal exposure of the City and its Agents. To that end, the proposed provision approaches the notification requirement through the lens of public safety, an undisputedly legitimate municipal function, and specifically narrows the notification duty to the City Manager.

TO BE ADDRESSED: Proposed Provision 8: “In order to maintain public safety and the orderly processes for all persons traveling in and through the City of Lebanon, if the City Manager or designee learns of and confirms that there exists a delay or obstruction in the City of the normal flow of traffic including, for example, due to a Federal immigration authority checkpoint, the City Manager shall promptly notify the public which may be done through the LebAlert system.” The City Manager will promulgate rules that will dictate how this provision is carried out administratively. Upon confirming that there exists a delay or obstruction in the City of the normal flow of traffic, the City Manager intends to issue an alert stating that such an obstruction exists and encouraging travelers to seek alternate routes. The specific nature of the obstruction will not be identified so as to protect the City Manager from personal liability.

PROVISION 9

The Welcoming Lebanon Ordinance passed by the voters did not contain an enforcement provision, a legal concern raised by Attorney Waugh requiring the attention of the Task Force. In the absence of a specific enforcement mechanism, the following New Hampshire statutes apply:

RSA 625:9, V-a. The violation of any requirement created by statute or by municipal regulation enacted pursuant to an enabling statute, where the statute neither specifies the penalty or offense classification, shall be deemed a violation, and the penalties to be imposed by the court shall be those provided for a violation under RSA 651:2.

RSA 651:2, III-a. A person convicted of a violation may be sentenced to conditional or unconditional discharge, or a fine.

RSA 651:2, IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The limitations on amounts of fines authorized in subparagraphs (a) and (b) shall not include the amount of any civil penalty, the imposition of

which is authorized by statute or by a properly adopted local ordinance, code, or regulation. The amount of any fine imposed on:

(a) Any individual may not exceed \$4,000 for a felony, \$2,000 for a class A misdemeanor, \$1,200 for a class B misdemeanor, and \$1,000 for a violation.

TO BE ADDRESSED: The Task Force has agreed that an enforcement provision is an important addition to the Ordinance. The Task Force is reviewing this issue based on concerns raised by the City Manager on behalf of city employees. The City of Lebanon does have a Complaints & Investigations Administrative Policy (ADM-126), adopted September 1, 2020 by the City Manager who has been conducting a methodical review of all city policies and procedures over the past year. ADM-126 creates a procedure for receiving, investigating, and processing complaints regarding City personnel and officials and could provide an appropriate enforcement mechanism to reference in the Welcoming Lebanon Ordinance. The Task Force could also consider making recommendations to strengthen the transparency and accountability of ADM-126, such as creating a page on the city website where data about complaints and their resolution could be made publicly available and/or requiring regular reporting to the City Council about complaints received and their resolution.

Proposed PROVISION 9 for consideration by the Task Force:

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be enforced in accordance with City of Lebanon Policy ADM-126.

B. Any person who believes that they have been subjected to a violation of this Ordinance, or who otherwise has personal knowledge pertaining to such a violation, may submit a complaint to the City Manager according to the process laid out in City of Lebanon Policy ADM-126 or anonymously via the City of Lebanon website.

C. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of civil liability on the part of the City or its agents. Nothing herein shall be deemed to pre-condition or restrict any person from pursuing a complaint in court or from seeking such alternative remedies as may be available under law.

Date: 10/13/2020

DS
Sm

**Bernie Waugh's Comments on the "Welcoming
Lebanon Ordinance Working Draft as of 10/9/20"**

(version compiled by Atty. Schuster, and
distributed by the City Manager by E-mail dated
10/10/20).

First, I hope Task Force members will accept my apologies for being absent last week. My wife and I had made reservations on the basis that the Task Force's work was anticipated to be complete prior to that time.

In general, the work of the Task Force is to be highly commended. There are only a few remaining items where I have comments – primarily in the areas where the Task Force itself has had difficulty reaching agreement:

Provision 5.B - I realize this has not yet been finalized by the Task Force. I would continue to argue that there should be ***some*** narrow leeway for police to utilize or disclose immigration-related information as part of an ongoing investigation and prosecution of violations of law unrelated to civil immigration law or citizenship status.

EXAMPLE: New Hampshire law provides for enhanced penalties for certain types of "hate crimes." For example under RSA 651:1(f), there can be enhanced penalties if the person convicted "*was substantially motivated to commit the crime because of hostility to the person's...national origin....*" Let us suppose that someone has committed a serious assault, and the only evidence that the perpetrator was "substantially motivated" by the victim's national origin is evidence showing that the perpetrator had in some manner acquired knowledge concerning the victim's immigration status. Clearly the inability to collect and use that information would compromise the investigation and prosecution.

[As you know, I myself have no experience in criminal investigations – I suspect members of the Police Department could present additional pertinent examples.]

MY SUGGESTION FOR 5B: "Where collection, retention, utilization, or disclosure of the specific information is required by statute or court order, ***or where the specific information constitutes an essential evidentiary element in an ongoing investigation or prosecution of a violation of law unrelated to civil immigration law or citizenship status.***"

[Note: If I understand the objections to this type of language (discussed in, for example, Sarah Wright's analysis dated 10/5/20), the concern appears to be that police officers will see the above type of language as a green light for collecting or disclosing

immigration information in **every** criminal investigation. I hope the Task Force realizes, however, that as an attorney for the City, I cannot endorse language which restricts essential law enforcement functions, based solely on an assumption that City personnel would **violate** this ordinance.]

Provision 8 (former 6) – I no longer have any *substantive* legal concern with the language of this section. It now gives the Manager sufficient discretion that s/he can avoid any substantial risk of interfering with federal law enforcement (for example, by issuing an alert which does not specify the exact cause of the traffic obstruction).

I *do* have a *grammatical* suggestion: The current sentence is inconsistent, because the general structure is “*if the City Manager or designee learns of (the issue), such information shall be reported to the office of the City Manager...*” (But hey, if the Manager has already learned the information, why does it still need to be reported to the Manager?) **Suggestion:** Delete the phrase “such information shall be reported to the office of the City Manager, who...”, and instead change the final clause of the sentence (following the phrase “for example, due to a Federal immigration authority checkpoint”) to read as follows: “***the City Manager or designee shall promptly cause the City to notify the public, which may be done through the LebAlert system.***”

Section 9 – Implementation and Enforcement. The biggest change here, of course, is that the reference in Paragraph A to a violation offense under RSA 625:9, V-a, has been totally removed – at least in the version which appears first in the 10/9/20 draft.

Comment: Both the City Manager and Chair Liot-Hill mentioned to me that someone at last week’s meeting expressed a belief that I had somehow *endorsed* the inclusion the violation offense as part of this ordinance. I can understand how that belief may have arisen, and I apologize for any misunderstanding. However:

1. As I’ve said before, it’s never been my role to take a position on policy issues. The decision of whether to include enforcement via a violation offense is such a policy position, given that it is not outright unlawful to do so.

2. I did admittedly include that language in my prior suggestions for versions of the enforcement provision. But that was only because that language had been included, by the Petition Committee, in the voter-passed version, not because I was endorsing it.

3. I definitely ***have*** expressed the legal opinion that RSA 625:9, V-a raises a ***presumption*** that a violation of this ordinance will constitute a violation offense (even if the ordinance were to be silent on that issue).

4. But as of the meeting on September 29, I had ***not*** addressed the question of whether the ordinance could be drafted so as to ***negate*** that presumption. The reason is simply that no one on the Task Force had, at that point, asked me that question.

5. Let me therefore address that question now. Please understand I am unaware of ***any*** court decision interpreting RSA 629, V-a. My opinion is thus based solely on the language of the statute, and how I think a court would interpret it in the context of N.H. municipal law.

6. In short, I am extremely confident that a court – if presented with the question – would allow this ordinance to negate any intent to create a violation offense, especially in the context of an ordinance applicable only to agents of a municipality. The clearest reason is that, otherwise, every violation of a local personnel policy would necessarily and automatically have to be treated as a violation offense – which would be contrary to a number of well-established principles of public employee labor relations.

Paragraph 9.A. Having said all that, I have two concerns with the first version of Section 9.A as presented in the 10/9/20 Working Draft: (a) First, assuming that its intent is to negate the creation of a violations offense under RSA 625:9, V-a, that intent needs to be clearer; and (b) the language referring to personnel policies leaves out the entire subject of violations committed by *non*-employee agents of the City, which is addressed by Paragraph C (first version). **My suggestion** is to use the “exclusive remedy” language, similar to the Chicago and Hartford ordinances, so that Paragraph A would read, in its entirety as follows: ***“The exclusive remedy for violations of this ordinance shall be pursuant to paragraphs B or C below, as applicable.”*** (I would also suggest such “exclusive remedy” language should be added if the second printed version of paragraphs A-C were to be adopted instead.)

Paragraph 9.D. Assuming, again, that the intent of the new version of A is to negate the creation of a violations offense, then the words “from pursuing a complaint in court, or...” should be **deleted** from Paragraph D. That phrase was formerly a reference to pursuing a violations complaint. Retaining that language now would be inconsistent, and would also tend to dilute and confuse the first clause of Paragraph D, which is to disclaim any intent to create civil liability.

One Final Comment: The “Severability” clause, which in the 10/9/20 Working Draft is printed as part of Provision 8, should probably (in accord with customary construction in other parts of the Lebanon Code) be given its own section, namely Section 10, **after** the Implementation and Enforcement provision.

I hope the Task Force finds the above comments helpful.
Sincerely,

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