



**LEBANON CITY COUNCIL
NOVEMBER 4, 2020 - 7:00 PM
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE**

1. Call to Order

The November 4, 2020 Lebanon City Council Meeting is hereby called to order.

2. Pledge of Allegiance

3. Public Forum Announcement by the Mayor

Any member of the public who desires to speak on any item may do so when the item is taken up by the Council and will be allowed to speak on the subject for not more than three minutes. **(Note: Speakers are asked to state their name, ward of residence, and to use the microphone provided.)**

4. Open to the Public

5. Recognitions: None

6. Approval of Minutes

A. October 21, 2020, Regular Meeting

B. October 21, 2020, CIP Meeting

7. Appointments: None

8. Public Hearing Items: None

9. Old Business

A. Presentation of Second Reading: Amendment to Ordinance #18, Salary Plan to amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Employees; and Article II.B, Seasonal/Temporary & Stipend Employees

B. Action to adopt amendment to Council Rules as presented on October 21, 2020

10. New Business

A. Action on request by the Carter Witherell Center for abatement of sewer charges due to pool leak

B. Discussion and Set Public Hearing for November 18, 2020: Ordinance #2020-18 to amend City Code Chapter 97, Landfill Regulations, Appendix A, Fee Schedule

C. Discussion & Set Public Hearing for November 19, 2020: Ordinance #2020-19 to amend the City Code by adding a new Chapter 185, Welcoming Lebanon

11. City Manager Report

- 12. Council Representatives to Other Bodies Report**
- 13. Future Agenda Items**
- 14. Non-Public Session**
- 15. 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

FUTURE BOARD/COMMITTEE/COMMISSION APPOINTMENTS

Board/Committee: Conservation Commission

Position: Regular Member

Applicant: S. Almy

Assigned Councilor: K. Zook

Assigned Date: 7/15/2020

Board/Committee: West Lebanon Revitalization Advisory Committee

Position: Regular Citizen Member

Applicant: D. Read

Assigned Councilor: T. McNamara

Assigned Date: 9/21/2020

Board/Committee: West Lebanon Revitalization Advisory Committee

Position: Regular Citizen Member

Applicant: L. Stavis

Assigned Councilor: T. McNamara

Assigned Date: 9/21/2020

Board/Committee: West Lebanon Revitalization Advisory Committee

Position: Regular Citizen Member

Applicant: R. Foster

Assigned Councilor: T. McNamara

Assigned Date: 9/21/2020

Board/Committee: West Lebanon Revitalization Advisory Committee

Position: Regular Citizen Member

Applicant: H. Clarke

Assigned Councilor: T. McNamara

Assigned Date: 9/25/2020

Board/Committee: West Lebanon Revitalization Advisory Committee

Position: Regular Business Member

Applicant: C. Clem

Assigned Councilor: T. McNamara

Assigned Date: 9/26/2020

Note: While 1 City Councilor is officially assigned to interview each applicant, any City Councilor may interview any applicant for any position to better inform their decision.

PROPOSED FUTURE AGENDA ITEMS: Dates may be tentative and this list not considered all inclusive.

NOVEMBER 18, 2020

PUBLIC HEARING ITEMS:

A. ORDINANCE #2020-18 – Public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2020-18 to amend City Code Chapter 97, Landfill Regulations, Appendix A, Fee Schedule

B. AMEND ORDINANCE NO. 18 – Public hearing for the purpose of receiving public input and taking action on proposed Ordinance #18, Salary Plan, to amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Employees; and Article II.B, Seasonal/Temporary & Stipend Employees

NEW BUSINESS:

A. Presentation of First Reading and Set Public Hearing for December 16, 2020: Amendment to Ordinance 18, Salary Plan, Article II, Non-Affiliated & LPASE Employees; and Article III, Bargaining Unit Employees to effectuate at 1.5% General Wage Increase effective the first pay period of 2021

B. Discussion & Set Public Hearing for December 2, 2020: Ordinance #2020-20 to amend City Code Chapter 68, Fees, Article III, Miscellaneous Fees, §68-15, Enumeration of Fees to authorize an 8% increase to the Water Service Rate and a 7.2% increase to the Sewer Service Rate

C. Discuss and approve DHMC PILOT Agreement

D. Presentation by Upper Valley Democratic Socialists of America: Proposal to reduce the 2021 Police Department budget by 50 percent.

NOVEMBER 19, 2020 (Special Meeting)

PUBLIC HEARING ITEM:

A. ORDINANCE #2020-19 - Public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2020-19 to amend the City Code to add new Chapter 185, Welcoming Lebanon

DECEMBER 2, 2020

PUBLIC HEARING ITEM:

A. ORDINANCE #2020-20 – Public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2020-20 to amend City Code Chapter 68, Fees, Article III, Miscellaneous Fees, §68-15, Enumeration of Fees to authorize an 8% increase to the Water Service Rate and a 7.2% increase to the Sewer Service Rate

OLD BUSINESS:

A. Presentation of Second Reading: Amendment to Ordinance 18, Salary Plan, Article II, Non-Affiliated & LPASE Employees; and Article III, Bargaining Unit Employees to effectuate a 1.5% General Wage Increase effective the first pay period of 2021

NEW BUSINESS:

A. Discussion and Set Public Hearing for January 6, 2021: Discontinuance or reclassification of a portion of Barden Hill Road

B. Discussion and Set Public Hearing for January 6, 2021: Discontinuance or reclassification of Durkee Road

C. Review and Discussion of 2020 3rd Quarter Budget Report and Release of Collected Public Schools Impact Fees

D. Public Input on Proposed 2021 Municipal Budget

DRAFT

**LEBANON CITY COUNCIL
MINUTES, REGULAR SESSION
Wednesday, October 21, 2020, 7:00 p.m.
Remote Via Microsoft Teams: LebanonNH.gov/Live**

MEMBERS PRESENT: Mayor Tim McNamara, Assistant Mayor Clifton Below, Bruce Bronner, Erling Heistad, Karen Liot Hill, Suzanne Prentiss, George Sykes, Jim Winny, Karen Zook

MEMBERS ABSENT: None

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager Paula Maville, City Clerk Kristin Kenniston, Lebanon Police Chief Richard Mello, Parks & Recreation Director Paul Coats, HR Director Gloria Leskiewicz, Kelly Crate-DPW, Melanie McDonough (IT)

1. Call to Order: Mayor McNamara called the meeting to order at 7:01 p.m.

This meeting took place virtually due to the COVID-19 Pandemic and was conducted in accordance with the Emergency Orders issued by the New Hampshire Governor according to NH RSA 91-A "Right-to-Know Law."

A Roll Call was taken and all City Councilors who attended the virtual meeting are listed above.

2. PLEDGE OF ALLEGIANCE: Councilor Bronner led the Council in the Pledge.

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

4. OPEN TO PUBLIC: No one came forth.

5. RECOGNITIONS: In Honor of Ms. Pat McGovern, Mayor McNamara read the following Resolution:

RESOLUTION IN HONOR OF PAT MCGOVERN

WHEREAS, Pat McGovern has dedicated her talents, resources and time to the City of Lebanon as a champion of all things related to sustainability; and

WHEREAS, Pat faithfully served on the Mascoma River Greenway (MRG) Capital Campaign Team and continues to bring MRG highlights to the public via the MRG website and Facebook pages; and

WHEREAS, Pat began and has maintained the UV Locavores, promoting a diet for a sustainable planet by buying and eating foods grown within a 100 mile radius; and

WHEREAS, Pat is a founder and manager of the Canillas Community Gardens, an organic community garden on CCBA land that features raised beds, herbs, flowers, a pollinator garden and a bean tepee; and

1 **WHEREAS**, Pat has made tangible efforts to reduce disposable plastics by contributing to the Lebanon
2 Library's "Cool Stuff" dinner party box, helped launch the No Plastics Pollution Challenge and the Refill
3 Not Landfill program with Lebanon Solid Waste; and

4
5 **WHEREAS**, Pat supports the efforts of LEAC through her website, offering "one resident's attempt to
6 follow the progress of the Energy Plan"; and

7
8 **WHEREAS**, Pat, the consummate teacher and communicator, has strengthened the Lebanon
9 community's access to information and ability to hear from one another through her management of the
10 Lebanon listserv and her blogs; and

11
12 **WHEREAS**, Pat is a strong activist for pollinators, creating and maintaining pollinator gardens, and
13 advocating for reduced use of pesticides and herbicides; and

14
15 **WHEREAS**, Pat is a funny, warm, and kind role model to others through her work and efforts to do
16 something positive and constructive; and

17
18 **WHEREAS**, Pat McGovern is awarded the Lebanon Recreation and Parks 2020 Volunteer of the Year
19 Award; and

20
21 **WHEREAS**, the citizens of the City of Lebanon are fortunate to have such an exemplary fellow citizen
22 residing within the community,

23
24 **NOW, THEREFORE BE IT RESOLVED**, that the Lebanon City Council on behalf of the citizens of
25 Lebanon extend their congratulations and appreciation to Pat McGovern in honor of her exemplary
26 volunteer services to the community.

27
28 _____
29 Tim McNamara, Mayor

30 City Councilors and City Staff expressed their accolades to Ms. McGovern and spoke about the many
31 personal experiences she, and the Friends of Lebanon, have extended to them over the years.

32
33 **6. ACCEPTANCE OF MINUTES: October 7, 2020 (Regular Session)**

34 Amendments: Page 9 of 62, line 32: replace "of the" and add "and"; Page 7 of 62, line 16: change
35 "Barton road" to "Barden Road" and line 18: change "Townline" to town line; Page 13 of 62, line 26
36 change "Roy Grawler" to "Rory Gawler"; Page 10 of 19: line 24 (page # listed on minutes) and
37 page 12 of 19: line 5: remove unanimously and change vote to (6-1): Page 18 of 62, line 40; Sentence
38 should read "The Council discussed increasing the threshold of parking fines for immobilization of a
39 vehicle."; Page 15 of 62: after motion add "in the agenda packet"; Page 14 of 62, line 5: change "EL
40 Huni" to "Elhuni"

41
42 **Councilor Heistad MOVED** to approve the October 7, 2020 (Regular Session) minutes as amended
43 and presented in the October 21, 2020 City Council agenda packet.

44 **Seconded by Councilor Prentiss.**

45
46 **Roll Call Vote:**

Assistant Mayor Below, and Councilors Heistad, Liot Hill, Prentiss, Sykes, Winny, Zook and Mayor McNamara, all voting Yea.
None voted Nay.

Councilor Bronner abstained because he was not present at this meeting.

**The Vote on the Motion was approved (8-0-1).*

7. APPOINTMENTS:

- Library Board of Trustees: Donna Hartford (Alternate Member): The Board unanimously voted to recommend that the City Council appoint Ms. Hartford to the position. One-year term (10/20 – 10/21)

Councilor Bronner put forth the nomination of Ms. Donna Hartford as an Alternate Member of the Library Board of Trustees. One-year term (10/20 – 10/21).

In the absence of a Councilor's interview, and after some discussion as to whether or not a Councilor's interview was necessary, the Council took the following action:

Roll Call Vote:

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

None voted Nay.

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

7. PUBLIC HEARING ITEMS:

A. ORDINANCE #2020-17

A public hearing for the purpose of receiving public input and taking action to amend the Code of the City of Lebanon, Chapter 1, General Provisions.

Included in the agenda packet was Ordinance #2020-17.

City Manager Shaun Mulholland came before the Council to give a briefing on Ordinance #2020-17.

Ordinance #2020-16 to amend the City Code to include a new Chapter 6, Administrative Enforcement, was adopted by the City Council on October 7, 2020, and enacted to enable the administrative enforcement of City code violations.

Chapter 1, General Provisions, of the City Code contains a "General Penalty" section to address penalties where another penalty is not provided in subsequent chapters of the Code. Currently the section is only applicable to "persons." The amendment proposed by Ordinance #2020-17 expands applicability to accessories, principals, and corporations.

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

ACTION:

Councilor Bronner MOVED, that the Lebanon City Council hereby adopts Ordinance #2020-17 to amend City Code Chapter 1, General Provisions, §1-4 General Penalty, as presented in the October 21, 2020 agenda packet.

1 *Seconded by Assistant Mayor Below.*

2
3 **Roll Call Vote:**

4 Assistant Mayor Below, and Councilors Bronner, Heistad, Liot Hill, Prentiss, Sykes, Winny, Zook and
5 Mayor McNamara, all voting Yea.

6 None voted Nay.

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

8
9 Assistant Mayor Below noted that there is still language in Ordinance #2020-17 referencing a
10 misdemeanor and felt the Council should change the misdemeanor language to a violation without the
11 potential of 90 days in jail.

12
13 **9. OLD BUSINESS: NONE**

14
15 **10. NEW BUSINESS**

16 **A. PRESENTATION: 2020 HISTORIC LANDMARK DESIGNATIONS**

17
18 Included in the agenda packet were: October 21, 2020 Memo from Planning & Development staff on
19 behalf of the Heritage Commission re: Presentation of Historic Landmark Designations; Historic
20 Landmark Certificate for 9 Seminary Hill Road; Historic Landmark Certificate for 523 Meriden Road;
21 2020 Lebanon Historic Landmark Properties: Photograph of buildings at 523 Meriden Road and 9
22 Seminary Hill Road.

23
24 Mr. Robert Welsch, Chair of the Heritage Commission Chair, came forth to recognize two Lebanon
25 properties identified by the 2020's Historic Landmark Designation Program for designation as local
26 historic landmarks. (Due to remote meeting requirements, originals of the Certificates along with
27 commemorative plaques will be provided to the property owners at a later date.)

28
29 In accordance with its purpose statement, the Lebanon Heritage Commission is responsible for the proper
30 recognition, use, and protection of resources, tangible or intangible, primarily manmade, that are valued
31 for their historic, cultural, aesthetic, or community significance within their natural, built or cultural
32 context. Lebanon is endowed with a trove of properties having historic, architectural, and/or cultural
33 significance that the Heritage Commission strives to recognize to foster individual and community pride.

34
35 The Heritage Commission was established in 2006 to take the place of the Historic District Commission.
36 In addition to its regulatory role within the Lebanon Historic District, the Heritage Commission plays an
37 advisory role citywide, and is responsible for the dissemination of information regarding the City's
38 historical resources and for conducting the Historic Landmark Program. The Historic Landmark
39 Designation Program was created in 1997 to identify and aid in the protection of sites of significant
40 community value in the City. The Program aims to increase awareness in, and encourage, property
41 owners to invest in the rehabilitation of their buildings, in turn to conserve property values and strengthen
42 the local economy. The Landmark Designation Program is an honorary celebration of our community's
43 legacies and does not subject properties to any special or additional regulations or restrictions within the
44 City or otherwise. For a building to receive Historic Landmark Designation it must possess historical,
45 architectural and/or cultural significance. For example, qualifying sites may be associated with historical
46 events or with the lives of significant persons in our past, or the site may embody the distinctive
47 characteristics of a particular style. The designation of Historic Landmarks also furthers the Master Plan.
48 Among the action items of Chapter 11, Historic Resources, is the following: "Continue identifying
49 structures that qualify for the State and/or National Historic Register and the Historic Landmark
50 Designation Programs." (#11.1.A3).

1
2 Chair Welsch read the following recognition documents into the record:
3

4 * 523 Meriden Road, Lebanon; Owner: Joel Tremblay Sr. and Patricia Tremblay
5

6 **BE IT KNOWN THAT:**
7

8 **James Wood House 523 Meriden Road**
9 **Situated in the City of Lebanon, has been designated by the**
10 **Lebanon Heritage Commission as an**
11 **Historic Landmark**

12 **in recognition of the historical, architectural, or cultural significance of such property and**
13 **in particular the following:**
14

15 **Built ca. 1825 by Ephraim Wood for his family in the southern part of town, the Wood**
16 **House descended to his eldest son James, who lived there in the 1860s. The house represents**
17 **a typical Lebanon farmhouse of two and a half stories formerly with a barn in the back. We**
18 **know from the diary of James Wood—in the collection of the Lebanon Historical Society—**
19 **that the family put up a runaway slave for the night on 1 June 1862, early in the Civil War.**
20 **It is one of the few standing structures in Lebanon that unambiguously highlights the**
21 **relationship between Lebanon and the fight against slavery.**
22

23 **Dated in the City of Lebanon this 21st Day of October 2020.**
24
25

26 * 9 Seminary Hill Road, West Lebanon; Owner: Nancy and James McAlister
27

28 **BE IT KNOWN THAT:**
29

30 **9 Seminary Hill Road**
31 **Situated in the City of Lebanon, has been designated by the**
32 **Lebanon Heritage Commission as an**
33 **Historic Landmark**

34 **in recognition of the historical, architectural, or cultural significance of such property and**
35 **in particular the following:**
36

37 **Built ca. 1800 and expanded upon during the nineteenth century, this structure, with its**
38 **steep gables and beautiful slate roof, is an example of the early structures in West Lebanon.**
39 **The house is notable for its wonderful slate roof and its steep gables. Besides its physical**
40 **properties and aesthetic design, this house is, according to oral tradition, a home that**
41 **occasionally put up runaway slaves on their way to Canada.**
42

43 **Dated in the City of Lebanon this 21st Day of October 2020.**
44

45 **ACTION:**

46 *No action is required by the Council. Item was for informational purposes only.*
47

48 **B. DISCUSS THE LONG-TERM PLANS FOR THE SEASONAL CLOSURE OF COURT**
49 **STREET AND THE PARKING AREA IN FRONT OF 20 WEST PARK STREET**
50

1 **Assistant Mayor Below recused himself from this discussion.**

2
3 City Manager Mulholland came forth requesting the Council to consider the seasonal and long-term post
4 COVID-19 plans as listed above.

5
6 Court Street and the parking area in front of 20 West Park Street were closed in May of 2020 to allow for
7 Three Tomatoes and Salt Hill Pub to set up tents for outside dining directly adjacent to their facilities, to
8 operate safely during the COVID-19 pandemic. Both restaurants plan to take down the tents during the
9 first week of November. DPW will be removing the planters for the winter season to allow for snow
10 removal operations.

11
12 It is anticipated that the COVID-19 pandemic and its related issues will not be resolved until the middle
13 or third quarter of 2021. There will be a need for both restaurants to operate in these same areas starting in
14 the spring of 2021. The planters would need to be re-installed resulting in these two areas being closed
15 until at least the issues of COVID-19 are addressed such that the threat of the spread of the virus is
16 adequately mitigated. Once COVID-19 has been mitigated, there will be an opportunity to also open up
17 the Mall space for other restaurant and retail activities.

18
19 The Council should determine if these areas should continue to be closed seasonally to allow for
20 restaurant or other retail activity. Should the Council make that determination, a process would need to be
21 developed to determine who or which entities should be allowed to use the space and how it should be
22 used.

23
24 Mayor McNamara noted that what was done in a very short period of time has been well-received by the
25 community and certainly increased the amount of street traffic in this area, which made the Downtown
26 seem a lot livelier.

27
28 The Council commended the restaurant owners and all who made this area a safe place for people to eat.
29 They were in favor of continuing to provide this service for the public, and potentially opening up the
30 Mall area to other retail businesses as long as the community finds value in it.

31
32 Mr. Rob Meyers, owner of Three Tomatoes, came forth to thank the City Manager for stepping outside of
33 the box. Allowing his restaurant to be able to open up in an outside space has tremendously helped his
34 business.

35
36 Mr. Josh Tuohy, owner of Salt Hill Pub, came forth and echoed Mr. Meyers sentiments. He also wanted
37 to thank everyone who helped make this possible. He also understood the concerns expressed by other
38 businesses and is willing to work with them and the City if this is continued.

39
40 Tracy Hutchins came forth noting the favorable comments she received from the community. At lot of
41 people would like to see this come back next year because this really made Lebanon come alive, not to
42 mention it was a great solution to these two restaurants.

43
44 City Manager Mulholland stated he would move forward with the permit process for the Council's review
45 and approval, at least through the COVID-19 period, and then we can talk about long-term plans.

46
47 **ACTION:**

48 No action required from the Council at this time.

49
50 **Assistant Mayor Below returned as a regular member of the Council.**

1 **C. PRESENTATION OF FIRST READING AND SET PUBLIC HEARING FOR**
2 **NOVEMBER 18, 2020: AMENDMENTS TO ORDINANCE NO. 18, ARTICLE II.A –**
3 **REGULAR FULL-TIME AND PART-TIME BENEFIT ELIGIBLE POSITIONS; AND**
4 **ARTICLE II.B – SEASONAL/TEMPORARY & STIPEND EMPLOYEES**
5

6 Included in the agenda packet were The Amendments to Ordinance No. 18, Article II.A – Regular Full-
7 Time and Part-Time Benefit Eligible Positions; and Article II.B – Seasonal/Temporary & Stipend
8 Employees.
9

10 Gloria Leskiewicz, Human Resources Director, came forth representing the proposed amendments as
11 listed below:
12

13 The Council is being asked to begin the process of amending Ordinance No. 18, Salary Plan, as follows:

- 14 1. Amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Positions by moving
15 the Utilities Superintendent Position from Grade 11 to Grade 10, deleting the position of Field
16 Inspector I (Grade 7), and retitling the position of “Field Inspector II” (Grade 8) to “Field
17 Inspector;” and
- 18 2. Amend Article II.B, Seasonal/Temporary & Stipend Employees to include the positions of
19 part-time Call Firefighter and part-time Communication Specialist.
20

21 Due to recent retirements of long-term employees, the City has recognized the need to reorganize the
22 Utilities Division as there is great need for an experienced superintendent to oversee construction projects
23 and to supervise emergency situations.
24

25 The Utilities Superintendent position is an existing position within the Lebanon Professional,
26 Administrative, Salaried Employees (LPASE) Bargaining Unit but has been vacant for several years.
27 Based on current needs, the job description has been reviewed, revised, and regraded to bring it into
28 alignment with three other Public Works Superintendent’s positions. The proposed regrading of the
29 position has been reviewed with the LPASE membership and they are in agreement with the
30 recommended change.
31

32 The structure of the Planning and Development Department does not dictate the need for two separately
33 graded Field Inspector Positions. Field Inspector I (Grade 7) was envisioned as an “entry level” position
34 and is being eliminated. As there will no longer be a “Field Inspector I” position, there is no need for a
35 “Field Inspector II,” so it is to be retitled “Field Inspector.”
36

37 The positions of part-time Call Firefighter and part-time Communication Specialist are existing positions
38 but were inadvertently left off the list of Seasonal/Temporary & Stipend Employees. We are asking that
39 they be included so the listing of “all” City positions in Ordinance 18 is complete.
40

41 **Process to Amend Ordinance No. 18**

42 Amending Ordinance No. 18 requires three separate presentations (see City Charter subsections 419:22,
43 419:24, 419:25, 419:52) followed by a public hearing and the vote of at least two-thirds (2/3) of all
44 members of the City Council – six (6) members - to adopt.
45

The Council was asked to recognize the first of three presentations on October 21 and to schedule a public hearing for November 18, 2020 to amend the Ordinance. The second and third presentations will follow on November 4, and November 18, respectively.

ACTION:

Assistant Mayor Below MOVED, that the Lebanon City Council acknowledges the first of three presentations to amend Ordinance No. 18, Salary Plan, as follows:

- 1. Amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Positions by moving the Utilities Superintendent Position from Grade 11 to Grade 10, deleting the position of Field Inspector I (Grade 7), and retitling the position of "Field Inspector II" (Grade 8) to "Field Inspector;" and*
- 2. Amend Article II.B, Seasonal/Temporary & Stipend Employees to include the positions of part-time Call Firefighter and part-time Communications Specialist.*

The following pay plan shall be in effect the first pay period of 2020 by incorporating the tables on pages 41, 42 and 43 of 62 pages in the Council's agenda packet, and with regard to season temporary and stipend employees, the following pay plan shall be in effect for the first pay period of 2020, incorporating the table on pages 43 and 44 of the Council agenda packet.

2. SCHEDULE PUBLIC HEARING:

Assistant Mayor Below also MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, November 18, beginning at 7:00 pm, Remote via Microsoft Teams, for the purpose of receiving public input and taking action to amend Ordinance No. 18, Salary Plan, as follows:

- 1. Amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Positions by moving the Utilities Superintendent Position from Grade 11 to Grade 10, deleting the position of Field Inspector I (Grade 7), and retitling the position of "Field Inspector II" (Grade 8) to "Field Inspector;" and*
- 2. Amend Article II.B, Seasonal/Temporary & Stipend Employees to include the positions of part-time Call Firefighter and part-time Communications Specialist.*

Changes to the compensation and classification schedules are shown in **blue italics** type; position deletions are shown **red-italics** type.

The following pay plan shall be in effect the first pay period of 2020.

REGULAR FULL-TIME/REGULAR PART-TIME NON-AFFILIATED & LPASE EMPLOYEES – 2020 SALARY GRADES 1.6% GWI

<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	\$16.52	\$22.31	-	-
2	Custodian	\$17.52	\$23.64	-	-
	Department Secretary	-	-	-	-
3	Airport Maintenance Worker	\$18.56	\$25.06	-	-
	Custodian I	-	-	-	-
4	Library Assistant	\$19.68	\$26.57	-	-
5		\$20.86	\$28.15	-	-

6	-	\$22.11	\$29.84	-	-
7	Administrative Secretary	\$23.43	\$31.97	-	-
	Assessing Clerk	-	-	-	-
	Assistant City Clerk	-	-	-	-
	Assistant Human Services Director	-	-	-	-
	Communications Specialist	-	-	-	-
	<i>Field Inspector I</i>	-	-	-	-
	Library Administrative/Technical Assistant	-	-	-	-
8	Administrative Assistant	\$24.84	\$33.54	-	-
	Benefits Coordinator/Payroll Specialist	-	-	-	-
	Deputy City Clerk	-	-	-	-
	Deputy Tax Collector	-	-	-	-
	<i>Field Inspector</i>	-	-	-	-
	<i>Field Inspector II</i>				
	Electrical Inspector	-	-	-	-
	Young Adult Librarian	-	-	\$993.65	\$1,341.53
	Outreach Librarian	-	-	-	-
9	Code Health Inspector	-	-	-	-
	Executive Assistant	\$27.32	\$36.88	-	-
	Digital Media Officer	-	-	-	-
	Information Technology Technical Specialist	-	-	-	-
	Real Estate Appraiser II	-	-	-	-
	Associate Planner	-	-	\$1092.81	\$1,475.23
	Systems Librarian	-	-	-	-
	Information Technology Librarian	-	-	-	-
	Children's Librarian	-	-	-	-
10	Assistant City Engineer	\$30.05	\$40.57	-	-
	Cemetery Sexton	-	-	-	-
	Financial Analyst	-	-	-	-
	Fleet Maintenance Supervisor	-	-	-	-
	Maintenance Superintendent	-	-	-	-
	<i>Utilities Maintenance Superintendent</i>				
	Police Communications Specialist	-	-	-	-
	Tax Collector	-	-	-	-
	Human Services Director	-	-	\$1,202.11	\$1,622.84
	Recreation Program Coordinator	-	-	\$1,202.11	\$1,622.84
11	Technical Advisor I	\$33.09	\$44.67	-	-
	<i>Utilities Maintenance Superintendent</i>	-	-	-	-
	Administrative Services Manager	-	-	\$1,323.45	\$1,786.70
	Airport Operations Supervisor	-	-	-	-
	Assistant Recreation Director	-	-	-	-
	Code Enforcement Director	-	-	-	-
	Deputy Library Director	-	-	-	-
	Fire Marshall	-	-	-	-
	Planner/GIS Coordinator	-	-	-	-
	Senior Planner	-	-	-	-
12	Wastewater Treatment Superintendent	\$35.07	\$47.34	-	-
	Water Treatment Superintendent	-	-	-	-

	City Assessor	-	-	\$1,402.68	\$1,893.45
	City Clerk	-	-	-	-
	City Engineer	-	-	-	-
	City Planner	-	-	-	-
	Deputy Finance Director	-	-	-	-
	Energy & Facilities Manager	-	-	-	-
	Police Lieutenant	-	-	-	-
	Prosecuting Attorney	-	-	-	-
	Solid Waste Manager	-	-	-	-
13	Airport Manager	-	-	\$1,486.91	\$2,007.28
	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	-	-	\$1,576.13	\$2,127.78
	Chief Assessor	-	-	-	-
	Library Director	-	-	-	-
15	Information Technology Director	-	-	\$1,670.78	\$2,255.37
16	Technical Advisor II	\$44.27	\$59.76		
	Chief of Police	-	-	\$1,770.86	\$2,390.47
	Director of Planning and Zoning	-	-	-	-
	Director of Public Works	-	-	-	-
	Finance Director	-	-	-	-
	Fire Chief	-	-	-	-
	Deputy City Manager	-	-	-	-

B. SEASONAL/TEMPORARY& STIPEND EMPLOYEES

Seasonal, temporary and part-time positions with less than 20 hours are not placed into grades. These positions are based upon comparable municipal positions and wages and/or local current market values. These positions are NOT eligible for employee benefits. Seasonal positions are up to 6 months in duration; part-time positions are less than 20 hours weekly and may be year round or by event; temporary positions vary in length of service (less than 1 year).

The following pay plan shall be in effect for the first pay period of 2020.

POSITION TITLE	HOURLY
ELECTION POSITIONS (HOURLY)	
Ballot Clerk	\$10.00
Election Assistant	\$10.00
Supervisors of the Checklist	\$10.00
Moderator	\$12.50

Ward Clerk		\$12.50
FIRE DEPARTMENT POSITIONS		
<i>Call Firefighter</i>	\$11.25	\$28.12
PARK AND RECREATION POSITIONS		
Camp Counselors	\$10.00	\$12.00
Front Desk Attendants – Pool	\$10.00	\$12.00
Head Front Desk Attendants	\$11.00	\$13.50
Site Assistant	\$10.00	\$13.00
Lifeguards	\$10.00	\$12.00
Head/Lead Counselors	\$13.00	\$16.00
Site Assistant	\$10.00	\$13.00
Head & WSI Lifeguards	\$12.00	\$15.00
Head Front Desk Attendant - Pool	\$12.00	\$15.00
Outdoor Adventurer - Educator	\$12.50	\$16.00
Softball Coordinator	\$12.50	\$16.00
Camp Director	\$13.00	\$16.00
Day Camp Counselors	\$10.00	\$14.00
Arts & Craft Director	\$13.00	\$16.00
Farmers Market Coordinator	\$14.00	\$18.00
Market Assistant	\$12.00	\$15.00
Tennis Instructor	\$15.00	\$19.00
Stomp & Romp	\$15.00	\$19.00
Asst. Pool Director	\$15.00	\$19.00
Pool Director	\$16.00	\$20.00
LIBRARY POSITIONS		
Circulation Substitutes		\$13.21
Reference Librarian Substitutes		\$22.32
PUBLIC WORK POSITIONS		
Engineering Clerk	\$11.00	\$14.00
GIS Clerk - (or Intern)	\$15.00	\$17.00
Seasonal Laborers – Summer & Fall DPW, Parks & Rec. & Airport	\$16.00	\$19.00
CDL Seasonal Drivers	\$22.81	\$27.30
PLANNING POSITIONS		
Park Ranger	\$15.00	\$17.00
POLICE DEPARTMENT POSITIONS		
Crossing Guard		\$16.29
<i>Communications Specialist</i>	\$23.43	\$31.97
Police Administrative Aide	\$20.00	\$23.00
Parking Control Officer	\$20.00	\$23.00
Police Officers	\$26.46	\$31.91
CITY CLERK POSITIONS		
Assistant City Clerks (Part-Time/Temp. <20)	\$23.06	\$31.14
Recording Secretary	\$21.50	\$23.50
Recording Secretary Coordinator	\$22.00	\$24.00
SHARED POSITION		
General Intern I	\$13.00	\$16.50
STIPEND POSITIONS		
Sport Coaches – Seasonally (Lacrosse, Track, Youth – Basketball, Field Hockey, Football, Cheerleader Coach etc. – may vary due to Programs)	\$200	\$700
(Chair) Supervisors of the Check List	\$150	\$250
Supervisor of the Voter Checklist	\$150	\$250

1 *Seconded by Councilor Bronner.*

2
3 Ms. Leskiewicz informed the Council that these changes will not be retroactive, noting they will simply
4 be added to Ordinance No. 18, Article II.A – Regular Full-Time and Part-Time Benefit Eligible Positions;
5 and Article II.B – Seasonal/Temporary & Stipend Employees if approved.
6

7 **Roll Call Vote:**

8 Assistant Mayor Below, and Councilors Bronner, Heistad, Liot Hill, Prentiss, Sykes, Winny, Zook and
9 Mayor McNamara, all voting Yea.
10 None voted Nay.

11 **The Vote on the MOTION was unanimously approved (9-0).*
12

13 **D. PRESENTATION AND DISCUSSION OF PROPOSED AMENDMENTS TO**
14 **CHAPTER A191, CITY COUNCIL RULES**

15 Included in the agenda packet was Chapter A191 Council Rules (as amended and presented on
16 10/21/2020).
17

18 Ms. Paula Maville, Deputy City Manager, came forth to inform the Council that the proposal to amend
19 City Council Rules is to renumber the “Order of Business” on City Council Agendas. This is being
20 proposed so the numbering on the agenda will coincide with new software for the creation of agendas on
21 the website and the recording of City meetings. Once the new system is fully in place with the media
22 program, the public and the Council will be able to go directly to any particular section of the agenda and
23 bring up the materials related to the meeting. In order to do this, the actual Call to Order of the meeting
24 needs to be an item on the agenda, so this will become Item #1. Also, Items on the agenda that currently
25 have an A, B, C, etc., listed under them, will be changed to have their own number.
26

27 While not yet approved by the Council, the October 21, 2020 agenda was numbered according to the new
28 proposed Order of Business.
29

30 In accordance with §A191-13 of the Rules, amendments must be presented in writing at the preceding
31 regular meeting, prior to adoption. As such, these amendments will be presented for adoption at the
32 November 4th meeting. Adoption requires a 2/3 vote of all members of the Council.
33

34 **ACTION:**

35 No action is required at this time. Action on the amendment will be scheduled for November 4, 2020
36

37 **E. UPDATE RE: LANDFILL GAS TO ENERGY PROJECT – Postponed**
38

39 **11. CITY MANAGER REPORT**

40 City Manager Mulholland updated the Council on the following:

- 41 • Regular and Workshop meeting schedules: Because public comments are not accepted during
42 workshop meetings, additional opportunities will be given to the public to allow for their
43 comments on the budget. He noted the following meeting dates:
 - 44 ○ December 16th – City Council approval of 2021 budget.
 - 45 ○ On December 2nd, at the end of the meeting, additional time will be added to allow for
46 public comments.
 - 47 ○ On November 18th, the Democratic Socialists of America will be given an opportunity to
48 make their proposal with regards to the Police Department budget.

- On November 19th: Special meeting to review the Fair & Impartial Policing Task Force recommendations for changes to the Welcoming Lebanon Ordinance. If the Council approves of their proposed changes, this is the night the Council will vote on those changes.

Mayor McNamara reviewed the City Council meeting schedule as follows:

- Wednesday, November 4, 2020: Regular Session
- Thursday, November 5, 2020: Budget Work Session
- Tuesday, November 10, 2020: Budget Work Session
- Thursday, November 12, 2020: Budget Work Session
- Monday, November 16, 2020: Budget Work Session
- Tuesday, November 17, 2020 – Finish CIP review.
- Wednesday, November 18, 2020: Regular Session
 - The Democratic Socialists of America will be given an opportunity to make their proposal with regards to the Police Department budget.
- Thursday, November 19, 2020: Fair & Impartial Policing Task Force recommendations review for the Welcoming Lebanon Ordinance and potential vote, if the Council accepts their recommendations.
- Wednesday, December 2, 2020: Regular Session and hopefully time will be given at the end of the meeting to allow for public comment on the budget.
- Wednesday, December 16, 2020 – Adoption of the 2021 budget

- Broadband throughout Lebanon (Rebecca Owens is lead): Ms. Owens will soon be presenting her research along with Comcast's proposal. Mayor McNamara stated there are a couple of options the City can look at, which are relatively low in cost, to make sure 100% of Lebanon's citizens have access to broadband in the future.
- DHMC PILOT update on agreement.
- CARES Act funding: The City's Funding has been used up, but the Governor has asked the City to provide estimates on what our costs would be between now and the end of the year. The reason the Governor is asking for cost estimates is because other cities/towns have not used all of their available funds and if those funds are not used by the end of the year they will have to be returned to the Federal Government.
- City Hall renovations: The schedule for moving back into the building will now be taking place during the weeks of November 2, 2020, and the week after, which is earlier than expected.

12. COUNCIL REPRESENTATIVES TO OTHER BODIES: NONE

13. FUTURE AGENDA ITEMS: NONE

14. NON-PUBLIC SESSION: NONE

15. ADJOURNMENT:

Councilor Bronner MOVED for adjournment.

Seconded by Councilor Heistad.

Roll Call Vote:

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

None voted Nay.

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

1
2 **The meeting was adjourned at 8:26 PM.**
3
4 Respectfully submitted,
5 Dona E. Gibson
6 Recording Secretary

DRAFT

**LEBANON CITY COUNCIL
MINUTES, CIP Work Session**

Wednesday, October 21, 2020, 5:30 p.m.

Remote Via Microsoft Teams: LebanonNH.gov/Live

MEMBERS PRESENT: Assistant Mayor Clifton Below, Bruce Bronner, Erling Heistad, Karen Liot Hill (arrived at approximately 5:41PM), Suzanne Prentiss, George Sykes, Jim Winny (arrived at approximately 5:50PM), Karen Zook and Mayor Tim McNamara

MEMBERS ABSENT: None

STAFF PRESENT: City Manager Shaun Mulholland, City Clerk Kristin Kenniston, Director of Planning & Zoning David Brooks, Lebanon Police Chief Richard Mello, Director of Public Works James Donison, Assistant Director, Public Works Jay Cairelli, Engineering Tech Erica Brittner, City Engineer Christina Hall, Deputy Finance Director Tina Stearns, Fire Chief, Emergency Management Director Chris Christopoulos, Airport Director Carl Gross, Parks & Recreation Director Paul Coats, HR Director Gloria Leskiewicz, Library Director Sean Fleming, Library Deputy Director Amy Lappin, Kelly Crate, DPW, Cemetery Sexton Patrick McCarthy, Planning Board Chair Bruce Garland, Melanie McDonough (IT)

1 Mayor McNamara called the meeting to order at 5:30 p.m.

2
3 This meeting took place virtually due to the COVID-19 Pandemic and was conducted in accordance with
4 the Emergency Orders issued by the New Hampshire Governor according to NH RSA 91-A "Right-to-
5 Know Law."

6
7 This is a Workshop, not a regular meeting, but the public is allowed to participate in terms of listening to
8 the meeting, but comments will not be taken at this time.

9
10 A Roll Call was taken and all City Councilors who attended the virtual meeting are listed above.

11
12 **1. NEW BUSINESS**

13
14 Included in the City Council agenda packet were 108 pages of the detailed proposed 2021-2026 Capital
15 Improvement Projects list.

16
17 Mr. David Brooks came before the Council noting that the agenda packet includes a summary of the
18 Planning Board review process and the subcommittee's review process. The project materials are listed at
19 the back of the agenda packet and are listed in the order as they appear in the spread sheet on page 27 out
20 of 108 in the agenda packet.

21
22 Mr. Brooks gave an overview of the CIP process for others who may be listening or watching from home.

23
24 The Capital Improvement Program is developed annually for use by City Council to review the proposed
25 budget expenditures relative to the Capital needs in the community and provides the mechanism for
26 anticipating future facility/infrastructure requirements, as well as ensuring they are funded in a

1 responsible and systematic fashion. The CIP is prepared in accordance with statutory requirements and is
2 based on, and supports, the goals of the City's Master Plan. A CIP bridges the gap between planning and
3 spending between the visions of the Master Plan and the fiscal realities of improving expanded
4 community facilities. The CIP normally covers a minimum of six (6) years to allow the City to plan for
5 large expenditures and avoid significant fluctuations in spending and tax rates to the extent possible. The
6 Council only considers year one (2021 in this case) as part of the annual budget review process. The
7 remaining years are used to anticipate upcoming capital expenditures.

9 For the first time, this year's CIP list includes projects anticipated for funding beyond the immediate 6-
10 year time period in order to further enhance the usefulness of the CIP as a community planning tool.
11 While the annual budget is approved by the City Council, the Planning Board is responsible for adapting
12 the Capital Improvement Program each year.

14 The Planning Board Capital Improvement Program Items (CIP Items) will be those items that pertain to
15 planning and land use within the City only. CIP Items include:

- 16 a) Any Physical Public Betterment and studies relative thereto;
- 17 b) Acquisition of land;
- 18 c) Construction of new buildings and facilities with an estimated value in excess of \$50,000;
- 19 d) Facilities engineering design and other pre-construction costs in excess of \$50,000, unless such
20 costs are part of a project that does not result in more capacity for growth;
- 21 e) Major planning-related studies and analysis requiring utilization of independent professional
22 consultants in excess of \$25,000;
- 23 f) Reconstruction of existing facilities resulting in more capacity for City growth. Capital items
24 that are operational in scope, vehicles for example, are not considered to be CIP Items.

26 Other Capital expenditures, including operational items and maintenance improvements that do not
27 increase capacity for growth are excluded from the Board's definition of a CIP item. The Planning Board
28 only reviews CIP items and does not review or comment on other capital expenditures.

30 The Planning Board Capital Improvement Program Subcommittee is responsible for the initial ranking
31 and review of CIP projects and for recommending appropriate capital projects through the full Planning
32 Board. The full Board then reviews the subcommittee's comments and recommendations and prepares its
33 own recommendations to the City Council and City Manager.

35 One final point to highlight is that there have been changes to the CIP since the Planning Board's review
36 in August/September. In some cases, cost estimates for certain projects have been revised or additional
37 information has been received. In other cases, projects have been removed from the CIP entirely as the
38 need for the project has changed.

40 Mr. Bruce Garland, Planning Board Chair, came before the Council and explained that the CIP process is
41 mandated by law, and encouraged Planning Board members to participate. Unfortunately, there were
42 only three (3) Board members on the subcommittee who put together a spread sheet (in agenda packet)
43 which contains the results of their review for each project and assigns points to that project resulting in an
44 overall rating. He urged the Council to take that (overall rating) with a certain amount of skepticism for
45 two reasons: 1. Although the subcommittee met twice for roughly 7-hours each to get through all the
46 projects, they never had a follow-up meeting to compare the results; 2. Mr. Brooks and he have
47 struggled with the criteria over the last couple of years and one item in particular was emergency/safety
48 issues, noting that in last year's process the rating was changed to reflect that if there was really an

1 emergency the project would stand out above all others and given 15 points. Zero points were given if
2 there was no emergency. This year it was done on a sliding scale. He suggested getting rid of that
3 criteria next year because emergencies are not something the Planning Board covers and, more
4 importantly, the Council would not wait for the CIP if there really were an emergency. He requested
5 suggestions from the Council as to how the Planning Board might be able to address this issue next year
6 and presented some extreme situations to illustrate his point (i.e., fire trucks, ambulances), noting it might
7 be better to have one new building for the fire equipment and different buildings spread over the City for
8 ambulances. According to the fire chief, 70% of the calls his department receives are ambulance-related
9 and 30% are fire-related. This information was not available at the time the CIP was reviewed, and Chair
10 Garland felt this department's CIP should be labelled the Department of Emergencies.

11
12 The point Chair Garland made is that while they are certainly willing to review projects, he was uncertain
13 about the extent the Planning Board can be helpful in the Council's process, noting the ratings were not
14 particularly useful.

15
16 Karen Liot Hill made the point that it was really important for the Planning Board to understand and
17 become more educated in municipal operations for the City of Lebanon, since the role of advising the
18 City Council on CIPs is different from what they usually do but is connected to the City's long-term
19 planning.

20
21 Mr. Mulholland gave a slide presentation, which can be found on pages 112-128 in the October 21, 2020
22 City Council agenda packet and spoke about the CIP projects that will not be included in the budget
23 process due to the lack of funds. They are:

- 24 • Central Fire Station replacement.
- 25 • Community Center: Funds will be raised through grants/tax credits and donations.
- 26 • Athletic Field.
- 27 • West Lebanon improvements, which is a major focus of the Planning Department to get this
- 28 moving.
- 29 • City Hall upgrades.
- 30 • Lebanon Police Department upgrades.
- 31 • Hanover Street improvements, with the exception of one small portion.
- 32 • Downtown roadway reconstruction.
- 33 • Climate Action Plan: Assistant Mayor Below thought it was interesting the scoring done by the
- 34 Planning Board was a zero. Pushing this out beyond 2027 does not make sense because a greater
- 35 number of people are recognizing that we are in a climate emergency and it's like a fire alarm fire
- 36 in some places. Without starting to take into account a Climate Action Plan, we face an uncertain
- 37 future in terms of capacity for growth vs. decline if the climate starts to spin out of control. This
- 38 Climate Action Plan addresses a big deficiency in the City's energy system, and felt it important
- 39 to keep this on the agenda and try to find less expensive ways to work at this.

40
41 Mr. Mulholland explained there are a number of projects in place to reduce the City's carbon
42 footprint and those projects are moving forward. However, he would like to utilize the studies
43 done by other communities. It's not that we are totally eliminating the Climate Action Plan, we
44 are just not going to have a formal study done that would be paid by the City.

- 45 • Sidewalk extension plan; However, we are still going to continue to extend some of the sidewalk
- 46 system along Mechanic Street to connect to Downtown West Lebanon.

The following CIP projects (which are listed in bold red text on the attached project list) were reviewed and discussed by the Planning Board: The cost of individual projects is based on the best estimates available at the time this plan was prepared; actual project costs are a function of detailed study by architects and engineers

Department

1. Airport Runway Safety Area Improvements:

Cost estimate for entire project: \$8-9 M

Mr. Carl Gross came forth to review the Airport Runway Safety Area Improvements (starts on page 30 of 128 in agenda packet).

Project Description

FAA has a national requirement and top priority to improve Runway Safety Areas (RSAs) to meet FAA design criteria to the extent feasible. In 2016, the City Council approved the LEB Comprehensive Airport Master Plan, and approved the plan for RSA improvements contained in the Master Plan.

The project will perform an Environmental Assessment (EA) of the proposed runway 18-36 safety area improvement project as required by the Federal Aviation Administration (FAA) under the National Environmental Protection Act (NEPA). A Limited Scope Airport Layout Plan update was approved and is in progress.

Total Estimated Cost: \$220,000 to be divided up as follows:

- \$200,000 – Federal - 90%
- \$10,000 – NH DOT - 5%
- \$10,000 – City – 5%

The project will also fund a Reimbursable Agreement for an internal FAA study to determine the feasibility of relocating the airport glideslope. The glideslope provides an electronic signal to align a plane with the centerline of the runway for landing in inclement weather and is usually located at the end of the runway. The project shifts the runway the glideslope will need to be relocated. The purpose of the agreement is to reimburse the Technical Operations section of FAA for performing the study.

The 2021 - 2026 Capital Improvement Program Reimbursable Agreement (FAA) – Localizer Relocation Feasibility Study.

Total Estimated Cost: \$55,000 to be divided up as follows?

- \$50,000 – Federal - 90%
- \$2,500 – NH DOT - 5%
- \$2,500 – City – 5%

2. Planning & Zoning: Airport TIF District Infrastructure Improvements

Appropriation: \$2,964,700

Mr. David Brooks came forth to present the Airport TIF District Infrastructure Improvement as detailed on (pages 35-38, agenda packet)

1
2 **Project Description**

3 On November 6, 2019, the City Council voted unanimously to establish the Lebanon Airport-Tech Park
4 Tax Increment Finance (TIF) District on lands adjacent to the airport. Subsequently, the Council approved
5 a capital project to fund the initial design and permitting of a roadway and utility infrastructure within the
6 TIF District. Preliminary (30%) plans have been prepared by the City's engineering consultant based on
7 guidance provided by the City.
8

9 As requested by the City, the proposed TIF District infrastructure has been designed to allow for
10 construction in two phases. This phased approach allows the City to make the minimum upfront
11 investment necessary to provide access to the property and to enable development of 2-3 building sites on
12 the City's property. The first phase construction would also facilitate access to developable land on the
13 east side of the adjacent Upper Valley Tech Park, LLC property (M/L 131-3; also, part of the TIF
14 District), which is separated by wetlands from the western portion of that property. The westerly portion
15 of the property is already accessible from Technology Drive within Airport Phase 1A and would begin to
16 generate TIF proceeds with any new development undertaken in that area.
17

18 The engineering consultant has provided preliminary cost estimates for construction of the access
19 roadway, water, sewer, and storm drainage improvements, as well as landscaping and lighting based on
20 the 30% plans. The consultant has also provided a cost estimate for clearing, grubbing, and rough grading
21 of the first phase area (approximately 8.8 acres) to get the first 2-3 building sites ready for development.
22 Preliminary cost estimates for the extension of 3-phase power to serve the area have been received from
23 Liberty Utilities.
24

25 Only after development begins to occur and a tax increment begins to be generated would the City
26 commit additional resources to construct the remainder of the TIF District roadway and utilities, which
27 would open up the remaining 2-3 building sites on the City's property and potentially one additional site
28 on the Upper Valley Tech Park property
29

30 **3. Lebanon Library Renovation: Design/Engr/Constr.**

31 **Appropriation: \$1,720,215**
32

33 Library Director Sean Fleming came forth to review the 9 East Park Street Lebanon Library Renovation
34 as detailed on pages 39-40 in the agenda packet.
35

36 **Project Description**

37 The Lebanon Public Library was constructed in 1909, with an addition completed in 1985. The library has
38 HVAC systems that are nearing or past the end of their expected life, and the building would benefit from
39 energy efficiency improvements. Safety issues, including a dangerous landing by the front entrance, and
40 the lack of a firewall between the elevator room and boiler room, need to be addressed. A central stairwell
41 would improve access for patrons, replace stairs that do not meet code, and allow staff to better monitor
42 the entire building. Many areas of the building that had been used for office space should be converted for
43 patrons use; these efforts will require the elimination of some walls. Some cosmetic upgrades to the
44 interior of the building, including new carpeting and tile, shelving and furniture also need to be included.
45

46 Mr. Fran Oscadal, Library Board of Trustees, came forth and spoke about the ADA compliance issues
47 needed to bring the Lebanon Library up to code, as well as general accessibility around the building.
48

1 Mr. Phillip Bush, Library Foundation Treasurer, came forth and reviewed the Library Foundation's
2 capital campaign, whose goal is to raise \$300K to be put towards the Lebanon Library renovation. He
3 spoke about the interior projects that would be renovated, such as the Children's room, bathrooms, teen
4 room and meeting room.

5
6 Mr. Steve Taylor came forth and discussed the replacement of the old heating system with a new HVAC
7 heat pump system, which is desperately needed now, especially due to the COVID pandemic.

8
9 Mr. Pat Hayes, Library Foundation President, came forth and reviewed the proposed improved reading
10 spaces and spoke about the reasons why the Council should consider this CIP project.

11
12 In response to Council Heistad's question regarding the exchange rate of the new HVAC system, Mr.
13 Jason LaCombe (Architect/Engineer) said he would look into this and get back to City Staff with this
14 information

15
16 **13. ADJOURNMENT:**

17
18 **The meeting was adjourned at 6:54 PM.**

19
20 Respectfully submitted,
21 Dona E. Gibson
22 Recording Secretary

**AGENDA
LEBANON CITY COUNCIL
NOVEMBER 4, 2020**

9. OLD BUSINESS:

**9.A – PRESENTATION OF SECOND READING:
AMENDMENTS TO ORDINANCE NO. 18, ARTICLE II.A –
REGULAR FULL-TIME AND PART-TIME BENEFIT ELIGIBLE POSITIONS; AND
ARTICLE II.B – SEASONAL/TEMPORARY & STIPEND EMPLOYEES**

BACKGROUND

The Council is being asked to continue the process of amending Ordinance No. 18, Salary Plan, as follows:

1. Amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Positions by moving the Utilities Superintendent Position from Grade 11 to Grade 10, deleting the position of Field Inspector I (Grade 7), and retitling the position of “Field Inspector II” (Grade 8) to “Field Inspector;” and
2. Amend Article II.B, Seasonal/Temporary & Stipend Employees to include the positions of part-time Call Firefighter and part-time Communication Specialist.

Due to recent retirements of long-term employees, the City has recognized the need to reorganize the Utilities Division as there is great need for an experienced superintendent to oversee construction projects and to supervise emergency situations.

The Utilities Superintendent position is an existing position within the Lebanon Professional, Administrative, Salaried Employees (LPASE) Bargaining Unit but has been vacant for several years. Based on current needs, the job description has been reviewed, revised, and regraded to bring it into alignment with three other Public Works Superintendent’s positions. The proposed regrading of the position has been reviewed with the LPASE membership and they are in agreement with the recommended change.

The structure of the Planning and Development Department does not dictate the need for two separately graded Field Inspector Positions. Field Inspector I (Grade 7) was envisioned as an “entry level” position and is being eliminated. As there will no longer be a “Field Inspector I” position, there is no need for a “Field Inspector II,” so it is to be retitled “Field Inspector.”

The positions of part-time Call Firefighter and part-time Communication Specialist are existing positions but were inadvertently left off the list of Seasonal/Temporary & Stipend Employees. We are asking that they be included so the listing of “all” City positions in Ordinance 18 is complete.

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.

On October 21, 2020, the City Council scheduled a public hearing for November 18, 2020 and recognized the first reading of the proposed amendment to Ordinance No. 18. to amend Article II.A, Regular Full-Time and Part-Time Benefit Eligible Employees; and Article II.B, Seasonal/Temporary & Stipend Employees. The City Council is now asked to recognize the second of three presentations. The third presentation and public hearing will follow on November 18.

ACTION

The City Council is asked to take the following action:

ACKNOWLEDGE SECOND PRESENTATION:

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.A, Regular Full-Time and Part-Time Benefit Eligible Positions by moving the Utilities Superintendent Position from Grade 11 to Grade 10, deleting the position of Field Inspector I (Grade 7), and retitling the position of "Field Inspector II" (Grade 8) to "Field Inspector;" and***
- 2. Amend Article II.B, Seasonal/Temporary & Stipend Employees to include the positions of part-time Call Firefighter and part-time Communications Specialist.***

Changes to the compensation and classification schedules are shown in *blue italics* type; position deletions are shown *red-italics* type.

REGULAR FULL-TIME/REGULAR PART-TIME NON-AFFILIATED & LPASE EMPLOYEES – 2020 SALARY GRADES 1.6% GWI

<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	\$16.52	\$22.31	-	-
2	Custodian	\$17.52	\$23.64	-	-
	Department Secretary	-	-	-	-
3	Airport Maintenance Worker	\$18.56	\$25.06	-	-
	Custodian I	-	-	-	-
4	Library Assistant	\$19.68	\$26.57	-	-
5		\$20.86	\$28.15	-	-
6	-	\$22.11	\$29.84	-	-
7	Administrative Secretary	\$23.43	\$31.97	-	-
	Assessing Clerk	-	-	-	-
	Assistant City Clerk	-	-	-	-
	Assistant Human Services Director	-	-	-	-
	Communications Specialist	-	-	-	-
	Field Inspector I	-	-	-	-
	Library Administrative/Technical Assistant	-	-	-	-
8	Administrative Assistant	\$24.84	\$33.54	-	-
	Benefits Coordinator/Payroll Specialist	-	-	-	-
	Deputy City Clerk	-	-	-	-
	Deputy Tax Collector	-	-	-	-
	<i>Field Inspector</i>	-	-	-	-

	Field Inspector II				
	Electrical Inspector	-	-	-	-
	Young Adult Librarian	-	-	\$993.65	\$1,341.53
	Outreach Librarian	-	-	-	-
9	Code Health Inspector	-	-	-	-
	Executive Assistant	\$27.32	\$36.88	-	-
	Digital Media Officer	-	-	-	-
	Information Technology Technical Specialist	-	-	-	-
	Real Estate Appraiser II	-	-	-	-
	Associate Planner	-	-	\$1092.81	\$1,475.23
	Systems Librarian	-	-	-	-
	Information Technology Librarian	-	-	-	-
	Children's Librarian	-	-	-	-
10	Assistant City Engineer	\$30.05	\$40.57	-	-
	Cemetery Sexton	-	-	-	-
	Financial Analyst	-	-	-	-
	Fleet Maintenance Supervisor	-	-	-	-
	Maintenance Superintendent	-	-	-	-
	Utilities Maintenance Superintendent				
	Police Communications Specialist	-	-	-	-
	Tax Collector	-	-	-	-
	Human Services Director	-	-	\$1,202.11	\$1,622.84
	Recreation Program Coordinator	-	-	\$1,202.11	\$1,622.84
11	Technical Advisor I	\$33.09	\$44.67	-	-
	Utilities Maintenance Superintendent	-	-	-	-
	Administrative Services Manager	-	-	\$1,323.45	\$1,786.70
	Airport Operations Supervisor	-	-	-	-
	Assistant Recreation Director	-	-	-	-
	Code Enforcement Director	-	-	-	-
	Deputy Library Director	-	-	-	-
	Fire Marshall	-	-	-	-
	Planner/GIS Coordinator	-	-	-	-
	Senior Planner	-	-	-	-
12	Wastewater Treatment Superintendent	\$35.07	\$47.34	-	-
	Water Treatment Superintendent	-	-	-	-
	City Assessor	-	-	\$1,402.68	\$1,893.45
	City Clerk	-	-	-	-
	City Engineer	-	-	-	-
	City Planner	-	-	-	-
	Deputy Finance Director	-	-	-	-
	Energy & Facilities Manager	-	-	-	-
	Police Lieutenant	-	-	-	-
	Prosecuting Attorney	-	-	-	-
	Solid Waste Manager	-	-	-	-
13	Airport Manager	-	-	\$1,486.91	\$2,007.28
	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	-	-	\$1,576.13	\$2,127.78
	Chief Assessor	-	-	-	-
	Library Director	-	-	-	-
15	Information Technology Director	-	-	\$1,670.78	\$2,255.37
16	Technical Advisor II	\$44.27	\$59.76		
	Chief of Police	-	-	\$1,770.86	\$2,390.47
	Director of Planning and Zoning	-	-	-	-
	Director of Public Works	-	-	-	-
	Finance Director	-	-	-	-
	Fire Chief	-	-	-	-
	Deputy City Manager	-	-	-	-

B. SEASONAL/TEMPORARY& STIPEND EMPLOYEES

Seasonal, temporary and part-time positions with less than 20 hours are not placed into grades. These positions are based upon comparable municipal positions and wages and/or local current market values. These positions are NOT eligible for employee benefits. Seasonal positions are up to 6 months in duration; part-time positions are less than 20 hours weekly and may be year-round or by event; temporary positions vary in length of service (less than 1 year).

The following pay plan shall be in effect for the first pay period of 2020

POSITION TITLE	HOURLY	
ELECTION POSITIONS (HOURLY)		
Ballot Clerk		\$10.00
Election Assistant		\$10.00
Supervisors of the Checklist		\$10.00
Moderator		\$12.50
Ward Clerk		\$12.50
FIRE DEPARTMENT POSITIONS		
<i>Call Firefighter</i>	\$11.25	\$28.12
PARK AND RECREATION POSITIONS		
Camp Counselors	\$10.00	\$12.00
Front Desk Attendants – Pool	\$10.00	\$12.00
Head Front Desk Attendants	\$11.00	\$13.50
Site Assistant	\$10.00	\$13.00
Lifeguards	\$10.00	\$12.00
Head/Lead Counselors	\$13.00	\$16.00
Site Assistant	\$10.00	\$13.00
Head & WSI Lifeguards	\$12.00	\$15.00
Head Front Desk Attendant - Pool	\$12.00	\$15.00
Outdoor Adventurer - Educator	\$12.50	\$16.00
Softball Coordinator	\$12.50	\$16.00
Camp Director	\$13.00	\$16.00
Day Camp Counselors	\$10.00	\$14.00
Arts & Craft Director	\$13.00	\$16.00
Farmers Market Coordinator	\$14.00	\$18.00
Market Assistant	\$12.00	\$15.00

Tennis Instructor	\$15.00	\$19.00
Stomp & Romp	\$15.00	\$19.00
Asst. Pool Director	\$15.00	\$19.00
Pool Director	\$16.00	\$20.00
LIBRARY POSITIONS		
Circulation Substitutes		\$13.21
Reference Librarian Substitutes		\$22.32
PUBLIC WORK POSITIONS		
Engineering Clerk	\$11.00	\$14.00
GIS Clerk - (or Intern)	\$15.00	\$17.00
Seasonal Laborers – Summer & Fall DPW, Parks & Rec. & Airport	\$16.00	\$19.00
CDL Seasonal Drivers	\$22.81	\$27.30
PLANNING POSITIONS		
Park Ranger	\$15.00	\$17.00
POLICE DEPARTMENT POSITIONS		
Crossing Guard		\$16.29
<i>Communications Specialist</i>	\$23.43	\$31.97
Police Administrative Aide	\$20.00	\$23.00
Parking Control Officer	\$20.00	\$23.00
Police Officers	\$26.46	\$31.91
CITY CLERK POSITIONS		
Assistant City Clerks (Part-Time/Temp. <20)	\$23.06	\$31.14
Recording Secretary	\$21.50	\$23.50
Recording Secretary Coordinator	\$22.00	\$24.00
SHARED POSITION		
General Intern I	\$13.00	\$16.50
STIPEND POSITIONS		
Sport Coaches – Seasonally (Lacrosse, Track, Youth – Basketball, Field Hockey, Football, Cheerleader Coach etc. – may vary due to Programs)	\$200	\$700
(Chair) Supervisors of the Check List	\$150	\$250
Supervisor of the Voter Checklist	\$150	\$250

**AGENDA
LEBANON CITY COUNCIL
NOVEMBER 4, 2020**

9. OLD BUSINESS:

**9.B – ADOPTION OF AMENDMENTS TO CITY COUNCIL RULES AS PRESENTED
ON OCTOBER 21, 2020**

BACKGROUND

Attached is a proposed amendment to City Council Rules to renumber the “Order of Business” on City Council Agendas. This is being proposed so the numbering on the agenda will coincide with new software for the creation of agendas on the website and the recording of City meetings.

While not yet approved by the Council, the October 21st agenda has been numbered according to the new proposed Order of Business.

In accordance with §A191-13 of the Rules, amendments must be presented in writing at the preceding regular meeting, prior to adoption. As such, these amendments will be presented for adoption at the November 4th meeting. Adoption requires a 2/3 vote of all members of the Council.

ACTION

MOVED, that the Lebanon City Council hereby amends City Code Chapter A191, Council Rules, to include amendments to Section 191-8, Order of Business, as presented on October 21, 2020.

Included in this Section:

1. Chapter A191 Council Rules (as amended and presented on 10/21/2020)

Chapter A191

COUNCIL RULES

§ A191-1.	Council meetings.	§ A191-13.	Rules: Adoption, Amendment, & Suspension.
§ A191-2.	Temporary Chair.	§ A191-14.	Appointment of Council Representatives to Other Bodies
§ A191-3.	City Clerk.	§ A191-15.	Council appointments to City Boards, Committees, Commissions.
§ A191-4.	Legal counsel.	§ A191-16.	Constituent - Council contacts.
§ A191-5.	Robert's Rules of Order.	§ A191-17.	Confidential materials.
§ A191-6.	Raise hand to be recognized.	§ A191-18.	Attendance at Seminars, Workshops, etc.
§ A191-7.	Agenda.		
§ A191-8.	Order of business.		
§ A191-9.	Budgetary summary.		
§ A191-10.	Motion to be stated by Presiding Officer; withdrawal.		
§ A191-11.	Communications.		
§ A191-12.	Permission required to address Council.		

[HISTORY: Adopted by the City Council of the City of Lebanon 9-18-1974. Amendments noted where applicable.]

GENERAL REFERENCES

Ordinances -- See Charter § C419:22.

Enactment of ordinances -- See Ch. 115.

§ A191-1. Council meetings.

- A. The Council shall meet in regular session on the first and third Wednesday of every month at 7:00 p.m. until the conclusion of business or 10:00 p.m., whichever comes first. The 10:00 p.m. adjournment shall only be extended by a two-thirds vote of the Council. [Amended 11-7-1979; 4-15-1992; 6-23-1993; 3-30-1994; 7-19-1995; 10-18-1995; 5-21-2003]
- B. Attendance. Prior to each meeting, unless prevented by emergency, a Councilor shall notify either the Mayor, City Manager or City Clerk if he or she will be unable to attend a meeting.
- C. Remote Attendance. As long as a quorum of the Council is present in person, one or more members of the City Council at the discretion of the Mayor may participate in a meeting by electronic or other means of communication only when attendance is not reasonably practical. This procedure shall not be construed to mean that conferencing by electronic means shall be regularly used or used at every meeting of the Council but shall be used only as necessary to allow the participation of Council members who are unable to attend in person due to such circumstances as personal illness or disability, employment obligations, or a family or other emergency.

- 1) Member must notify the City Manager's office at least 24 hours in advance of the meeting, unless impractical, so that necessary communications equipment can be arranged. Inability to make the necessary technical arrangements may result in the inability of the members remote attendance.
- 2) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear the other members physical present or participating electronically during the meeting and shall be audible or otherwise discernable to the public in attendance at the meeting's location.
- 3) If participation is not in person, the member must state the reason such attendance is not reasonably practical, and that information must be included in the minutes of the meeting.
- 4) Sufficient security and identification procedures be employed, either at the outset of any meeting or at any time during the meeting as appropriate, to ensure that any and all members attending for discussion or voting purposes are in fact an authorized member with the right to speak and vote.
- 5) The person not in attendance shall identify the persons present (if any) in the location from which the member is participating.
- 6) If a member of the Council is participating by electronic or other means of communication, all votes must be recorded by roll call vote.
- 7) Electronic or other means of communication can include, but due to changing technology, are not limited to Telephone/Speakerphone/Conference Calls and Computer audio/video conferencing.

§ A191-2. Temporary Chair.

In case of the absence of the Mayor and Assistant Mayor, the Clerk shall call the Council to order. If a quorum is found to be present, the Council shall choose one of its members to act as Chair.

§ A191-3. City Clerk. [Amended 3-30-1994]

The City Clerk or his/her designee shall be ex-officio clerk of the Council and shall keep minutes of the meeting and perform such other and further duties in the meeting as may be ordered by the presiding officer of Council. Copies of the minutes of meetings shall be furnished to each Councilor with the agenda of the next meeting.

§ A191-4. Legal counsel. [Amended 4-18-1990]

Designated legal counsel shall attend any meetings of the Council when requested by the Mayor or City Manager. Any member of the Council, upon notification to the City Manager, may call upon Counsel for an oral or written opinion to decide any question of law or parliamentary procedure.

§ A191-5. Robert's Rules of Order. [Amended 2-6-1991; 7-19-1995; 4-21-2004]

Robert's Rules of Order (most recent Edition) shall be used in all Council deliberations except as modified herein.

§ A191-6. Raise hand to be recognized.

Councilors do not have to stand to move motion or second.

§ A191-7. Agenda. [Amended 5-7-1986; 7-19-1995; 6-3-1998; 4-18-2007; 4-15-2009]

As stated in §A191-1 above, the Council shall meet in regular session on the first and third Wednesdays of every month at 7:00pm. Agendas for Council meetings are the responsibility of the City Manager and the Mayor.

Submission Deadlines:

- The first Wednesday of the month will be the date in which the agenda is set for the meeting on the first Wednesday of the next month.
- The third Wednesday of the month will be the date in which the agenda is set for the meeting on the third Wednesday of the next month.

Any Councilor wishing to have an item placed on an agenda must submit said item (in its proper format by utilizing a City Council Agenda Request Form, provided by the City Manager's Office) to the City Manager's Office by Noon on the Tuesday preceding the Wednesday on which the agenda is to be set.

Items of an urgent nature which require special attention or are in need of immediate action by the Council may be placed on any agenda at the discretion of the Mayor and/or City Manager.

§ A191- 8. Order of business. [Amended 6-21-1978; 4-7-1982; 5-7-1986; 4-6-1988; 3-27-1991; 6-23-1993; 7-19-1995; 5-15-1996; 4-16-1997; 6-7-2006; 9-3-2008; 4-1-2009]

The business of all regular meetings of the Council shall be transacted in the following order unless the Council, by a vote of at least 2/3 of the members present, suspends the rules and changes the order.

1. [Call to Order.](#)
2. Pledge of Allegiance.
3. Announcement by Mayor. Public forum. "Any member of the public who desires to speak on any agenda item may do so when the item is taken up by the Council and will be allowed to speak on the subject for not more than three minutes. (Note: Speakers are asked to state their name, ward of residence and to use the microphone provided.)"
4. Open to public.
5. Recognitions.
6. Acceptance of Minutes:
7. Appointments.

8. Public Hearings
 - i. Presentation
 - ii. Mayor Opens Public Hearing
 - iii. Questions and Comments by the Public
 - iv. Mayor Closes Public Hearing
 - v. Council Deliberation & Action
9. Old Business.
10. New Business.
- ~~10. Reports~~
 - ~~A. City Manager~~
 - ~~B. Council Representatives to Other Bodies~~
11. City Manager Report
12. Council Representatives to Other Bodies Report
13. Future agenda items
14. Nonpublic sessions.
15. Adjourn.

§ A191-9. Budgetary summary. [Amended 3-00-1985]

On a quarterly basis, and within the months of October and November, the City Manager shall submit a budgetary summary to the City Council. Discussion of the summary shall be placed on the agenda of the next Council meeting following submissions.

§ A191-10. Motion to be stated by Presiding Officer; withdrawal. [Amended 7-19-1995]

- A. When a motion is made and seconded it shall be repeated upon request by the presiding officer before debate. At his/her discretion the presiding officer may request motions to be put in writing. A motion may not be withdrawn by the mover without the consent of the member seconding it and the approval of the Council.
- B. The presiding officer may at any time, by a majority vote of the members present, permit a member to introduce an ordinance, resolution or motion out of the regular order.

§ A191-11. Communications. [Amended 12-9-1992; 7-19-1995; 6-16-2004]

- A. Unattributed communications shall not be introduced in Council meetings. Information advocating a certain position obtained from constituent contact may be introduced at Council meetings if the name of the source is given. Electronic and written communications from any Councilor to four or more members shall constitute public comment and shall be transmitted to the City Manager's office for public record.
- B. With the exception of the Mayor's use of City letterhead, stationery, or official City insignia for resolutions or proclamations, members of the City Council may only use such for purposes officially approved by the Council.

§ A191-12. Permission required to address Council. [Amended 4-7-1982]

Persons other than members of the Council and City officers shall be permitted to address the Council. A time limit of three minutes shall be in effect. The speaker shall not enter into a debate with any person, Mayor or Council member and shall speak only on a subject on that particular agenda item.

§ A191-13. Rules: Adoption, Amendment, & Suspension. [Amended 7-19-1995]

- A. Each newly seated Council by motion shall formally adopt the Council Rules and Regulations currently in place.
- B. These rules may be amended or new rules adopted by a 2/3 vote of all members of the Council. Any such alterations or amendments shall be submitted in writing at the preceding regular meeting and shall be placed on the calendar under the order of new business.
- C. These rules may be suspended by a 2/3 vote of those members present and voting. The purpose for suspension must be clearly stated before the vote is taken, and 2/3 of the members present and voting must declare the matter one of such priority that it would be detrimental to hold it over until the next regular meeting.

§ A191-14. Appointment of Council Representatives to Other Bodies.

The Mayor shall designate and appoint representatives from the City Council to other bodies, including City boards, committees, and commissions, as the need arises.

§ A191-15. Council Appointments to City Boards, Committees, Commissions.

- A. When vacancies occur on City boards, committees, commissions, either by resignation, removal or lapse of term, applications received by the City Clerk will be forwarded to the City Council in a timely manner in order for vacancies to be filled as quickly as possible. [Amended 4-2-2008]
- B. All appointments shall be acted upon by the City Council as authorized by the City Code, the City Charter and New Hampshire Law. [Amended 8-2-1995; 5-21-2003; 4-2-2008]
- C. The following procedure shall be followed for board, commission and committee appointments and reappointments: [Added 9-18-1996; Amended 4-2-2008]
 - 1) For initial appointment, the applicant shall fill out the standard application form. [Amended 5-21-2003; Amended 4-2-2008]
 - 2) For reappointment, the applicant can update the current form on file or complete a new updated application form. [Amended 4-2-2008]
 - 3) One member of the City Council shall interview the applicant within 30 days of

receiving the application from the City Clerk and report to the full Council prior to any nomination for appointment or reappointment. [Amended 4-2-2008]

- 4) While one city councilor is officially assigned to interview each applicant, any city councilor may interview any applicant for any position to better inform their decision.

§ A191-16. Constituent-Council contacts. [Added 5-13-1992]

Council members shall use the process outlined on the attached flow chart for constituent contacts.

§ A191-17. Confidential materials.

A. Classification.

- 1) In the event that materials need to be classified as confidential, a standard will be applied by the City administration to determine if a compelling purpose exists to require that the materials be confidential and that public disclosure of the materials would serve to undermine the interest of the City. The City administration's determination of confidentiality shall be made in accordance with RSA 91-A. [Amended 5-21-2003]
- 2) Some examples where materials would be classified as confidential would include positions in labor negotiations, personnel matters involving a right of privacy and settlement discussions of pending litigation.
- 3) In order to ensure that the government of the City of Lebanon conducts its affairs in public and not in private, and that the citizens' deliberation on public affairs in Lebanon be as fully informed as practically possible, hereby be it resolved, that the City promptly release to the public all legal opinions received hereafter by the City, including, but not limited to, memoranda from any legal counsel to the City, and opinions received by the City in private consultation with legal counsel (as allowed under RSA 91-A:2, Meetings Open to Public, I(c), Consultation with legal counsel), except that the following shall only be released at the discretion of the City Manager and City Council: [Added 5-15-2002]
 - (a) Opinions pertaining to the dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against the employee; [amended 4-01-2009]
 - (b) Opinions pertaining to the hiring of any person as a public employee;
 - (c) Opinions which, if released to the public, would likely affect adversely the reputation of any person other than a City Councilor; [amended 4-01-2009]
 - (d) Opinions pertaining to the consideration of the acquisition, sale or lease of real or personal property which, if released to the public, would likely benefit a party or parties whose interests are adverse to those of the City;
 - (e) Opinions pertaining to the consideration or negotiation of claims or litigation which has been threatened in writing or filed against the City;
 - (f) Opinions pertaining to matters before quasi-judicial boards of the City;
 - (g) Opinions which, in the judgment of the City Manager and City Council,

could potentially cause harm to the City if released.

- B. Treatment of classified materials. When materials are classified as confidential, they will be identified and marked as "Confidential" and transmitted to the City Council in sealed envelopes marked as "Confidential." The reason for the confidential classification will be noted on the materials.
- C. In the event that a significant portion of a document may be made available to the public without compromising the portions of a document which are necessary to be maintained as confidential in accordance with Subsection A of this policy, then such portion(s) shall be made available to the public with only the confidential portion(s) classified. [Amended 6-19-1996; 5-21-2003]

§ A191-18. Attendance at Seminars, Workshops, etc.

Any Councilor who wishes to attend (at the expense of the City) a seminar, workshop, or other function designed to improve their ability to serve on the City Council (or their respective board, committee, or commission) must first confirm with the City Manager that funds are available for use. If funding is in place, the following options are available:

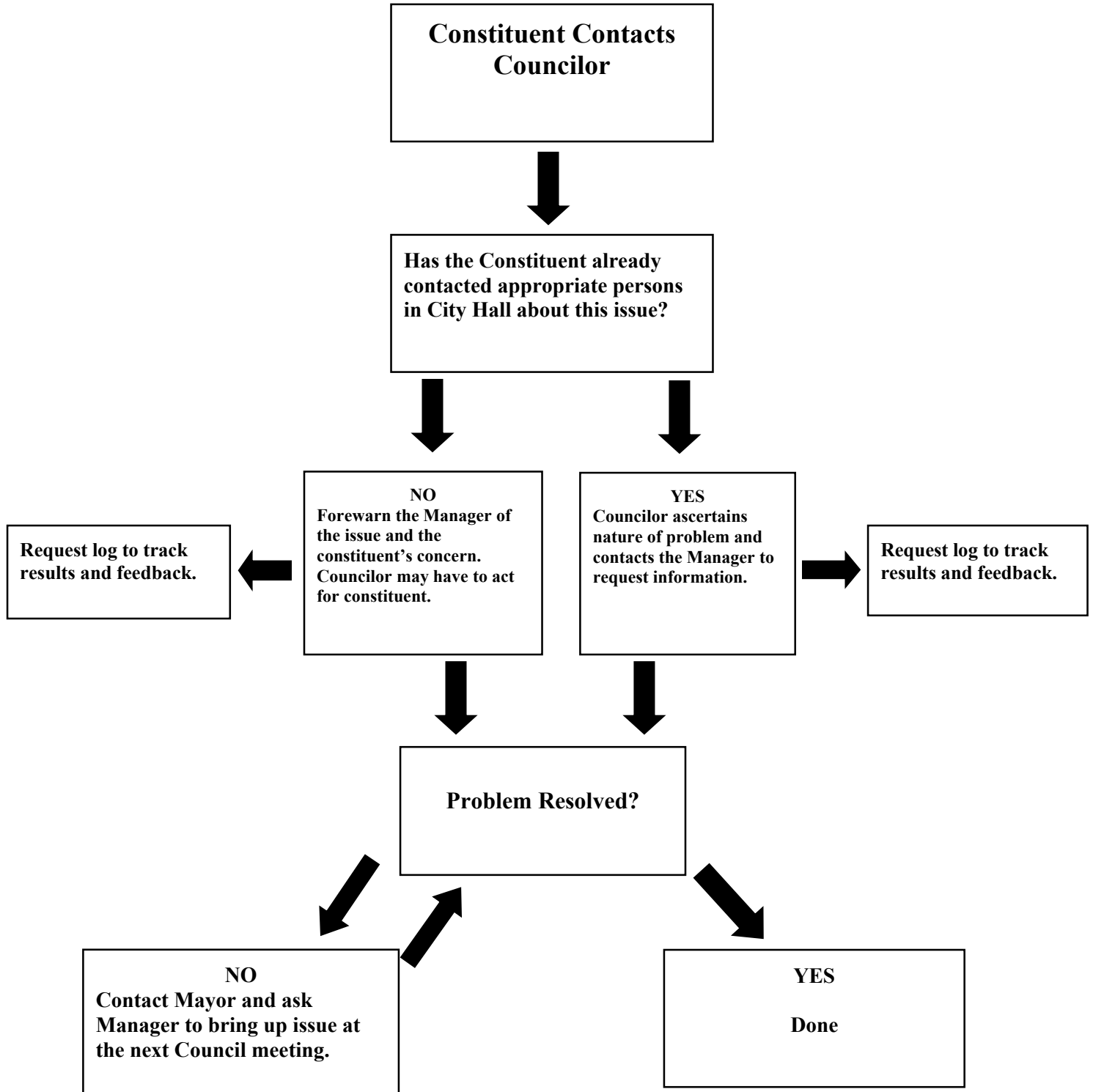
- (1) Register for the event through the City Manager's Office and request payment in advance of attendance; or
- (2) Self-register for the event and request reimbursement after attending.

If option (2) is exercised, reimbursement is only guaranteed if confirmation of funding was requested in advance of attending and proper documentation, according to the City's Purchasing Policy, is submitted with the reimbursement request.

§ A191-19. Email and Computer Use

All City Councilors will be provided with City issued email addresses and computer devices to assist them in their capacity as elected officials. Use of City email addresses and/or computer devices is not mandatory. Councilors who elect to utilize City email addresses and/or computer devices must comply with and sign an acknowledgement form for compliance with any City computer use and cyber security policies.

FLOW CHART FOR CONSTITUENT-COUNCILOR CONTACTS
Council Rules, Section A191:16
[Amended 4-20-2011; 5-16-2012]



**AGENDA
LEBANON CITY COUNCIL
NOVEMBER 4, 2020**

10. NEW BUSINESS:

10.A – CARTER WITHERELL CENTER SEWER ABATEMENT REQUEST

BACKGROUND

The Carter Witherell Center is requesting an abatement of a substantial portion of their sewer use charges (plus accrued interest) for the service period of March 1 – June 30, 2020. Upon investigation of the facility due to receipt of a larger than normal water and sewer bill, a major leak was discovered in their indoor pool. A partial abatement in the amount of \$2,593.20 was approved by the City Manager on October 14, 2020. The calculation for the partial abatement was based on the average water usage over the same quarter for the past four years (interest was not abated). The Witherell Center Staff does not agree that this should be the basis for the abatement and are requesting additional relief.

For additional details, please see attached Application for Water & Sewer Bill Abatement. Executive Director Kerry Artman and Board Chair Dan Evans will be present to discuss the request.

ACTION

Should the Council decide to grant the abatement request, the following motion is offered for consideration:

MOVED, that, in accordance with City Code Chapter 136, Sewer Service, Section 136-80, Abatement, the Lebanon City Council hereby authorizes an abatement of sewer use charges for the Carter-Witherell Center in the amount of \$_____ for the period of March 1, 2020 – June 30, 2020.

Included in this Section:

1. September 30, 2020 Application for Water & Sewer Bill Abatement by the Carter Witherell Center
2. July 31, 2020 Water & Sewer Bill for Carter Witherell Center
3. Utility Billing Statement for Carter Witherell Center (printed 10/28/2020)



City of Lebanon
 Department of Public Works
 193 Dartmouth College Highway
 Lebanon, NH 03766
 (603) 448-3112

Application for Water & Sewer Bill Abatement

Fill in all blanks, attach additional paperwork as necessary. Any request for abatement must be filed in writing to the Department of Public Works within 30 days of the billing period. The filing of this form does not guarantee that your abatement will be granted or relieve the applicant of the responsibility to pay the water or sewer usage bill in full by the due date specified. Further documentation may be required.

Instructions: Account & Property Information:

1 TAYLOR ST
 Service Street Address

00226657
 Acct Number

00233935
 Bill Number

CCBA Witherell Rec Center
 Last Name or Business Name

KERRY ARTMAN
 First Name or Business Contact

448-6477
 Contact Phone

Kerry.Artman@joinedba.org
 Contact Email

7/31/2020
 Date of Contested Bill

\$17,530.45
 Amount owed on Contested Bill

Reason for Abatement Request:

- ☐ Leaking Toilet
- ☐ Household Plumbing Leak
- ☐ Outdoor Water Usage (power washer, hose, pool)
- ☐ Building Unoccupied
- ☐ Faulty Water Heater
- ☒ Other: LEAK IN POOL

Monthly Payment Plan Requested

Please provide explanation describing your request for abatement. Attach additional sheets, if necessary.

Please see attached...

Please provide explanation describing your request for abatement:

This bill covers the time between 3/1/20 – 7/2/20. The Witherell Recreation Center was closed from 3/16/20-6/15/20 – two thirds of the billing cycle. We assumed our water would reflect that and be about one-third of the normal rate. However, the bill we received reflects heavy water usage and is nearly triple our usual bill.

We've been in contact with the City of Lebanon Department of Public Works since we received the bill. We've asked for new meter readings and the City installed an updated meter reading technology so water usage can be recorded more frequently. The billing department has also been kept in the loop that we are trying to determine why our water usage is so high.

We have employed multiple pool experts and run tests to determine the source of a leak. We know the grout has failed in sections of the pool. We will be draining and re-grouting our pool beginning 10/15/20. We will also be conducting tests of our pipes when the pool is drained to see if there are additional leaks there. The water we used to keep the pool at the appropriate volume did not go into the sewer.

We are asking for an abatement of the sewer portion of the bill beginning 3/16/20. We did not open our showers until the end of July, so the only water going into the sewer was from toilets and the washing machine in use once a day. With member usage of the building extremely low since 6/15/20, we are not heavy users of the sewer system.

In addition, we are requesting an abatement of the interest charged on our bill beginning in September. We were told to wait on the bill until we could identify the source of our leak and request this abatement.

We will be asking for a sewer abatement on the next bill as well, through 10/15/20 when we close the pool for repairs.

Thank you very much,

A handwritten signature in black ink, appearing to read "Kerry Artman", is written over the typed name.

Kerry Artman
Executive Director | CCBA | 448-6477

1 Taylor St, Lebanon, NH 03766

Statement of Financial Hardship (*Water abatements can only be made due to financial hardship and inability to pay.*). Attach additional documentation to support request.

Our revenue has been severely impacted by COVID-19 restrictions, shut downs, and associated costs of doing business in the current climate.

Kerry Artman
Signature

KERRY ARTMAN
Printed Name

9/30/2020
Date

Lebanon City Code Chapter 136 SEWER Service, Article X, §136-80 Abatement

For good cause shown, the City Manager may abate any such fees and assessments made herein. Any person aggrieved by the neglect or refusal of the City Manager to grant an abatement may petition the City Council for relief at any time within 30 days after notice of decision by the City Manager.

Lebanon City Code Chapter 182 WATER Service, Article V, §182-33 Abatement

For good cause shown, the City Manager may abate any bill and/or fees charged herein. The Manager, or his or her designated agent, will review in private session with the person requesting abatement that person's need for abatement. The Manager may abate any bill and/or fees by a decision in writing because of financial hardship and inability to pay or may set up an installment payment schedule. In the event of a default in the installment payment schedule, water service may be terminated upon the terms and conditions as provided in this chapter. In the event that the consumer pays fees in excess of the fees required by the Code of the City of Lebanon, and abatement is made, the city shall refund such excess fees together with interest of 6%.

For Official Use Only

☒ Approved ☐ Denied Explanation: This is a partial approval.

The high usage was caused by a leak that did not reach the sewer so your bill will be adjusted to the average usage over the same quarter for the four previous years. The interest however cannot be abated. There is no record of you being told by a City Official not to pay your bill.

City Manager: Shawn Mulholland Date: 10/14/2020
AE8C225904D9436...

Principal Abated \$2593.20 Interest Abated _____ Amount Still Owed \$15,287.86

Payment Plan Amount Owed Per Month _____

CITY OF LEBANON

51 N PARK ST LEBANON NH 03766 603-448-1569

WATER & SEWER

Bill#	Bill Date:	Due Date:	Map/Lot	Description	Charges
00233935	7/31/2020	9/01/2020	92/25	SEWER CUBIC FT 9.730/10	10,970.58
Reading Date	Prev Reading	Cur Reading	Usage	SPK2 2@250	500.00
7/02/2020	249180	361930	112,750	WATER CUBIC FT 4.850/10	5,468.38
Service Location	Account#	PID	SEWER 2"FIXED CHARGE	356.68	
1 TAYLOR STREET	0506100	2823	WATER 2"FIXED CHARGE	234.81	
Bill To:	Billing Period				
	4/01/2020 through 7/02/2020		Total Current Charges:		17,530.45

CARTER-WITHERELL CENTER
P.O. BOX 386
LEBANON, NH 03766

IF NOT PAID BY THE DUE DATE, THERE IS A 1% INTEREST CHARGE ADDED MONTHLY (12% ANNUALLY). FAILURE TO PAY BY THE ABOVE DUE DATE MAY RESULT IN DISCONTINUANCE OF SERVICE. GO TO WWW.LEBANONNH.GOV TO PAY BY CREDIT CARD OR E-CHECK.

VIEW YOUR WATER QUALITY REPORT (CCR) ONLINE:
WWW.LEBANONNH.GOV/WATERREPORT
TO RECEIVE PAPER COPY PLEASE CALL 603-448-2514

CITY OF LEBANON

51 N PARK ST LEBANON NH 03766 603-448-1569

WATER & SEWER

Bill#	Bill Date:	Due Date:	Map/Lot	Description	Charges
00233935	7/31/2020	9/01/2020	92/25	SEWER CUBIC FT 9.730/10	10,970.58
Reading Date	Prev Reading	Cur Reading	Usage	SPK2 2@250	500.00
7/02/2020	249180	361930	112,750	WATER CUBIC FT 4.850/10	5,468.38
Service Location	Account#	PID	SEWER 2"FIXED CHARGE	356.68	
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Bill To:	Billing Period				
	4/01/2020 through 7/02/2020		Total Current Charges:		17,530.45

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WWW.LEBANONNH.GOV/WATERREPORT
TO RECEIVE PAPER COPY PLEASE CALL 603-448-2514



10/28/2020

Utility Billing Statement

CITY OF LEBANON

CARTER-WITHERELL CENTER

P.O. BOX 386
LEBANON, NH 03766

Service Location: 1 TAYLOR STREET

Acct#: 0506100

A/R	Bill#	Bill Date	Due Date	Amt Billed	Balance	Interest 10/28/2020	PerDiem	Cost	Amt Due
S	233935	07/31/2020	09/01/2020	10,970.58	8,377.38	219.41		0.00	8,596.79
SP	233935	07/31/2020	09/01/2020	500.00	500.00	10.00		0.00	510.00
W	233935	07/31/2020	09/01/2020	5,468.38	5,468.38	109.37		0.00	5,577.75
MS	233935	07/31/2020	09/01/2020	356.68	356.68	7.13		0.00	363.81
MW	233935	07/31/2020	09/01/2020	234.81	234.81	4.70		0.00	239.51
Utility Billing Total Due					14,937.25	350.61		0.00	15,287.86

**AGENDA
LEBANON CITY COUNCIL
NOVEMBER 4, 2020**

10. NEW BUSINESS:

10.B – DISCUSSION & SET PUBLIC HEARING FOR NOVEMBER 18, 2020:
ORDINANCE #2020-18, TO AMEND CITY CODE CHAPTER 97,
LANDFILL REGULATIONS, APPENDIX A, FEE SCHEDULE

BACKGROUND

Chapter 97, Landfill Regulations, was fully updated in July 2019 to incorporate the language from now repealed Chapter 143 (Solid Waste) and to include a fee schedule for disposal of refuse and recycling of certain materials. The fee schedule is to be reviewed annually for possible updates based on current market rates.

Attached please find the fee schedule proposed to be effective January 1, 2021.

ACTION

Should the Council decide to move forward with Ordinance 2020-18 as proposed, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, November 18, 2020, beginning at 7:00pm, Remote via Microsoft Teams, for the purpose of receiving public input and taking action on proposed Ordinance #2020-18, to amend the Code of the City of Lebanon, Chapter 97, Landfill Regulations, Appendix A, Fee Schedule.

Included in this Section:

1. Proposed Ordinance #2020-18

**CITY OF LEBANON
ORDINANCE #2020-18**

AN ORDINANCE TO AMEND Chapter 97, Landfill Regulations of the Code of the City of Lebanon, Appendix A, Fee Schedule.

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

Section 1.

The Code of the City of Lebanon, Chapter 97, Landfill Regulations, Appendix A, Fee Schedule, is amended as follows:

Item	Fee
MSW – Commercial	\$75/ton \$75.75/ton
MSW – Residential	\$1.50/household bag \$3/contractor bag \$15 per punch card
Minimum Load – Scale Use (200lbs)	MSW - \$10.00 (6 punches) C&D - \$15.00 (10 punches) Bulky - \$12.00 (8 punches)
Construction and demolition debris – commercial NOTE: This does not include mixed aggregates	\$150/ton
Construction and demolition debris – residential	1 punch = 20lbs of C&D 1 card = 200lbs of C&D
Mattresses	\$9 per item (6 punches) \$120/ton (oversized bulky waste rate)
Furniture	\$9 per item (6 punches) \$120/ton
Tires	\$6/tire \$7.50/tire (5 punches) \$150/ton \$175/ton
Yard trimmings and brush	\$10/ton for loads larger than 2 cubic yards \$15/ton for loads larger than 2 cubic yards
Bulk loads of glass, asphalt, brick and concrete and mixed aggregate	\$30/ton
Electronic waste – monitors and TVs	\$15 each \$21/item (14 punches) \$0.25/lb \$0.30/lb on CRTs larger than 27”
Electronic waste – solar panels	\$24 \$30/ panel
Electronic devices – DVD, VCR, stereo, etc	\$6 \$9/item (6 punches)
Freon-containing devices	\$21/unit (14 punches)
Fluorescent bulbs	\$0.10 \$0.15/ft.
Compact fluorescent lamps (CFLs)	\$0.60/each
Cover materials	\$10 \$12/ton
Food waste	\$50/ton
Food scraps – household	\$15 permit annually (10 punches)
Pressurized cylinders – fire extinguishers and propane tanks	\$12/tank
Small pressurized tanks	\$1.50/each
Equipment Assist	\$50

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 jurisdictions, such decisions shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 3. Effective Date.

This ordinance shall become effective January 1, 2021.

AGENDA LEBANON CITY COUNCIL NOVEMBER 4, 2020

10. NEW BUSINESS:

10.C – DISCUSSION AND SET PUBLIC HEARING FOR NOVEMBER 19, 2020: ORDINANCE 2020-19 TO AMEND THE CITY CODE BY ADDING A NEW CHAPTER 185, WELCOMING LEBANON

BACKGROUND

In March 2020, the voters of Lebanon passed the “Welcoming Lebanon” Ordinance which began through a binding referendum process in October 2019.

In May 2020, the City Council established the Fair and Impartial Policing Task Force to study and propose amendments to the ordinance in an effort to make it compliant with applicable Federal and State laws, rules, and regulations, while maintaining the intent and purpose of the ordinance as adopted by voters.

Attached are the recommendations by the Task Force along with Ordinance #2020-19 which formats the recommendations for codification as part of the City Code.

Ordinance 2020-19 has been sent for legal review in accordance with City Code Chapter 115, Enactment of Ordinances. If the opinion is available prior to the November 4 meeting, it will be provided under separate cover and posted to the City’s website. If it is not available for November 4, it will be available on or before the time the Ordinance is posted for the public hearing on November 19.

ACTION

Should the Council decide to move forward with Ordinance 2020-19 as proposed, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Thursday, November 19, 2020, beginning at 6:00pm, Remote via Microsoft Teams, for the purpose of receiving public input and taking action on proposed Ordinance #2020-19, to amend the Code of the City of Lebanon, by adding new Chapter 185, Welcoming Lebanon.

Included in this Section:

1. Proposed Ordinance 2020-19
2. October 21, 2020 Welcoming Lebanon Ordinance as reviewed and recommended by the Fair and Impartial Policing Task Force
3. Fair & Impartial Policing Task Force Report to the Council

**CITY OF LEBANON
ORDINANCE #2020-19**

AN ORDINANCE TO AMEND the Code of the City of Lebanon by adding a new Chapter 185, to be entitled WELCOMING LEBANON, which provides for the procedures concerning residents' immigration status and responsibilities and powers regarding federal civil immigration enforcement.

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 by adding thereto a new chapter, to be Chapter 185, Welcoming Lebanon, to read as follows:

- §185-1. Purpose/Intent
- §185-2. Definitions
- §185-3. Provisions
- §185-4. Implementation and Enforcement

§185-1. 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.

§185-2. DEFINITIONS

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

ADMINISTRATIVE WARRANT - 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 – Includes 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 - 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 - 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 – Includes 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 - 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 - Includes, but is not limited to, “disability” as defined in RSA 354-A:2, IV.

§185-3. PROVISIONS

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.
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.

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.
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.
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 and as long as no agent of the City provides or requests any of this information from federal immigration authorities.
 - 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.
 - B. 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.
 - 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.
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.

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.
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 someone acting on the City Manager's behalf learns of 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 or someone acting on the City Manager's behalf shall make a reasonable effort to confirm that one exists and then cause the public to be promptly notified which may be done through the LebAlert system.

§185-4. 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 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 or access 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 any cause of action under the criminal code 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.

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 any remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 3. Effective date.

This ordinance shall become effective upon passage.

FAIR & IMPARTIAL POLICING TASK FORCE
WELCOMING LEBANON ORDINANCE

FINAL - as of 10/21/20

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 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 and as long as no agent of the City provides or requests any of this information from federal immigration authorities.

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.

B. 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.

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 someone acting on the City Manager's behalf learns of 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 or someone acting on the City Manager's behalf shall make a reasonable effort to confirm that one exists and then cause the public to be promptly notified which may be done through the LebAlert system.

Section 9 - Implementation and Enforcement.

A. Failure by agents of the City to comply with the Welcoming Lebanon Ordinances shall be addressed under the terms of the City's 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 or access 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 any cause of action under the criminal code 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.

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.

ORIGINS OF THE ORDINANCE

The effort to adopt the Welcoming Lebanon Ordinance was motivated by the understanding that all municipalities bear an obligation to ensure fair and just treatment of every person who lives, works, travels through, and otherwise participates in the life of their communities. Lebanon joined community members of three towns in the Upper Valley: Hartford, VT; Norwich, VT; and Hanover, NH, to focus on the particular goal of prohibiting their local police departments from enforcing federal immigration law and to provide a cohesive approach to this concern in the Upper Valley.

A strong foundation for the work of these communities was the example of more than 550 United States jurisdictions, including states and municipalities, that prohibit local enforcement of Federal Immigration law.

Of primary importance to the effort to adopt the Welcoming Lebanon Ordinance were the deep concerns of our immigrant neighbors. According to Census data from 2014 to 2018, more than 1,400 persons in the City of Lebanon were born in a country other than the United States. These numbers are augmented by individuals who enter Lebanon to work, shop, and use services within the city. Among these individuals who live in or who frequent the city are asylum seekers, persons who have temporary protective status, persons temporarily protected by DACA (Deferred Action for Childhood Arrivals), temporary green card holders, persons applying for U-Visas due to situations of domestic violence, and individuals who do not have documents or whose documents have expired. The Committee would like to emphasize that most violations of immigration law, such as the expiration of documents, are civil offenses rather than crimes. Systemic attacks on the aforementioned immigration programs and relentless physical assaults by both civilians and state and federal law enforcement on persons who have left their home countries in pursuit of a better life create fear, anxiety, and trauma in individuals, families, and communities. Even US citizens and documented immigrants experience discrimination, harassment, threats, and other forms of verbal and physical violence due to pervasive stereotypes rooted in xenophobia and anti-Blackness that link Black, Latinx, Asian, and Middle Eastern-appearing people with suspect immigration status and with criminal or violent tendencies. This is true in Lebanon and in the Upper Valley community as a whole.

Recognizing that unjust treatment of individuals is rooted in discrimination on the basis of perceived race, language, religion, and ethnicity as well as on the basis of immigration and citizenship status, the original Welcoming Lebanon Ordinance included Provision One. According to a July 2019 Census report, 2,280 persons living in Lebanon at the time self-identified as Black, Indigenous American, Asian, Native Hawaiian or other Pacific Islander, Persons of two or more races, or Hispanic or Latinx.

These members of the Lebanon Community must be treated in a just and non discriminatory manner by every Agent and Agency of the City. Racial and ethnic discrimination by government officials is a well-proven nationwide reality, which will require bold and genuine commitments that go beyond non-binding resolutions.

Federal Immigration Enforcement Presence Within the Upper Valley

Regardless of whether a person does or does not have proper documentation, the United States Constitution forbids federal immigration authorities to detain people solely on the basis of perceived race, ethnicity, or spoken language. However, racial and ethnic profiling is a widely accepted tactic among federal immigration enforcement. Many Lebanon residents have already been victims of this injustice.

A September 22, 2019 *Valley News* article (“ACLU files suit over detention in Lebanon”) revealed that Customs and Border Protection agents were using “small-scale undercover tactics” throughout New Hampshire towns to arrest and detain people they suspected were undocumented. A report filed with a NH ACLU lawsuit against CBP indicated that a number of these actions took place in Hanover and White River Junction during the summer of 2019 resulting in “numerous arrests”. An earlier incident in Lebanon on March 20, 2019, involved plain clothes Border Patrol agents targeting two men in a local thrift store. After learning that one of the men was from Guatemala and judging that both spoke “broken English”, the agents decided that they might be undocumented immigrants. They detained and imprisoned one of the individuals, a Claremont dairy worker, who faced the possibility of deportation.

A Border Patrol checkpoint in Lebanon on September 5, 2019 proved to be a true watershed moment for the Lebanon community. Immigrant residents — including citizens — and the community as a whole were traumatized by this 8-hour attack on the City of Lebanon and the Upper Valley. It is notable that this incident occurred on International Students’ Move-In Day at Dartmouth College.

Although the City cannot prevent Federal immigration authorities from acting within the City, the community has the power to prohibit the Lebanon Police Department from participating in these actions.

Fair and just treatment of all persons in the City of Lebanon requires not only unequivocal and binding anti-discrimination requirements for the Lebanon Police Department but also in the application of and access to all City services including public safety, healthcare services, social services, education, recreation, and the pursuit of business opportunities.

Based on this understanding, the Welcoming Lebanon Ordinance Committee did not limit the scope of the Ordinance to law enforcement, and instead followed the example of neighboring Hartford, Vermont, to ensure that all Agents of the City will treat all persons within the city in a non-discriminatory and welcoming manner.

The Committee found support for the inclusion of all Agents and Agencies of the City in the City of Lebanon's 2018 Resolution For Inclusiveness.

The City Council of Lebanon stated its "commitment to protecting its citizens, residents and visitors against discrimination on the basis of race, skin color, national or ethnic origin, gender identity, sexual orientation, mental or physical disability, immigration status, religious or political opinion or activity, or housing status."

The resolution also affirmed "its strong support for the fundamental constitutional rights, human dignity and civil liberties of every person" in the city and a commitment to "fostering a community of tolerance, respect, and inclusion."

THE CITIZENS' BINDING INITIATIVE PROCESS

On October 15, 2019, an Initiative Petitioners' Committee of Lebanon City voters filed a petition for a Citizens' Binding Initiative to the City Clerk in accordance with Lebanon City Charter § C419:23a and Chapter 89 of the Lebanon City Code and submitted the draft Welcoming Lebanon Ordinance for review by the Attorney for the City.

Legal Counsel for the City, H. Bernard Waugh, reviewed the format of the proposed ordinance, made formatting recommendations, and included the information that because the proposed ordinance did not include a penalty, NH RSA 625:9 would apply. The Petitioners' Committee followed Attorney Waugh's formatting recommendations and also specified the application of NH RSA 625:9 in order to include an enforcement mechanism within the Ordinance.

Having met the required 610 signatures of registered Lebanon City voters by December 21, 2019 to place the Welcoming Lebanon Ordinance on the March 10, 2020 Municipal ballot, the Lebanon City Council scheduled a Public Hearing for the Ordinance to take place on January 22, 2020.

THE PUBLIC HEARING

On January 13th, Attorney Waugh provided a legal opinion stating that he saw "nothing fundamentally unlawful about the first 5 sections of the Ordinance." His stated concerns with these provisions were around wording and implementation issues. Attorney Waugh included a strong recommendation that "the City take measures to assure that enforcement (of the Ordinance) is as uniform and impartial as possible."

Attorney Waugh's primary concern was Provision 6. He provided his opinion that the Provision was "too vague to be enforceable" and that there was a "strong likelihood of being held to violate the 'noninterference' principle...(which) prohibits state and local government from 'actively interfering' with a federal function."

Attorney Kira Kelley, Counsel for the Welcoming Lebanon Ordinance Committee, submitted an opinion to the City Council for the Public Hearing on January 22, 2020 stating that the Ordinance "does not subject the City or its employees to liability for any failure to send alerts" and provided persuasive precedent that merely giving notice of immigration enforcement activities does not constitute unlawful interference.

The City Council had the opportunity to adopt the Ordinance during the January 22nd Public Hearing. However, a number of Council members voiced strong concerns regarding Provision One. Their interpretation of this Provision led them to believe that Lebanon Police officers would be prohibited from collecting and retaining data regarding race when stopping, searching, ticketing, and arresting individuals.¹ Councilors stated the clear need for such data in order to ensure fair and impartial policing in Lebanon.

The Council, while it did not adopt the Ordinance, endorsed the intent of the ordinance and agreed to a collaborative effort between the Council and the Petitioners' Committee to address unclear language and to ensure that the Ordinance was lawful. This effort would be undertaken if voters passed the Ordinance in the Municipal election on March 10, 2020.

THE MUNICIPAL VOTE

Provided with the Attorney for the City's January 13, 2020 Opinion and the original Ordinance, Lebanon voters adopted the Welcoming Lebanon Ordinance by a vote of 1,221 to 1,015 on March 10, 2020, the date of the Municipal election. The effective date of the Ordinance as approved by the voters is January 1, 2021.

TASK FORCE ASSIGNMENT

The Mayor of Lebanon subsequently appointed what he designated as the Fair and Impartial Policing Task Force to clarify language within and to ensure the legality of the Welcoming Lebanon Ordinance. The Task Force would consist of two city councilors,

¹ Provision One as submitted and in its current form prohibits collecting or retaining data *on the basis of* race or any other protected characteristic, but does not restrict collecting or retaining data *about* race or protected characteristics *when the characteristic itself is not the reason for collecting the data*. For example, police could record a person's race as long as they are not noting the person's race *because* the person is Black, but simply because it is standard procedure to note the race of every person stopped for a traffic infraction.

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 Ordinance has been formatted as Chapter 185, Welcoming Lebanon, in order to remain consistent with the name of the Ordinance as passed by voters.

WORK OF THE TASK FORCE

The Task Force has met regularly over the summer and early fall, engaging to date in 13 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 from Attorney Kira Kelley, 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 Attorney Waugh had addressed in his January 13, 2020 opinion 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.

§185-1. Purpose/Intent

The proposed Purpose/Intent section is very similar to what was passed by 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.

§185-2. Definitions

This is a new section, based on a recommendation from Attorney Waugh that the Ordinance include definitions to make it more enforceable. These definitions are generally adopted from similar ordinances including those of Hartford, VT and Chicago, IL, to ensure consistency in interpretation. Of the listed definitions, that of “Agent” aligns with the basic principles of Agency law² to include not only paid employees but also individuals acting on behalf of City agencies, so that information learned through that affiliation cannot be filtered through a loophole, and also so that any individual acting on behalf of the City upholds the City’s commitment to anti-discrimination.

§185-3. PROVISIONS

Provisions 1-5 are proposed to replace Provisions 1-4 of the Ordinance.

PROVISIONS 1 and 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, and 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 and 4

These provisions are based on former Provisions 2 and 3 and articulate specific prohibitions against requesting, investigating, and disclosing information regarding immigration and citizenship status. This language is close to the language in the original Ordinance.

PROVISION 5

A major 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.

² See, e.g. [*Restatement \(Second\) of Agency*](#)

The Task Force agreed that it was not the intent of the Ordinance to interfere with 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.

During a meeting with Chief Mello of the Lebanon Police Department, the issue was raised that data collected by law enforcement to ensure fair and impartial treatment of all persons must include data on traffic stops, citations, searches, and arrests and that this data should be readily available to the public. The chief stated that Lebanon does not have the ability to collect data on searches, a key element in fair treatment of all persons in the city. The chief and the city manager agreed that a mechanism for transparent public sharing of data should be implemented.

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 B addresses circumstances when “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.”

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.

PROVISION 6

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

PROVISION 7

Provision 7 replaces the former Provision 5. The language is identical, except for the addition of one sentence at the end of Paragraph F. There was unanimous agreement that it was not the intent of the Ordinance to prohibit the use of databases by law enforcement. Language was therefore added to specify that:

“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.”

PROVISION 8

Formerly Provision 6, this provision has come to be known as the “notification” provision and was the focus of significant time and attention for the Task Force. There was unanimous agreement among members of the Task Force that a notification provision should be retained in the Ordinance.

The intent of Provision 6 as approved by Lebanon's voters was that the City inform residents of Lebanon when Federal immigration authorities were present in the city. The reasons for this provision are many, including that: federal immigration authorities use race, ethnicity, and spoken language as the basis for questioning and detaining people regardless of actual documentation status and pose a real and traumatic danger to all people of color and people with accents in Lebanon; that most immigrants without documentation are not criminals and have violated only civil laws but are stigmatized as violent and/or a danger or a threat to this community due to a nationwide propaganda campaign rooted in racism and systemic oppression; and lastly that even white citizens face danger and disruption from the traffic delays in and around Lebanon and the hospital due to immigration enforcement activity. Such notification could allow members of the community to remain at home, to seek out information regarding their rights, or to ensure that they carried their documents with them should they be singled out and questioned by immigration enforcement agents.

Attorney Waugh added that he “had found no specific case dealing with local officials actively warning citizens against Federal officials” but remained uncomfortable recommending the provision from a conservative legal perspective.

Several officials in U.S. cities, notably Libby Schaaf, the mayor of Oakland, California, have warned their City residents of immigration enforcement sweeps and have not been prosecuted.

The Task Force engaged in substantial discussion of this provision primarily around the issue of liability for City employees and the issue of interference. There was unanimous agreement 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 narrows notification to a particular type of presence and 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.

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 someone acting on the City Manager's behalf learns of 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 or someone acting on the City Manager's behalf shall make a reasonable effort to confirm that one exists and then cause the public to be promptly notified 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 need not be identified so as to protect the City Manager from personal liability.

§185-4. IMPLEMENTATION AND ENFORCEMENT

In his initial review of the draft Ordinance, Attorney Waugh noted that although there were prohibitions in the document, there was no penalty within the Ordinance.

Consequently, the Welcoming Lebanon Ordinance passed by the voters included an enforcement provision based on NH RSA 625:9. Under this statute, failure to comply with the Ordinance would be classified as a violation and the penalty could be conditional or unconditional discharge and a fine of no more than \$1000.

Attorney Waugh suggested adding language from Hanover's Fair and Impartial Policing Ordinance as well as a “No private cause of action” clause to the enforcement provision.

A provision was created in cooperation with Attorney Waugh and included the following reference to NH RSA 625:9 in paragraph A of the provision: “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.”

The city manager stated his objection regarding the application of NH RSA 625:9 in the enforcement provision, maintaining that city personnel had voiced concerns that they could potentially be subject to a violation offense. He proposed that enforcement be “addressed under the terms of the City's policies”. (Paragraph A of Section 9-Implementation and Enforcement)

Paragraph A of the provision now formatted as §185-4 in the current draft appears problematic in that city policies are subject to change at the discretion of the city manager. Therefore, there is no clear, consistent penalty within the ordinance. While the

City Manager expressed the opinion that termination of employment would be a stronger deterrent than imposition of a fine, the Task Force was unable to craft such language to be included in the Ordinance. Thus, there are multiple members of the Task Force who object to the omission of such explicit penalties from this Ordinance and to the discretion that the Ordinance vests in the City Manager to alter the penalties applicable to ordinance violations without needing to go through the process for amending an ordinance.

Paragraphs B and C address mechanisms for reporting violations of the Ordinance by, respectively, City employees and non-employee Agents of the City.

Paragraph D includes language recommended by Attorney Waugh that “This Ordinance shall not be construed to create any civil cause of action or any cause of action under the criminal code or to form any basis of liability on the part of the City or its agents.” As initially supported by the Task Force, the remainder of this paragraph allowed for persons to seek remedy in court for violation of the Ordinance; however, with the elimination of the violation-level offense from the Ordinance, this appears to limit that allowance to violations which are also addressed by other laws beyond this Ordinance, limiting its effectiveness by removing external remedies so that the City employees face accountability for violations of the Ordinance solely at the discretion of the City Manager and other City employees.

RECOMMENDATION

In a unanimous vote, the Task Force agreed to submit this Ordinance to the City Council. However, a minority opinion objects to the inclusion of the words “under the criminal code” from Provision 9, as it apparently limits violation-level offenses to violations of the Ordinance that are also violations of other laws. Further, the Task Force recommends that the City Council and the City of Lebanon undertake several actions to support a smooth and effective implementation of the Ordinance, including:

1. Passing a policy that requires City interviewers to show the Ordinance to any prospective employee and to take into account any expressions of aversion to its anti-racist sentiments when making hiring decisions, as well as to ensure employees are thoroughly familiar with the Ordinance and what it asks of them.
2. Creating a process for compiling and reviewing complaints.
3. Removing the term “citizen” from City policies such as “Complaints and Investigations,” when the word “resident” would be more appropriate.
4. Reviewing and adjusting the City’s Anonymous Hotline Policy to eliminate the City’s exclusive discretion over whether or not reports called in are subsequently investigated.



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PRIVILEGED AND CONFIDENTIAL COMMUNICATION

October 30, 2020

Shaun Mulholland, City Manager
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Welcoming Lebanon Ordinance
City of Lebanon
Our File No. 20158-47.015

RELEASED TO THE PUBLIC
Lebanon City Manager's Office

Date: 11/2/2020



Dear Manager Mulholland and other City officials:

You have requested my legal opinion concerning the draft recommendation proposed by the Fair and Impartial Policing Task Force for an amendment to the Welcoming Lebanon Ordinance which was adopted by the City's voters by initiative petition in March. Section 115-3 of the Lebanon City Code requires a legal opinion "as to the authority and validity" of the proposal. The version being addressed here is the version formatted under the heading "City of Lebanon Ordinance #2020-19" which was E-mailed to me by Deputy City Manager Paula Maville on October 23, 2020.

SUMMARY OF OPINION:

It is my opinion, based on the discussion below, that the proposal is in accord with the City's authority, and is legally valid. However please see the formatting comments at the end of this letter.

DISCUSSION AND BASIS FOR OPINION:

1. ***Council Authority To Amend Voter-Enacted Ordinance.*** I addressed this generic legal issue in an opinion dated April 23, 2020, a copy of which is attached. My conclusion was, and still is, that an ordinance enacted pursuant to the "Citizens Binding Initiative" portion of the City Charter stands in no preferred position with respect to the Council's authority to amend. Thus the Council has the same legal authority to amend such an ordinance as it does with any Council-enacted ordinance.

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Shaun Mulholland, City Manager

October 30, 2020

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2. ***General Validity of Prohibiting City Agents From Cooperating with Federal Immigration Enforcement.*** I addressed the conceptual validity of the petitioned version of the Welcoming Lebanon Ordinance in an opinion dated January 13, 2020, a copy of which is also attached. Nothing has occurred since then to alter my general conclusion.

On the issue of whether the proposal violates federal law, my conclusion was based substantially on the Ninth Circuit's decision in *United States v. California*, 921 F.3d 865 (9th Cir, April 18 2019). Since I prepared that 1-13-20 opinion, the US Supreme Court on June 15, 2020 rejected a request for certiorari review of that case, leaving it intact (*see* 2020 WL 3146844), with only two justices voting to take up the case. No other federal decision since 1-13-20 has reached conclusions contrary to the 9th Circuit's decision. (A couple of Federal trial court decisions have refused to extend its rationale, but the issues in those cases were unrelated to the present discussion.) I continue to caution that there is some potential for the 9th Circuit's conclusions to be overturned by the US Supreme Court. However the likelihood of that is less than it was in January, when a request for Supreme Court review was still pending.

3. ***Comments on Details of the Task-Force-Recommended Draft:***

- (a) ***Immigration Checkpoint Alerts*** (Existing Provision 6, New Provision 8). This was the only existing provision which my 1-13-20 opinion said had a 50/50 chance of being found outright unlawful. The new version differs, in that: (1) It applies to all traffic obstructions, not just immigration checkpoints; and (2) It does not mandate that the alert issued to City residents must specify that the obstruction is an immigration checkpoint, or the exact location of that checkpoint. Thus in my opinion the new version gives the Manager (or "someone acting on the City Manager's behalf") sufficient discretion and flexibility to formulate an alert which avoids frustrating the purpose of a Federal immigration checkpoint.

The other problem with the existing provision is that it creates a legal duty for *all* "agents" of the City, but without clarifying exactly what that duty is, or how a City agent can determine when it has been fulfilled. The new version avoids that problem by creating a duty only for the Manager or Manager's designee, and by giving enough flexibility on how that duty will be met.

In my opinion the new version is lawful. However the Manager (or designee) will still need to exercise care to implement it in a way which does not affirmatively frustrate federal enforcement.

- (b) ***Collecting, Retaining or Disclosing.*** One element of ambiguity I raised in my 1-13-20 opinion resulted from the general prohibitions on collecting, retaining and disclosing information about *any* of the non-discrimination categories. (For

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Shaun Mulholland, City Manager

October 30, 2020

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example, if a police report describes a suspect as speaking French, would that violate the disclosure of information concerning “language”?)

However, a major change the Task Force makes in this new proposed version is to limit the prohibitions on collecting, retaining or disclosing information, such that those prohibitions apply *only* to information concerning citizenship and immigration status (*see* Provisions #3 and #4). With all of the other non-discrimination categories, the new version limits collection, retention and disclosure of information *only* if there is a discriminatory purpose or effect (*see* Provision #2). The legal concern has thus been largely eliminated, especially in light of the revised statement of exceptions (Provision #5, *see below*).

- (c) ***Non-Discrimination Categories:*** Provision #1, which generally prohibits profiling, targeting or discrimination, contains some non-discrimination categories which are not found in state law. For example, the Ordinance prohibits discrimination based on “familial status,” “ethnicity or culture,” “language,” “economic or housing status,” and “citizenship or immigration status,” whereas those terms do not appear in RSA 354-A, the State’s Law Against Discrimination.

I do not perceive a legal problem with these additional categories, because: (1) Many of the additional categories are implied within the state law categories (for example discrimination based on language is *de facto* discrimination based on race or national origin). (2) Some are categories already recognized in other laws (for example “familial status” is protected under the Federal Fair Housing Act). (3) It must be remembered that this Ordinance does not regulate private behavior, but governs only agents of the City – I find no basis for believing that RSA 354-A preempts the City from being *more* protective in the context of actions taken by the City itself. (4) In those specific areas where state or federal law *does* affirmatively *require* discrimination (such as based on citizenship or economic need), that is now covered by the exceptions found in Provision #5 (*see below*).

- (d) ***Exceptions*** (New Provision #5). Another problem I had found with the existing Ordinance is that the exceptions were scattered through different provisions, and were inconsistent with each other. The new version addresses that problem by collecting all exceptions into one section (new Provision #5). In my view that paragraph now adequately covers all of the potential situations where City personnel might need to discriminate in an otherwise-prohibited way, namely: (1) In programs where state or federal law mandates utilization of the categorical information (for example considerations of citizenship in employment and elections). (2) When the information is mandated by statute or court order, or constitutes “an essential evidentiary element” in a law enforcement case (for example where a perpetrator’s knowledge of a victim’s immigration status is

Privileged and Confidential Communication

Shaun Mulholland, City Manager

October 30, 2020

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relevant to charging an assault as a “hate crime”). (3) Where a city department is collecting and retaining information in order to evaluate and improve its non-discrimination practices. And (4) Where the particular City program requires evaluation of financial need (for example in responding to requests for local general assistance).

- (e) ***Inter-agency Databases.*** Another instance of ambiguity in the existing Ordinance is whether the prohibition on aiding federal immigration enforcement (Existing Provision #5, New #7) restricts the City’s use of an inter-agency database such as the National Crime Information Center. (Suppose, for example, that a particular person is being sought by Federal authorities for immigration violations, and that person’s name is entered into the database as someone who was arrested in Lebanon for DWI, thus helping Federal authorities to locate that person – does the use of the database violate the prohibition on aiding immigration enforcement?) The Task Force’s recommendation includes explicit language stating that it does not (*see* Provision 7.F), thus clarifying that ambiguity.
- (f) ***Enforcement.*** The sole enforcement provision found in the existing version is a sentence after Provision #5 stating that a violation of the Ordinance constitutes a “violation” under the Criminal Code, RSA 625:9. The proposed recommendation *eliminates* that language (*see* § 185-4) and instead provides that in the case of City employees, enforcement will only be under the City’s governing personnel policies. In the case of non-employee City “agents” (for example members of elected or appointed boards), the complaint would go to the Manager, who could refer it to the Council (*see* § 185-4.D). Thus the option of prosecuting a violation of this Ordinance through the court system would be eliminated.

I find no legal defects in the new enforcement provision. I would emphasize, however, that the elimination of the option to prosecute a violation offense in court is not being made as a result of legal advice, but is based on policy considerations.

COMMENTS ON FORMATTING: The following comments are addressed to the manner in which the Task Force’s draft dated 10-21-20 has been formatted in the form of a proposed ordinance.

1. ***The Enactment Clause:*** The introductory wording of Section 1 of the draft ordinance fails to recognize the existence and legal validity of the already-existing version of the Welcoming Lebanon Ordinance, which was enacted by the voters by initiative petition under § C419:23a of the City Charter. That could potentially raise legal questions about which of the two versions is in effect. I would recommend language similar to the following:

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Shaun Mulholland, City Manager

October 30, 2020

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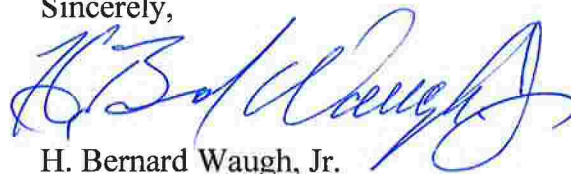
"The 'Welcoming Lebanon Ordinance' which was enacted by the voters of the City by citizen initiative pursuant to § C419:23a of the City Charter, and which was to take effect on January 1, 2021, is hereby repealed and replaced by adding a new chapter to the Code of the City of Lebanon, to become Chapter 185 Welcoming Lebanon, and to read as follows:"

2. **Severability:** The Severability clause has been reworded so as to be consistent with other severability clauses in the City Code. I have no *legal* concerns with this. The two different wordings are in my view equally legally effective.
3. **Effective Date:** Given that § C419:23a of the Charter provides for the initiative-passed version to take effect on January 1, 2021, it would in my view be less apt to raise imponderable questions over timing if this new version were also to have an effective date of January 1, 2021.

* * * * *

I would be glad to respond to any comments or questions concerning this opinion.

Sincerely,



H. Bernard Waugh, Jr.

Enclosures

cc: Paula Maville, Deputy City Manager



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CONFIDENTIAL AND PRIVILEGED LEGAL COMMUNICATION

January 13, 2020

Shaun Mulholland, City Manager
51 North Park Street
Lebanon, NH 03766

Re: "Welcoming Lebanon Ordinance" Binding Initiative Petition
Our City of Lebanon File No. 20158-47.015

Dear Manager Mulholland and other City officials:

You have requested my legal opinion concerning the substantive legal validity – if adopted – of the "Welcoming Lebanon Ordinance" recently submitted to the Council by binding initiative petition under § C419:23a of the City Charter. This letter does not cover procedural issues, which I have discussed elsewhere.

SUMMARY OF OPINION

It is my opinion that there is no fundamental conceptual legal flaw in the first five provisions of the proposed ordinance – subject, however, to the wording and implementation concerns discussed in Section D below, and also subject to the *caveat* that this opinion is based on very recent case law, primarily from the 9th Circuit, which could potentially be overturned in the US Supreme Court, and if it were, the proposed ordinance would become unenforceable.

It is my view that the "Provision 6" has a high likelihood of being held unlawful, for the reasons given in Section E of the discussion below.

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Shaun Mulholland, City Manager

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DISCUSSION AND BASIS FOR OPINION

A. Content of the Proposed Ordinance: The version of the proposed ordinance text addressed by this opinion is the one which appears at pages 161-162 of the Council's Agenda Packet for January 8, 2020.

The first five sections would (if adopted) list a number of actions which the City's "agents" – an undefined term in the draft, but whose common meaning would include all employees and officials when acting in their official capacity – would be *prohibited* from doing, including:

- "Profil[ing], target[ing], or "collect[ing] any information" about any person on the basis of race, ethnicity, language, religion, citizenship or immigration status.
- Requesting, investigating or collecting any information concerning any person's immigration status (which an exception for when that information is relevant to "an administrative proceeding in which the City is or may be a party").
- Disclosing information about any person's citizenship or immigration status, unless authorized by the person involved, mandated by "legal process," or when necessary for an ongoing investigation of a non-immigration-law related felony.
- Conditioning any City service or benefit on citizenship or immigration status unless required to do so by state or federal law.
- Participating in or aiding immigration enforcement actions, including making arrests, assisting Federal immigration authorities, giving Federal authorities access to City-detained persons, allowing use of City facilities by such Federal authorities for immigration-related investigations, or sharing information with such authorities.

The sixth section of the proposed ordinance is the only one which creates an *affirmative* duty on the part of City agents – namely the duty to "immediately act to inform residents of the City" when they become aware of the presence of Federal immigration authorities within the City.

Violations of any part of the proposed ordinance would constitute a "violation" as defined by the NH criminal code.

B. State Law Authority. It is my opinion that the subject matter covered by the first five sections of the proposal (I will discuss the sixth section separately below) comes well within the City's enabling authority under RSA 47:17 to enact ordinances for the

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City. Those five sections do not involve the City embarking on any new enterprise or function, but merely set forth actions which City agents who are already engaged in other (presumably lawful) actions on the City's behalf are prohibited from taking.

The state law question thus becomes: Is there any state law *mandating* the City to take the types of actions which these 5 sections prohibit. I do not find any such mandate *in general* (although see comments under Section D below). In the realm of police departments, for example, no N.H. municipality is mandated to have a police department at all (and some do not). And for those municipalities which do have such a department, the law supports the authority of local policy-making authorities to determine – through the local budgeting process and otherwise – which law enforcement functions local resources will be utilized in support of, and which they will not. In the NH Supreme Court case of *Blake v. Town of Pittsfield*, 124 N.H. 555 (1984), the Court upheld a town's selectmen in terminating a chief of police "for cause" on the basis of overspending the budget. The chief's claim that the additional amounts spent were necessary in order to provide "required services" was held not to be not excuse for ignoring the budgetary votes of the town. Every appropriation decision is also a policy decision involving not just an amount of money, but the *purpose* of the authorized expenditure (*see* definitions in RSA 32:3). And even aside from the issue of overexpenditures, RSA 105:2-a makes the supervisory decisions of a chief of police subject to the "written formal policies" of the appointing authority. Thus, at least as a matter of *state* law, the City's policy-making officials have authority to determine, for example, what areas of a community will receive regular patrolling and enforcement and which will not – or, in this case, that certain types of federal laws will not be enforced by City personnel.

Importantly, there are a number of states in the US which, since the beginning of the Trump administration, have enacted state laws outright prohibiting municipalities in those states from enacting ordinances similar to the one under consideration. However New Hampshire does not have such a state law. The NH Legislature expressly defeated such a prohibition as part of HB 232 of the 2019 Session. (Of course there is always the possibility that such a prohibition might pass in the future. If that occurred, my opinion would of course have to be altered.)

C. Federal Law. The status of federal law is less straightforward than state law. *On its face*, federal statute law appears to prohibit ordinances such as the "Welcoming Lebanon Ordinance." Specifically, 8 US Code § 1373 and § 1644 prohibit both state and local authorities from enacting laws or ordinances restricting local communications

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or cooperation with the Immigration and Naturalization Service. However as of the date of this opinion, case law has so far held that those statutes are effectively negated by the 10th Amendment to the US Constitution (the one that says all powers not conferred on the federal government are reserved to the states).

The most-authoritative current decision on this subject (albeit one which is at this time subject to a petition for certiorari review by the US Supreme Court) is *United States v. California*, 921 F.2d 865 (9th Cir. April 18, 2019). At issue were certain California *state laws* limiting the extent to which state and local authorities could cooperate with federal immigration authorities (similar to the Lebanon proposal). The state laws were *upheld* by reference to the 10th Amendment.

The Trump Administration argued such laws violated the principal of “intergovernmental immunity” – under which both federal and state/local governments are prohibited from *actively interfering* with each other’s functions. But the Court held that the state law at issue did *not* require interference, but merely kept state and local governments out of participation in the described federal functions. The Court acknowledged that federal immigration enforcement was made more difficult by these laws, but withholding cooperation is simply not the same as interference or obstruction.

That conclusion was bolstered by consideration of the 10th Amendment – which under prior US Supreme Court decisions (*see New York v. US*, 505 U.S. 144 (1992) and *Printz v. US*, 521 U.S. 898 (1997)) has been held to establish an “anticommandeering rule” – which means the federal government cannot compel state or local governments to expend local/state resources (cannot “commandeer” those resources) for the purposes of helping to implement a federal law. The Court in the *United States v. California* case held – for purely technical reasons – that 8 US Code § 1373 and § 1644 were not in fact violated by the state laws at issue. However other federal court decisions have held that those sections are outright unconstitutional due to the “anticommandeering” rule of the 10th Amendment, *see, e.g., City of Chicago v. Barr*, 2019 WL 4511546 (Sept. 19, 2019); *City of San Francisco v. Sessions*, 349 F.Supp 3d 924 (2017), affirmed 897 F.3d 1225 (2018).

[I want to re-emphasize that the *US v. California* case may be taken up by the US Supreme Court, and of course could be overturned (although it is notable that the 10th Amendment “anticommandeering” rule is one developed primarily by more conservative justices in the past, and the Supreme Court is arguably even more

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Shaun Mulholland, City Manager

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judicially conservative today). New Hampshire is of course not directly governed by 9th Circuit decisions. However I have found no similar 1st Circuit decisions.]

In summary, as of the date of this opinion, I see nothing fundamentally unlawful about the first 5 sections of the proposed ordinance. Although federal statutes prohibit such ordinances, case law as of this date holds those statutes preempted by the 10th Amendment. Clearly a US Supreme Court decision could potentially reverse that conclusion. But if that happened, the ordinance would simply become unenforceable. I foresee no particular legal risk from following prevailing court opinion until it is overturned.

The Issue of Withholding Funds such as Community Policing Grants. Despite the trend toward invalidating 8 US Code § 1373 and § 1644 under the Tenth Amendment, the Department of Justice has in some cases attempted to enforce compliance with those sections by conditioning receipt of certain federal funds on assisting and cooperation with INS. The general trend has been for course to hold that only Congress can attach such “strings” to grants, *see*, for example, *City of Philadelphia v. Sessions*, 309 F.Supp 3d 289 (2018). On the other hand the 9th Circuit recently held in *City of Los Angeles v. Barr*, 929 F.3d 1163 (July 12, 2019) that there was nothing constitutionally wrong with the Federal government utilizing a “point system” to determine which communities receive the grants – and that the point system can include extra points for communities that comply with § 1373.

D. Wording And Implementation Issues: Even though, as laid out above, I see no fundamental conceptual flaw in the first 5 sections of the proposal, I do find some problematic and ambiguous wording in some areas, as well as implementation concerns:

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 measure could

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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.

2. A specific example of lack of clarity is found in "Provision 1" of the proposal, which prohibits agents of the City from "collect[ing] or retain[ing] information... on the basis of race ethnicity, or language..." (in addition to on the basis of citizenship or immigration status). Let's suppose there is a police incident report which says, "The victim reported that the assailant was Caucasian, in his 30s, and spoke French." Does that report violate the prohibition on collecting information "*on the basis of*" race or language? That's unclear because, as applied, the meaning of the phrase "on the basis of" is fuzzy. If the report also said "the victim believed the assailant was probably a citizen of France," that arguably would violate the intent of the proposed ordinance, but again it's not clear. It would be much preferable to specify in detail what activities it applies to. Again I would recommend, at the very least, that the City adopt implementation guidelines to address, among other things, how such ambiguous provisions are going to be interpreted and applied to normal City functions.

3. As another issue arising under that same section, I understand that many police departments *do* collect information on the racial and other characteristics of people who are stopped or arrested, precisely so those departments will have data to analyze to determine whether racial profiling is in fact occurring, and if so, can make better efforts to *avoid* it. Would the proposed ordinance prohibit the use of such data for this self-policing function? That's unclear, but it appears that it would.

4. Another area where I understand City officials have concerns involves election laws. State law requires voters to be US citizens, and hence indirectly requires local officials to collect citizenship information in conjunction with voting registration. Disclosure of voter registration lists thus impliedly discloses citizenship information. Is such disclosure consistent with "Provision 3" of this proposed ordinance? That's unclear. It says such disclosure is allowable if "*required...by legal process...*" But the term "legal process" is not defined in the ordinance. Does it refer only to court or administrative proceedings, or is a statutory requirement adequate? Again, a clarification is necessary.

5. Another implementation concern arises from the fact that the proposal applies broadly to all "agents" of the City. One can imagine circumstances where literal interpretation of the proposal might interfere with someone's First Amendment rights.

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Suppose, for example, that a member of the Recreation Commission were to feel strongly about immigration enforcement and chose to share some immigration status information with Federal officials – information, let's say, which was unrelated to, and not learned in, that member's official City capacity. First Amendment rights might arguably be involved.

In summary, while again I do not see any fundamental *conceptual* flaw in the first five provisions, there are a number of wording issues and ambiguities which would make this ordinance problematic to implement if it were enacted without alteration. The above list is not intended as exhaustive in that regard.

E. Provision 6 of the Proposal. As observed earlier, this is the only provision which requires an *affirmative* act on the part of City agents – namely a duty to “inform residents” of the City if any federal immigration authorities are present in the City. I recommend *against* the adoption of this provision, for two reasons:

1. First, the affirmative duty is defined in such vague terms that it would be impossible for any particular City agent to determine when or whether it had been complied with. The text of the proposal says that City agents “shall immediately act to inform residents...through any reasonable means and channels available.” But no particular reporting procedures are given. What does “immediately” mean? Who determines what channels are “available.” Whose job is it to take the lead and determine when this duty has been met, so that other City agents no longer need concern themselves? Further, which residents of the City have to be informed? Presumably the aim is to protect persons who have some uncertainty as to their immigration status. And yet, due to the other provisions of the proposal, the City would be prohibited from collecting information about who those people are. In, sum, this section of the proposal is too vague to be enforceable.

2. Perhaps more importantly, in my opinion this provision – by its very nature – is not covered by the “anticommandeering” principle, but instead has a strong likelihood of being held to violate the “noninterference” principle which is part of the intergovernmental immunity discussed in Section C above (and is a principle that dates all the way back to *M'Culloch v. Maryland*, 17 US 316 (1819)). That principle prohibits state and local government from “actively interfering” with a federal function (see *U.S. v. California*, 921 F.3d 865 at 880, and cases cited therein). Although I have found no specific case dealing with local officials actively warning citizens against

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Federal officials, it is my view that there is a strong likelihood that such warnings would be held to constitute obstruction of a Federal function.

[*Note:* It is true that one of the California provisions upheld in the *US v. California* case was a state law requiring *private employers* to inform employees prior to federal immigration inspections of the workplace. It is conceivable that the petitioners in this case construed that case as a green light for imposing such a notification requirement on the City itself. But the “noninterference” principle only governs the relationship between *branches of government*, hence the two situations are in no way analogous.]

3. In light of the above views concerning Provision 6, what should City officials do if the proposal is enacted without alteration? My recommendation is for the City to make it known publicly that Provision 6 will not be implemented or enforced. The wording of City Charter § C419:23-a makes it clear that a measure which is legally flawed need not be implemented. The last sentence states “If a majority of the qualified voters voting on any proposed measure, *and which falls within the lawful rights and powers of the city*, shall vote in favor thereof, same shall thereafter go into effect...” Thus the City is not mandated to put into effect a section which is legally flawed. (Of course, if there were uncertainty about legality, the City might seek a declaratory judgment, or a citizens’ group might conceivably go to court to challenge the City’s failure to implement. Thus it may be preferable to avoid such uncertainty.)

F. Response To Petitioners’ Handouts From Jan. 8, 2020. Subsequent to preparing a draft of the above opinion I reviewed the packet of handouts which the Petitioners’ group gave to the Council last Wednesday:

- I have nothing to say about the testimonial letters and policy arguments in favor of the proposed ordinance. As usual, it is not my role as the City’s attorney to comment on the public policy aspects of a proposal.
- The federal case law cited by the ACLU letters in the packet is consistent with my conclusion that the first five provisions of the proposal are not fundamentally legally flawed from a conceptual standpoint – at least unless the US Supreme Court were to decide otherwise.
- On the issue of federal government withholding of grants, I would note that the ACLU letter appears to omit any mention of the recent case of *City of Los Angeles v. Barr*, 929 F.3d 1163 (2019), which held that the Trump Administration *can* – in determining which communities receive certain grants –

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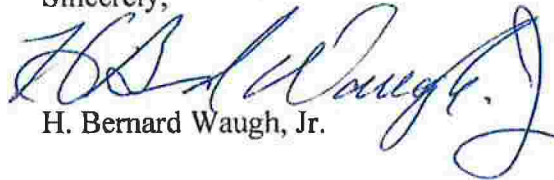
give additional consideration or “points” to those communities which do choose to cooperate with federal immigration authorities. Thus the effect of the proposed ordinance on the availability of such funds in the future is, in my view, not as safe and secure as Attorney Bissonnette’s January 9 letter makes it seem.

- Importantly, none of the Petitioners’ handouts appears to address how they arrived at the wording which was used for the six proposed provisions. Hence my wording and implementation concerns remain to be addressed.
- In addition, I did not see anything in the handouts which explains or attempts to legally justify Provision 6 – the provision which in my opinion is probably unlawful.

* * *

Please do not hesitate to get back to me about any aspect of this opinion.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Bernard Waugh, Jr.", with a large, stylized flourish at the end.

H. Bernard Waugh, Jr.



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PRIVILEGED AND CONFIDENTIAL COMMUNICATION

April 23, 2020

Shaun Mulholland, City Manager
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: "Welcoming Lebanon" Ordinance
City of Lebanon
Our File No. 20158-47.015

Dear Manager Mulholland and other City officials:

I understand a question has arisen concerning the extent to which the Lebanon City Council has legal authority to amend an ordinance enacted by the voters by initiative and referendum. This opinion addresses that question generically, without reference to any specific ordinance, or to any policy position with respect thereto.

QUESTION: Does the Lebanon City Council have legal authority to amend an ordinance enacted by referendum under § C419:23a of the City Charter, "Citizens Binding Initiative," and if so, when can such an amendment occur?

SUMMARY OF ANSWER: It is my opinion, for the reasons given below, that an ordinance enacted pursuant to § C419:23a stands in no preferred position with respect to the Council's authority to amend. The Council thus has the same legal authority to amend as it does with any prior Council-enacted ordinance. Such an amendment can legally be made to take effect immediately upon the effectiveness of the initiative-passed measure, or at any time thereafter.

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DISCUSSION AND BASIS FOR OPINION:**A. IN GENERAL.**

The first issue is whether the Council can amend a referendum-passed ordinance *at all* (by contrast with, say, such an ordinance being subject to amendment only by further referendum). My answer is that the Council clearly *does* have the legal authority to amend such an ordinance, for the following reasons:

1. **Wording of Charter.** First and foremost, no wording found in § C419:23a – or anywhere else in the Lebanon City Charter – suggests any restriction on such amendments. The Lebanon City Charter thus stands in clear contrast to some examples given in McQuillen, MUNICIPAL CORPORATIONS § 21:3 ‘*Power to amend – Initiative and referendum measures*’ – of specific charters or constitutional provisions from other states which do impose such restrictions; for example a charter provision requiring a 2/3 council vote to amend an initiative-passed measure; or one requiring a new referendum to amend (*City of Shreveport v. Gregory*, 172 So. 435 (Louisiana 1936)); or one explicitly prohibiting amendments for a certain period of time (*Sustainable Growth Initiative Committee v. Jumpers*, 128 P.3d 452 (Nevada 2006)). Lebanon’s charter simply does not contain any such provision. Neither does any New Hampshire statute.

2. It should be noted that the *title* of § C419:23a – “Citizens Binding Initiative” – does not alter that conclusion. The function of the words “Binding Initiative,” taken in the context of the Charter as a whole, are simply to differentiate § 23a of the Charter from § 23b “Citizens Non-binding Initiative.” A referendum vote under § 23b is merely advisory, and does not take effect at all unless enacted by the Council. A referendum under § 23a, by contrast, is “binding” in the sense that if the procedures therein are followed, it takes effect without a Council vote (until and unless affirmatively amended). Just as importantly, the word “binding” *did not in fact appear* in the version of § 23a which was actually voted upon by the City’s voters in 1980 (*see* the ballot question, as quoted by the NH Supreme Court in *Harriman v. City of Lebanon*, 122 N.H. 477 at 479 (1982)).

3. **The Harriman Case.** The notion that there might be an implied restriction on the Council’s authority to amend an initiative-passed measure would also be contrary to the holding of the NH Supreme Court in the 1982 *Harriman* decision, cited above. While the Court in that case held that § 23a was not unlawful on its face, the Court limited the scope and effect of the initiative petition process as follows:

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"The defendant argues that the process of initiative or referendum cannot exist in a municipality with a city council-city manager form of government. We disagree. Binding initiative does not run afoul of RSA Ch. 47 or RSA 44:3. When the proper procedures for amending a charter are followed, as they were in this case, a charter providing for citizen initiative or referendum can exist in a municipality with a city council-city manager form of government ***as long as the initiative petition neither intrudes into matters reserved for the city council under RSA Ch. 47, nor contravenes the general laws or constitution.***"

The above italicized language limiting the scope and effect of the initiative and referendum provision was also quoted in a more recent NH Supreme Court decision, *City of Manchester v. School Dist. of Manchester*, 150 N.H. 664 (2004)), where the Court was emphasizing the Legislature's ***limitations*** on the scope of charter amendments under RSA Ch. 49-B. The Court cited the *Harriman* case specifically to re-emphasize that "a citizen initiative and referendum process could not intrude into matters reserved for the city council, and could not contravene the general laws or the constitution" (150 N.H. at 670).

4. Council's Authority Under State Law. So, exactly what ***are*** the powers reserved to the Council, which the Court said in *Harriman* cannot be 'intruded into' by the initiative petition process? § C419:16 and § C419:23 of the Lebanon City Charter establish the Council as the City's legislative body, with all the powers given by state statutes to the "mayor and aldermen" and "common councils" of other cities. Those powers expressly include the authority to enact bylaws and ordinances "to carry into effect ***all*** the powers by law vested in the city" (RSA 47:17, paragraph I, italics added). While subsequent paragraphs of RSA 47:17 fill in the details of some of the Council's ordinance powers, the language of paragraph I makes it clear that the Council's authority over ordinances is intended to cover the full gamut of the ordinance authority conferred on the City by the Legislature. That intent is bolstered by RSA 49-B:2 – one of the body of statutes which implements the so-called "home rule charter" amendment to the N.H. Constitution (Part I, Article 39, adopted in 1966). RSA 49-B:2 sets forth the scope of municipalities' authority to adopt "home rule" charters. Local charter authority is broad but not unlimited. The statute mandates that the charter must either designate the municipality as a town or as a city (rather than something in-between). RSA 49-B:2, IV(c) establishes the council as the "legislative body" of a city. Moreover, if the municipality is a city, the provisions of RSA Chapter 49-C apply, and RSA 49-C:8 establishes the council as the "governing and legislative body" under the council-manager plan.

In sum, initiative-passed referendum measures ***cannot*** be legally exempt from the Lebanon City Council's authority to amend, because if they were, that would mean that the initiative petition process ***would*** "intrude into matters reserved for the city council" under state law, contrary to the *Harriman* decision.

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5. ***The Craigie case.*** Another key case limiting the allowable scope and effect of municipal charter amendments is *City of Claremont v. Craigie*, 135 N.H. 528 (1992). Claremont's voters had tried – using charter amendment procedures under RSA 49-B – to amend the Claremont charter to make the annual budget subject to a voter referendum. The Court held that the amendment was invalid because it would enable the voters to intrude upon the powers reserved to the city council, and hence was inconsistent with state law. It's true that the Legislature has permitted a municipality to adopt a *town* council with budgetary town meeting (RSA 49-D:3, II), but ***this option is not available for a municipality whose charter designates it as a city.*** The Court said putting the budget to a referendum was inconsistent with the powers of a city council in RSA Chapters 44 and 47. Moreover, RSA Ch. 49-B sets out separate procedures for a charter ***amendment*** versus a charter ***revision***. Claremont could lawfully change itself from a city to a town with budgetary town meeting, but that would require a charter revision, not just an amendment.

By that same reasoning, the Courts would not construe § 23a of the Lebanon City Charter as placing initiative-passed measures beyond the Council's authority to amend, because such a construction would be inconsistent with Lebanon's city form of government, which could not be altered in the absence of a charter ***revision*** changing Lebanon from a city back to a town.

6. ***Other N.H. Cases Construing Charter Amendment Authority Narrowly.*** In other so-called "home rule" cases, it has been held that a town has no authority to enact term limits as part of a charter amendment, because that would be inconsistent with the State Legislature's comprehensive legislative scheme governing elections *see Town of Hooksett v. Baines*, 148 N.H. 625 (2002). The Supreme Court also overturned the City of Manchester's attempt, via charter amendment, to convert the school district, which had previously been a separate legal entity (as in Lebanon) into a department of the City. In the course of its opinion (*City of Manchester v. School Dist. of Manchester*, 150 N.H. 664 (2004)). These cases further demonstrate our N.H. Supreme Court's trend toward construing charter provisions narrowly.

7. ***Cases from Other States.*** Outside New Hampshire, courts have been presented with the argument that an initiative petition process logically implies some limitation on a council's authority to amend, and have ***rejected*** that argument. For example in *Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir 2009) it was held that, several years after a voter referendum had established a 2-term term limit for city councilors in New York City, the Mayor and Council ***could*** lawfully amend that measure to allow up to 3 terms, without violating the free speech, due process or any other federal rights of either the referendum voters or council candidates. The Court rejected the argument that such amendment

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authority would have a chilling effect on voters' participation in future referendum measures. The court observed that the US Constitution does not require states to provide referendum procedures at all, much less to insulate such measures from legislative body authority. The Court cited a prior New York *state* court case, *Caruso v. City of N.Y.*, 517 N.Y.S.2d 897 (Sup.Ct.1987), *aff'd* 547 N.Y.S.2d 837 (1989), which had stated the following:

"The laws proposed and enacted by the people under an initiative provision are subject to the same constitutional, statutory and charter limitations as those passed by the [legislative body] and are entitled to no greater sanctity or dignity. Inasmuch as a legislative body may modify or abolish its predecessor's acts subject only to its own discretion, it likewise should be able, in the absence of an express regulation or restriction, to amend or repeal an enactment by the electorate, its co-ordinate unit, and *vice versa*."

In our neighboring state of Maine, the Supreme Judicial Court held in *Bird v. Town of Old Orchard Beach*, 426 A.2d 370 (1981) that where voters by referendum had rejected a bond issue, the town council nevertheless had authority to later pass that same bond issue, where the measure clearly fell within the town council's statutory powers, and no statute or charter provision limited such action. The Maine court found persuasive the following language from a New Jersey case:

"We see no reason to ham-string the discretion of the municipal governing body by imposing a limitation upon it not required by explicit statutory or constitutional mandate. The municipal residents have an immediate remedy by way of a petition or protest and an ultimate remedy through the exercise of their voting rights at municipal elections."

Cornell v. Mayor and Council of Borough of Watchung, 229 A.2d 630 (1967). Those same observations are equally persuasive as applied to the City of Lebanon.

IN SUMMARY: There is no general limitation on the Lebanon City Council's authority to amend an initiative-passed ordinance because:

- (a) The Charter itself contains no such limitation (items 1 and 2 above);
- (b) Such a limitation cannot be inferred merely from the existence of the initiative petition process (item 7 above);
- (c) To construe § C419:23a of the Charter as containing any such limitation would impermissibly allow the initiative process to "intrude upon" the powers given by state law to the City Council (items 3, 4 and 6 above); and
- (d) Any such limitation would also be contrary to the council-city manager form of government (item 5 above).

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B. WHEN COULD SUCH AN AMENDMENT LAWFULLY TAKE EFFECT?

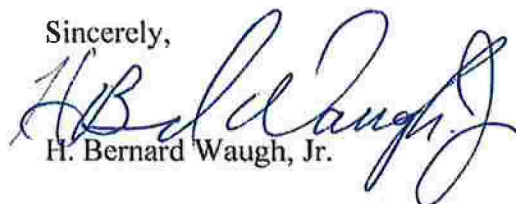
The only wording concerning time frame mentioned in § C419:23a of the Charter is the statement that the initiative-proposed measure, if it passes, “shall thereafter go into effect on the first day of the next succeeding municipal year.” Therefore, based on the wording of § C419:23a – and in light of the conclusions of part A of this opinion – it is my opinion that a Council-enacted amendment can lawfully take effect at any point in time after the initiative measure takes effect. No other timeframe is given in the Charter or in state law – there is no waiting period of a year, month, day, or even one second. Given that under § 23a, the initiative-passed measure goes into effect “on the first day of the next succeeding municipal year” (presumably at 12:00 A.M. on that day), a Council-approved amendment could take effect immediately (i.e. theoretically at a vanishingly-small fragment of a second after that time). To hold otherwise would be to insert some waiting period which the Charter simply does not contain.

The only remaining question which might be raised is whether the Council can act to draft and take a vote enacting such an amendment prior to the time the initiative-passed ordinance takes effect. The answer is yes. § C419:22 of the Charter – a section governing the Council’s ordinance powers – states that the effective date must be stated as part of any ordinance, thus implying that it may lawfully have an effective date later than the time of the Council’s vote. Indeed, the practice of inserting later effective dates is so common and well-known in the US Congress, state legislatures and municipal bodies as require no further discussion. An analogy suggested by the *Caruso* case (above) would be to consider the initiative-passed measure in the same light as a measure passed by a prior City Council (possibly with different membership). Let us assume, hypothetically, that the Council in 2017 had passed an ordinance with an effective date of January 1, 2021, and that the 2020 Council desired to make changes to the measure prior to its taking effect. Clearly the Council could – prior to January 1, 2021 – take a vote on amendments, and provide for them to take effect immediately upon the original taking effect. As set forth in Section A of this opinion, an initiative-passed measure stands in no different position.

* * * * *

I would be glad to respond to any comments or questions concerning this opinion.

Sincerely,



H. Bernard Waugh, Jr.