

FINAL

**LEBANON CITY COUNCIL
REGULAR SESSION MINUTES
Wednesday, January 4 2023, 7:00 p.m.
Remote Via Microsoft Teams: [LebanonNH.gov/Live](https://lebanonnh.gov/Live)**

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

MEMBERS ABSENT:

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager David Brooks, Director of Planning & Development Nathan Reichert, Deputy Planning & Development Director Tim Corwin, Associate Planner Rebecca Owens, Finance Director Vicki Lee, Deputy Finance Director Alesia Williams, Chief Innovation Officer Melanie McDonough, Energy & Facilities Manager Tad Montgomery

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

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

- City Manager Shaun Mulholland announced the meeting criteria for the public.

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

4. OPEN TO PUBLIC: No one came forth.

5. RECOGNITIONS: NONE

6. ACCEPTANCE OF MINUTES:

- November 28, 2022 (Budget Work Session)
- December 7, 2022 (Regular Meeting)

Amendments: Page 17, Line 26; Motion -Change "\$300 hour" to "\$300 (flat fee); Page 19, change Ordinance Fee from "\$300 hour" to "\$300 (flat fee)"

- December 14, 2022 (Regular Meeting)

Amendments: Page 57, Line 39; In MOTION change "Wilkie MOVED" to "Whittlesey MOVED"

*Councilor Heistad MOVED to approve the November 28, 2022 (Budget Work Session), the December 7, 2022 (Regular Meeting) and the December 14, 2022 (Regular Meeting) minutes as amended and presented in the January 4, 2023 City Council agenda packet.
Seconded by Councilor Whittlesey.*

**The Vote on the Motion was approved (9-0)*

7. APPOINTMENTS: NONE

8. PUBLIC HEARING ITEMS:

- A. ORDINANCE 2023-01** - A public hearing for the purpose of receiving public input and taking action to amend City Code Chapter 152, Streets and Sidewalks, Article IV, Non- Public Signs in City Highway Right-of-Way, relative to political signs on public highways

Included in the agenda packet: (*Pages 80-87, Council agenda packet*)

1. Ordinance #2023-01
2. December 28, 2022 Legal Opinion by Attorney Matthew C. Decker, RE: Amendments to City Code Chapter 152, Art. IV, “Non-Public Signs in City Highway Right-of-Way”

City Manager Mulholland reviewed the background and amendments for Ordinance 2023-01.

BACKGROUND

The City Council adopted the provisions contained in Chapter 152, Article IV, Non-Public Signs in City Highway Right-of-Way on February 18, 2009. This code provision allows for the placement of political signs as defined by NH RSA 664:2 in City rights-of-way.

It is not uncommon for municipalities to prohibit the placement of any signs for any purpose (other than traffic signs posted by governmental entities) within the municipality’s right-of-way. NH RSA 664:17 specifically prohibits the placement of political advertising on or affixed to any public property, including highway rights-of-way or private property, without the owner’s consent.

This past summer, the City implemented a pilot program to beautify the traffic islands in the downtown area. Private businesses either donated funds or utilized their own employees to plant and care for the flowers planted in these designated traffic islands.

The City Manager has received complaints regarding political signs being placed on the traffic islands obscuring the flowers planted there. The proposed code changes limit the period of time political signs can be placed in the right-of-way. Additionally, the amendments prohibit placement of political signs on traffic islands or other portions of public highways that are designated by the City Manager as part of the City’s beautification program.

Other proposed amendments included in Ordinance #2023-01 are intended to update and correct cross-references to the signage regulations within the Lebanon Zoning Ordinance.

City Manager Mulholland stated that code 152 could potentially be challenged legally because it allows certain signs and prohibits certain other types of signs. One option that may prevent a legal challenge is to not to allow any signs in the public way at all.

Mayor McNamara opened the Public Hearing and the following came forth:

Roberta Hamilton (Ward-1): She was representing the Lebanon Democratic Committee and spoke about their concerns with being able to have their candidates’ names and positions known and proposed the time for (political) signage be 60 days. She also spoke about her reasons for registering signs, what a potential fee could be, and what a violation fine could be for unregistered signs.

Jeremy Katz (Ward-3): He spoke about his reasons why it seems unwise to adopt this ordinance if legal counsel advised against it.

Hearing no further comments from the public, the Public Hearing was closed.

Council Discussions:

In response to Assistant Mayor Below's question regarding increasing the City's legal jeopardy vs. doing nothing to the ordinance, City Attorney Decker noted that yes, there is an existing potentially minor problem due to certain signage categories as identified in his memo on pages 85-87, Council agenda packet. The proposed amendments do not significantly change the calculus on his analysis of the constitutional issues.

Mayor McNamara asked what the potential consequences of an appeal would be, either for the ordinance currently in place or the proposed ordinance with the limitations.

Attorney Decker noted the most likely result of an appeal would be an order from the court that the ordinance is potentially unenforceable as written and then the City would be called upon to **not** enforce it as written. As for the time limitation, the issue is not necessarily whether or not the time limitation is 30 or 60 days, it is the content-based distinction between political signs and other types of signs. The constitutional analysis would be that the government is favoring one type of speech and disfavoring all other types of speech that could possibly show up on those signs. If the ordinance were to say, "No signs at all in the public right-of-way," this is very defensible because it is not a content-based restriction. If the ordinance were only going to allow temporary signs in the ROW within 30 days around an election, you are not distinguishing based on the content of the signs, so theoretically any sort of sign could be allowed within 30 days of an election. There still might be an implication that the ordinance is not content neutral so there could still be a finding, even though the ordinance content seems neutral on its face, there is a content-based intent behind it. Keeping the existing content-based distinctions as they are, putting a time limit on that, or restricting it to 30-days, does not change it much more. The analysis from a constitutional perspective would be very similar whether you have the current form of the ordinance or whether you have the amendments included. He spoke about the results of the U.S. Supreme Court case of *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015). ([Page 86, Council agenda packet.](#))

Councilor Whittlesey spoke about his reasons for making §152-34(A) subsection (2) a separate section by taking out the word political and blocking any advertising on the Traffic Islands and portions that are part of the beautification area.

Councilor Liot Hill spoke about the background behind the amendments to Ordinance #2023-01. She suggested the Council pause and address all of the legal issues counsel raised in order to address these in a way that is consistent with the constitution.

City Manager Mulholland stated this could be easily done by prohibiting all signs in the public way to make sure there is no chance of litigation.

Mayor McNamara noted that under the Reed case he was unsure if there was an ultimate fix. This is a bigger discussion and felt this is a first step that does not put us in any more jeopardy and at least addresses the problem of the islands and helps to narrow that window (of time).

In response to Councilor Sykes question about what happens if signs appear after the ordinance is passed, City Manager Mulholland noted the State Statute covers this and signs will be removed if they do not meet the requirements in the statute.

Assistant Mayor Below cited the State Statute regarding politically advertising/speech and gave his reason why he felt the risk of litigation was not significant.

Councilor Heistad agreed noting we have been in this position for a long time and Lebanon is not the only town in the State of NH that has political signs go up. He felt the City could put a limitation to the time for political signage.

City Attorney Decker noted that under Commercial Law, commercial speech gets lessor protections than other types of speech. You might be able to distinguish signage based on content for commercial vs. non-commercial. He did not intend his memo to be alarmist, it was more intended to flag the issue for the Council and explain it in detail and spoke about the Reed case, which came down in 2015 as listed below:

It bears noting here that the City had a Sign Ordinance Task Force in 2017/2018 to work on improvements to Zoning Ordinance Section 608 (Signs). In its current form, ZO Section 608 avoids references to the content (words) of signs. One example of avoiding the Reed problem is in Section 608.6(A)(3), where one additional temporary sign is permitted on private property for the time period not more than 60 days prior to an election – without reference to whether the one extra sign speaks about an election issue or not.

Councilor Wilkie spoke about his reasons for supporting the ordinance moving forward.

ACTION:

Assistant Mayor Below MOVED, that the Lebanon City Council hereby adopts Ordinance #2023-01 to amend City Code Chapter 152, Streets and Sidewalks, Article IV, Non-Public Signs in City Highway and Right-of-Way as presented in the Council packet.

Seconded by Councilor Heistad.

Assistant Mayor Below spoke to his motion noting that he served on the Sign Task Force and felt the City Manager's suggestion to take an overall look at this section of the ordinance is a good idea. It is not a big deal to come back and amend it at a later date once we have taken that closer look.

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

**CITY OF LEBANON
ORDINANCE #2023-01**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 152, Streets and Sidewalks, Article IV, Non-Public Signs in City Highway Right-of-Way, by amending §152-34, Exceptions.

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

Section 1:

The Code of the City of Lebanon is hereby amended to revise Chapter 152, Streets and Sidewalks, Article IV, Non-Public Signs in City Highway Right-of-Way, §152-34, Exceptions, as follows:

§ 152-34 **Exceptions.**

The following are excepted from the prohibition in this § 152-32, above:

- A.** Political advertising, as defined in RSA 664:2, is permitted to be located on public highways if and only if in accordance with RSA 664:14 through RSA 664:17, all other applicable laws or regulations including the provisions below;

 - 1. Political advertising may only be placed within public highways 30 days prior to the election in which the measure or elected office is being acted upon.
 - 2. Political advertising may not be placed on traffic islands or other portions of public highways that are designated as part of the City's Beautification Program designated by the City Manager.
- B.** Any activity properly licensed by the City to take place on public highways, including street vendors under City of Lebanon Code Chapter 179, street fairs under RSA 31:100, or parades licensed under RSA Ch. 286 may include signs relating to the licensed activity, to the extent permitted by the respective licensing authority.
- C.** The prohibition in this article shall not apply to official signs and devices properly erected by agents of the City itself for purposes of directing and controlling traffic, or other valid public safety or welfare purpose.
- D.** The prohibition in this article shall not apply to leaflets or placards held at all times by a human being, or to messages or information printed on clothing or other items worn by a human being, so long as said persons are not interfering with traffic and are not in violation of any other laws or ordinances.
- E.** The prohibition in this article shall not apply to signs painted on or otherwise affixed to motor vehicles being operated upon public highways; provided, however, that vehicles which have commercial signs painted on or otherwise attached to them shall not remain or be parked for more than three hours at any one location on any public highway right-of-way in the City, unless said vehicle is being actively used at that location for some business purpose other than parking or advertising, including but not limited to loading, unloading or utility installation or repair, and is not in violation of any other laws or ordinances. The three-hour time restriction in this subsection shall be in addition to other restrictions such as those contained in City of Lebanon Code Chapter 168.
- F.** The prohibition in this article shall not apply to sandwich board signs permitted under Section 608.6(A)(5) of the Zoning Ordinance, which are located on public sidewalks in the Central Business and Lebanon Downtown Districts only, and are otherwise in conformity with that section and all other applicable ordinances and regulations, nor to promotional banners under Section 608.2(A)(2) of the Zoning Ordinance which are explicitly permitted by the City Licensing Board.
- G.** The prohibition in this article shall not apply to signs which announce and give directions to yard sales which are in compliance with Section 207 of the Lebanon Zoning Ordinance; provided, however, that:

 - (1)** No such sign shall exceed four square feet in area;
 - (2)** There shall be no more than a total of three signs for any one yard sale;
 - (3)** The date(s) of the yard sale shall be written on each sign;

- (4) The exception in this subsection shall apply only upon the actual date of such a yard sale and the date prior to the yard sale; and
- (5) City authorities may remove or relocate any such sign which impedes traffic or visibility, or otherwise impairs the safety and convenience of the traveling public.

H. The prohibition in this article shall not apply to temporary directional signs advertising residential property for sale and located in the public right-of-way, provided that:

- (1) There shall be no more than two directional signs placed at the nearest street intersections, in each direction, to the property for sale;
- (2) Each sign shall not exceed four square feet in area;
- (3) The signs shall be removed upon completion of the transaction; and
- (4) City authorities may remove or relocate any such sign which impedes traffic or visibility, or otherwise impairs the safety and convenience of the traveling public.

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.

****The Vote on the Motion was approved (9-0)***

- B. RE-ADOPT VETERANS TAX CREDITS** – A public hearing for the purpose of receiving public input and taking action to re-adopt the Optional Veterans' Tax Credit and the All Veterans' Tax Credit.

Included in the agenda: (*Pages 89-96, Council agenda packet*)

1. New Hampshire Department of Revenue Administration, Technical Information Release, Updated TIR 2022-005, dated October 24, 2022
2. NH RSA 72:27-a; RSA 72:28; RSA 72:28-b

City Manager Mulholland reviewed the background/purpose for re-adopting the Veterans Tax Credits.

BACKGROUND

The Optional Veterans' Tax Credit and the All Veterans' Tax Credit are programs made available by the City for Lebanon's veterans and/or their spouses. The tax credit reduces the total property taxes owed on the veteran's residential property by the amount of the credit.

The Optional Veterans' Tax Credit was last amended on October 16, 2019 when the Council voted to increase the amount of the tax credit from \$100 to \$250 in accordance with NH RSA 72:28. At the same meeting, the City Council voted to adopt the All Veterans' Tax Credit pursuant to NH RSA 72:28-b in the

amount of \$250. Veterans and/or their spouses may qualify for either the Optional Veterans' Tax Credit or the All Veterans' Tax Credit, but cannot receive both.

In 2022, the New Hampshire Legislature passed, and Governor Sununu signed into law, House Bill 1667 (Chapter 121, Laws of 2022) amending the eligibility criteria for certain veterans' property tax credits. Effective on July 26, 2022, the bill amended NH RSA 72:28, the "Standard and Optional Veterans' Tax Credit", and NH RSA 72:28-b, the "All Veterans' Tax Credit", to expand the eligibility requirements of the veterans' tax credit to include individuals who have not yet been discharged from service in the armed forces.

Under NH RSA 72:27-a, IV, amendments to tax credits and exemptions which require adoption will apply "in a municipality which previously adopted the provision only after the municipality complies with the procedure" specified in NH RSA 72:27-a, II. As a result, the legislation requires the City to re-adopt the Optional Veterans' Tax Credit and/or the All Veterans' Tax Credit at the existing amount of \$250, or at a new amount, in order for them to remain in place and include the expanded eligibility effective for the April 1, 2023 tax year. If either the Optional Veterans' Tax Credit or the All Veterans' Tax Credit, or both, are not re-adopted by the City, then only the Standard Veterans' Tax Credit (NH RSA 72:28, I) in the amount of \$50, including the expanded eligibility requirements, will be in place for the April 1, 2023 tax year.

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

Councilor Heistad abstained from voting as he is a veteran who receives these benefits.

ACTION:

Assistant Mayor Below MOVED, that the Lebanon City Council hereby re-adopts the Optional Veterans' Tax Credit in the amount of \$250 in accordance with NH RSA 72:28 and the All Veterans' Tax Credit in the amount of \$250 in accordance with NH RSA 72:28-b.

Seconded by Councilor Liot Hill.

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

Councilor Heistad returned as a regular voting member of the City Council.

9. OLD BUSINESS – NONE

10. NEW BUSINESS

A. Review and Adoption of 2023 Annual Calendar

Included in the agenda packet: (*Pages 97-10 , Council agenda packet*)

1. Proposed 2023 Annual Calendar

BACKGROUND

To better organize the Council's annual events, a calendar has been drafted for review and consideration. Thus far, dates include City holidays, regular Council meetings, municipal election information, proposed dates for the annual work sessions (unconfirmed), a general budget work schedule (in-house), and proposed Council budget work session dates (5 reserved dates in November – subject to change). If the proposed

meeting schedule is acceptable, the Council is asked to take action to adopt the calendar as presented. If changes/additions are desired, the Council is encouraged to suggest alterations for consideration by the body.

ACTION:

***Councilor Liot Hill MOVED, that the Lebanon City Council hereby adopts the Annual Calendar as proposed in the January 4, 2023 agenda packet.
Seconded by Councilor Whittlesey.***

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

B. Appointment of 2023 Chair and Vice-Chair for Economic Development Commission

Included in the agenda packet: ([Pages 110-111, Council agenda packet](#))

1. EDC Member Roster

BACKGROUND

On July 10, 2019, the City Council approved Ordinance #2019-12 to amend Chapter 31, Boards, Committees, and Commissions, of the City Code to establish the Economic Development Commission (EDC).

According to §31-46, Establishment; Membership; Qualifications, the City Council shall annually in December of each year appoint a Chairperson and a Vice-Chairperson from the nine members of the Economic Development Commission to serve the following calendar year.

ACTION:

Councilor Sykes MOVED, that William Dunn be appointed as Chair of the Economic Development Commission for calendar year 2023.

***BE IT FURTHER MOVED that Councilor Liot Hill be appointed as Vice-Chair of the Economic Development Commission for calendar year 2023.
Seconded by Councilor Wilkie***

****The Vote on the Motion was approved (9-0)***

C. Lebanon Community Power – Community Power Coalition of New Hampshire (CPCNH) Cost Sharing Agreement and Related Policies

Included in the agenda packet: ([Pages 112-240, Council agenda packet](#))

1. Overview for CPCNH Wave 1 Governing Bodies, Dated December 28, 2022
2. Guide to CPCNH Policy Documents, Dated December 28, 2022
3. Guide to CPCNH Cost Sharing Agreement, Dated December 28, 2022
4. CPCNH Board Policy, Data Security and Privacy (Policy No. CPCNH-2022-04), effective December 15, 2022
5. Energy Portfolio Risk Management, Retail Rates, and Financial Reserves Policies, adopted by CPCNH on December 19, 2022
6. CPCNH Cost Sharing Agreement, adopted by CPCNH Board on December 27, 2022

7. Proposed Amendments to Lebanon’s Electric Aggregation Plan dated December 28, 2022

BACKGROUND

Assistant Mayor Below requested the Council’s consideration of the information and adoption of agreements with the Community Power Coalition of New Hampshire (CPCNH) as a follow-up step to the Electric Aggregation Plan (EAP) for Lebanon Community Power (LCP) adopted by the Council on September 15, 2021 and amended on June 15, 2022. These policies and agreements need to be approved by the City Council before LCP (Lebanon Community Power) can begin energy procurement for a launch of services in April or May of this year (2023). There are also a few proposed amendments to LCP’s EAP to conform it with the adopted policies and the Cost Sharing Agreement.

Assistant Mayor Below reviewed and explained his detailed presentation regarding the Lebanon Community Power as Coalition of New Hampshire (CPCNH) Cost Sharing Agreement and Related Policies *(for complete details, please refer to the pages 112-240 Council agenda packet listed above)*

Below are a few screenshots that were included in Assistant Mayor Below’s presentation that briefly depict the topics he discussed:

Agenda

- 1 | Overview of Community Power & the Coalition
- 2 | Coalition Governance & Power Agency Services
- 3 | Coalition Technical Assessment & Financial Forecast
- 4 | Wave 1: Community Power Launch Process
- 5 | Q&A Discussion & Reference Slides: Power Agency Team

What is Community Power?

New Hampshire cities, towns, and counties can become **default electricity provider** for their residents + businesses and provide related services.



[RSA 53-E, Relative to Aggregation of Electric Customers by Municipalities & Counties](#)

Customers may switch back to utility default supply or take service from a Competitive Supplier

Community Power programs must be paid for out of revenues received from participating customers

Community Power Coalition of New Hampshire

Community-governed power supplier — launching Community Power programs in April 2023

✧ Nonprofit Joint Power Agency formed 10/1/21

✧ **27 Members representing:**

- **21% of NH population**
- ~125,000 customers
- ~1,124,000 MWh / year
- ~\$138 million / year revenues (controlled by communities)

✧ Target windows for program launch:

- April-May 2023 for 12 Members
- April-May 2024 for 15 Members



The revenues were based on the experience of the public power industry (70) that have evolved to serve the 2K municipal utilities where they operate distribution systems but often combine the joint power agencies to procure their power supply. We worked on adapting National practices, as well as the experiences of Community Power Aggregations.

Coalition Design Goals

- ✧ Robust & democratic governance & oversight structure
- ✧ Economies of scale for services + procurement
- ✧ Risk management of a portfolio of power supply contracts
- ✧ Advanced retail customer services (new services & choices)
- ✧ Proven model for new project development & local programs
- ✧ Team of professional staff & advisors manage power agency
- ✧ Joint public advocacy to improve state energy policy

Assistant Mayor Below spoke about the local policy goals, noting that in this current economic climate the goal is to provide more stable costs/rates over time, enable local projects/programs, and create a platform for more collaborative relationships with the utilities, etc.

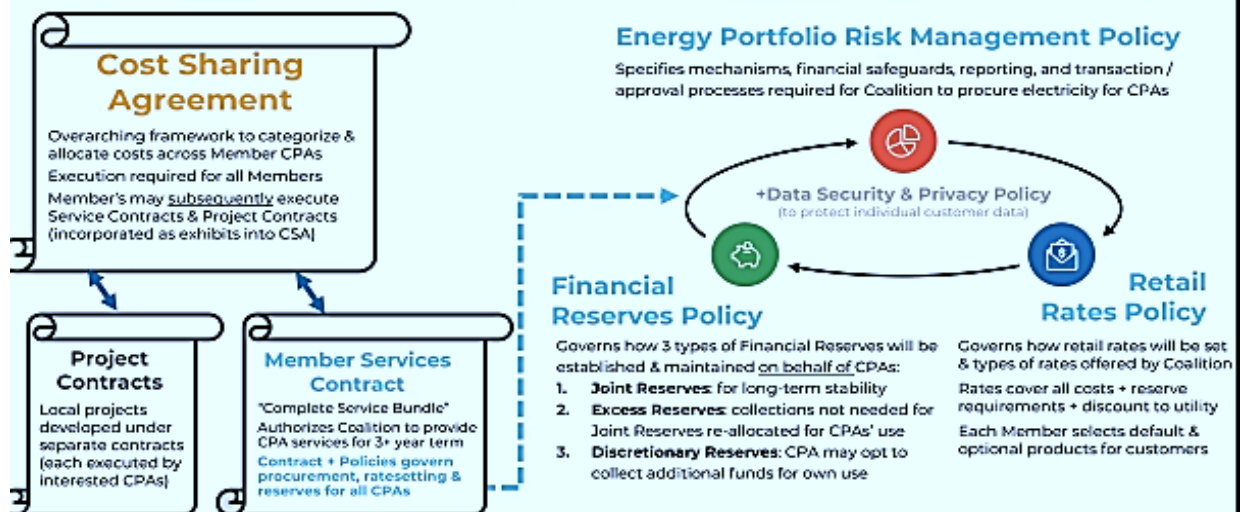
Assistant Mayor Below reviewed the Broker Bid Model failures, noting the CPCNH is more complex and is designed to try to avoid all the failures others have had. We can start to transform larger markets and explained what is being done in California.

Wave 1 Member Actions to Date & Next Steps

✓	Appointed Electric Aggregation Committee
✓	Adopted Joint Powers Agreement
✓	Appointed CPCNH Director & Alternate to serve on Member Board
✓	Developed & adopted Electric Aggregation Plan (EAP) w/ public input
✓	Received Public Utilities Commission approval of EAP
✓	Puc rule 2203.02 & 2204.02 utility data requests submitted (in progress for some CPAs)
✓	Electric Aggregation Committees preparing for Communities Engagement Campaigns
	January: Governing Body approves (1) EAP amendments, (2) Cost Sharing Agreement, (3) "Complete Service Bundle" Member Services Contract and (4) Data Security & Privacy, Energy Portfolio Risk Management, Retail Rates, & Financial Reserves policies
	February 1 to 16: Member's "Authorized Official" (designated by Governing Body) makes "go/no-go" procurement decision at Coalition Risk Management Committee meeting. Subsequently, Member's Authorized Official or Governing Body chooses which rate products to offer as default and opt-in choices for customers.

Enabling Agreements to Elect Wave 1 Service

Decisions on energy procurement, customer rates & financial reserve collections for CPAs are governed by (1) Member Services Contract and (2) Energy Portfolio Risk Management, Rates & Reserves Policies



Wave 1 Procurement & Ratesetting Process

Enabling Agreements → Procurement Authorization → Rate Product Selections → Launch!

- ❑ **January 2023: each Member's Governing Body...**
 - ❑ Approves final Electric Aggregation Plan updates required for launch + Amended JPA (if not previously adopted)
 - ❑ Adopts Coalition's Data Security, Energy Portfolio Risk Management, Rates, & Reserves policies
 - ❑ Adopts (and signatory executes) Cost Sharing Agreement and "Complete Service Bundle" contract
 - ❑ Designates "Authorized Officer" for "go/no-go" procurement decision and rate product selection
- ❑ **January 30: Risk Management Committee (RMC) meets to assess market conditions...**
 - ❑ Committee votes to authorize power procurement (Yes or No) to meet target rates
 - ❑ "Authorized Officer" can verbally opt-out of Wave 1 procurement at meeting to defer launch of CPA
 - ❑ Coalition procures power hedges (pursuant to Energy Portfolio Risk Management Policy)
- ❑ **February 6: RMC & Finance Committee meetings to deliberate rates w/ public input...**
 - ❑ RMC finalizes rates for all products, recommended for Board approval (pursuant to Rates & Reserves policies)
 - ❑ Feb. 6-16: Member Governing Body or "Authorized Officer" selects default and optional rate products
- ❑ **February 16: CPCNH Board reviews and approves rates...**
 - ❑ Coalition notifies utilities, mails customer notifications, prepares enrollment and opt-ins/outs
 - ❑ Member holds public hearing within 15 days of mailers being sent (Coalition supports)
- ❑ **April 3 (target launch date): customers enrolled & power flows!**

Lebanon Energy Advisory Committee (LEAC) is gearing-up to do public informational meetings on how Lebanon's Community Power and the CPCNH will work.

(Please note: Due to the volume and density of Assistant Mayor Below's presentation, not all slides were provided in these minutes but detailed information can be found on [pages 112-240, Council agenda packet.](#))

Council Discussions:

Mayor McNamara's interest is in having this succeed and once letters go out to the public he wanted to make sure the Council has answers to the most basic questions the public will have:

- Will I still get a bill from Liberty? Yes, but on that bill it will say Community Power Coalition is your energy supplier.
- Will I save any money? Yes. Here is what we believe you will save and we are not going to enter into this (agreement) unless there are savings.
- What about clean energy and how does that work?

The primary purpose of this really benefits residential customers and small business. Big businesses have the ability to go procure their own energy. He encouraged the Council, if they have questions on the local level, ask them of Assistant Mayor Below.

Assistant Mayor Below noted there will be a FAQ's for governing body members and is on their list to do. In about a week or two they should be able to distribute a simplified FAQ's to Governing Board members. They will also be updating their website's FAQ's.

In response to Councilor Liot Hill's question about Lebanon's threshold benchmarks, Assistant Mayor Below noted their policy says that Lebanon Community Power will only launch if it is able to offer residential default rates that are initially lower than offered by Liberty Utilities. When we go to procure (electricity) we will lock in and be absolutely confident that we will be able to launch with a lower rate (+/-5%).

In response to Council Heistad's question about failures, Assistant Mayor Below noted that this particular model has only been used in a few states. One good example of success is Cape Light & Power, which has been around for 20 years and were one of the first regional municipal aggregations. In California, all but one have been successful for up to 10 years now. There have also been some successes in Ohio and New York.

The Council discussed the potential of a conflict of interest for Assistant Mayor Below, with Councilor Liot Hill noting that as long as the Council understands this potential conflict of interest and there is transparency about it, she does not have an ethical dilemma about him becoming Lebanon's Authorized Officer.

ACTION:

Councilor Liot Hill MOVED, that the Lebanon City Council hereby authorizes the City Manager to enter into the Cost Sharing Agreement and Member Services Contract for the Complete Service Bundle with the Community Power Coalition of New Hampshire (CPCNH) with

Assistant Mayor Below as the Authorized Officer and with elections on p. 19 of the Agreement being “Yes”; and

BE IT FURTHER MOVED, that the City of Lebanon hereby 1) approves the CPCNH’s Data Security and Privacy, Energy Portfolio Risk Management, Rates, and Financial Reserves Policies; and 2) approves the amendments to the Electric Aggregation Plan for Lebanon Community Power as presented in tonight’s agenda packet.

Seconded by Councilor Wilkie.

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

Council Liot Hill thanked Assistant Mayor Below for the years (decades) he has worked to get this going. The City, and State, owes him a debt of gratitude.

- A.** Review of Proposed Zoning Amendments for Council Adoption and those to be placed on the 2023 Municipal Ballot (Public Hearing to be held January 18, 2023)

Included in the agenda packet: ([*Pages 241-284, Council agenda packet*](#))

1. December 22, 2022 Memo to the Lebanon City Council from Planning & Development Department
Staff re: 2022-2023 Proposed Zoning Amendments which includes the following:
 - 2022-2023 Proposed Zoning Ordinance Amendments (Red-lined Version, last revised December 21, 2022)
 - November 15, 2022 Legal Opinion from Attorney Christine (Fillmore) Johnston
 - December 21, 2022 Legal Opinion from Attorney Christine (Fillmore) Johnston
 - Excerpt of Planning Board meeting minutes from November 21, 2022
 - Excerpt of Conservation Commission meeting minutes from December 8, 2022
 - Excerpt of Zoning Board of Adjustment meeting minutes from November 22, 2022
 - Excerpt of Planning Board meeting minutes from December 19, 2022
2. Letter from the Lebanon Energy Advisory Committee

BACKGROUND

At the October 5, 2022 meeting, the City Council was presented with a number of proposed amendments to the Zoning Ordinance. The Council took action to accept the amendments as presented and forwarded them for review and comment by the Planning Board, Conservation Commission, and Zoning Board of Adjustment. Legal review has been obtained, and all boards have completed their review. Attorney Johnston’s legal opinions along with excerpts of Land Use Boards’ meeting minutes are attached in the Council’s agenda packet for their review. A public hearing pursuant to Section 1000.3.D of the Zoning Ordinance is requested for January 18, 2023 (scheduled as part of Council’s prior action on October 5th).

The purpose of this meeting was to present the final version of the proposed amendments to be considered by the Council at the upcoming public hearings. Some of the proposed amendments are under the authority of the Council, others require placement on the municipal ballot for consideration by voters. All of the amendments are addressed in the comprehensive memorandum drafted by Planning Department Staff that was included in the January 4, 2023 agenda packet. As a reminder, the Council has the authority to place any of the proposed amendments on the ballot, including those that are under the Council’s sole purview.

Once the proposed amendments are finalized, they will be posted as part of the public hearings. Once posted, all applications to the Land Use Boards and all Building/Zoning Permit applications will be subject to the provisions of both the existing Zoning Ordinance and the proposed amendments. The proposed

amendments will be posted by January 7, 2023.

Senior Planner Tim Corwin and Director of Planning and Development Nathan Reichert came before the Council to review the updated changes made to the proposed 2023 Zoning Amendments before they are placed on the ballot in March. *(For complete information on all proposed Zoning Amendments please refer to pages 241-284, in the January 4, 2023 Council agenda packet.*

The following adjustments were made to the proposed 2022-2023 Zoning Board Amendments since the kick-off meeting on October 5, 2022. Out of all the proposed amendments, six needed adjustments as a result of the public review process.

BALLOT AMENDMENTS:

A1. COTTAGE HOUSING

ADJUSTMENTS MADE FOLLOWING DISCUSSION WITH COUNCIL AT KICK-OFF MEETING

- ▶ Minimum number of units reduced from 4 to 3
- ▶ Min. lot size adjusted from one-half acre to 20,000 sq. ft. in the R-1, R-O, and R-O-1 Districts and increased to 40,000 sq. ft. in the R-2 and R-3 District
- ▶ Maximum permitted building coverage increased to 35%
- ▶ Min. and max parking requirements removed (so default is Section 607)
- ▶ Definition of “cottage” updated to increase maximum floor area to 1,500 sq. ft. and maximum footprint to 1,000 sq. ft. *(note redline error)*

A2 - MANUFACTURED HOUSING

- ▶ Remove requirement that “an electrical source supplying at least 60 amps, 120/140 volts” is provided per each manufactured housing unit
- ▶ Clarify that density for manufactured housing PURDs in the R-1 District shall be per Section 308.2.
 - ▶ Should also be added to proposed Section 503.6 - density for manufactured housing parks *(erroneously excluded from redline)*

Ballot Amendments - con't

- ▶ A.4 - Amend Section 610 (“Accessory Dwelling Unit (ADU)”) to allow an accessory dwelling unit for owner-occupied two-family dwellings
 - ▶ *Additional language added to clarify that the dwelling unit density requirements of the underlying zoning district shall not apply to accessory dwelling units*
- ▶ NOTE: Adding an ADU to a two-family dwelling converts the building to a multi-family dwelling for fire and building code purposes

The Planning Department did confirm with the Building Inspector and the Fire Department that adding an ADU to an existing two-family dwelling does convert it to a multi-family dwelling for building and Fire Code purposes but not if it is a separate structure.

A discussion took place about feedback the Planning Staff has obtained from the public, with Mr. Corwin noting he has not received many comments himself and did not hear anything negative about the proposed amendments. During the public informational sessions, he did not hear a lot of concerns. There were questions about the Cottage Development, but it was made clear this would be talked about in more detail in the future.

Mr. Corwin noted that the Conservation Commission was concerned the Zoning Ordinance, as written below) would allow recreational facilities for manufactured home park uses to be located within the open space designation.

43. At least ~~20–15~~ percent of the total area for common open space or recreation, ~~exclusive of wetlands and slopes of 25% or more.~~ This area shall not include roads, streets, **parking areas, service areas,** non-recreation **accessory buildings** or similar facilities. This area may include facilities for recreation and/or playgrounds.

Councilor Heistad spoke about the Conservation Commission’s concerns, noting it was about recreational land being used in the wetlands and whether the wetlands are being allowed to be considered as recreational land. They also had concerns about the 25% slope grade. Both Mr. Corwin and Mayor McNamara noted wetlands are subject to the same regulations: You cannot install structures in a wetland or change the grade.

COUNCIL TEXT AMENDMENTS:

B.1 Add “equipment and machinery sales, rental and service,” as a new use category. A developer has expressed interest in developing property located near the Airport for an equipment rental business, which is not currently a use identified in the Zoning Ordinance. Staff proposes to create such a category and to allow it as a permitted use in the Light Industrial District which includes similar and compatible uses. The proposal is to: • Amend Section 303.2 to allow “equipment and machinery sales, rental and service,” as a permitted use in the IND-L District, and amend Section 303.4 to require screening for any related outdoor storage (see p. 2 of the redline). • Amend Appendix A to provide a definition for “equipment and machinery sales, rental and service.” (see p. 21 of the redline).

B.2- Section 608.4.A.4.d - non-conforming freestanding signs near I-89



Amend Section 608 (see p. 16 of the redline) to allow properties that are within 100 feet of the Interstate 89 right-of-way and that have an existing freestanding sign that is non-conforming due to its height to have one additional freestanding sign in conformance with the requirements of Section 608 (which would otherwise be prohibited). The proposed language in Section 608 was prepared at the recommendation of the City’s legal counsel and replaces the “Highway Commercial District” concept originally presented to the Council on October 5th.

Within the vicinity of I-89 Exit 20 there are four freestanding signs that range in height from 55 ft. to 75 ft. and, as such, they are non-conforming to the current requirements of Section 608 (“Signs”). The height and size of these signs is conducive to attracting customers from I-89, but cannot be practically utilized to provide necessary signage at street level. Recognizing that these signs are legal non-conforming and are permitted to remain, the proposed amendment would allow a second freestanding on each property within close proximity to I-89, whereas each property is otherwise permitted to have only one freestanding sign. The purpose of the amendment is to allow these select properties to have a second freestanding to serve street-level customers, in addition to any existing freestanding sign that is non-conforming to the 25 ft. height limitation applicable in the GC District. It is further noted that this proposed amendment does not change the legal status of the existing non-conforming signs and does not allow additional, new non-conforming signs to be created.

B.3 DENSITY BONUSES

Following Council’s discussion, criteria for awarding a bonus for energy efficient design has been expanded.

- D. **Energy Efficient Design.** The Planning Board may award a density bonus of up to 10% for any development that ~~proposes to participate in~~ will be constructed to meet standards for industry-accepted energy efficiency standards including but not limited to those of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) certification program, the Passive House Institute (PHI), or the Passive House Institute US (PHIUS). In evaluating the requested density bonus, the Planning Board shall take into account the ~~proposed level of LEED certification, the extent and scope of buildings proposed to be LEED certified, and proposed energy efficiency construction throughout the development together with~~ any other relevant factors and considerations related to the ~~proposed development and the LEED~~ any applicable energy efficiency certification program ~~programs that the applicant proposes to participate in.~~

B.5 ELECTRIC VEHICLE (EV) REQUIREMENTS

- ▶ Updated definition of “EV-Ready Space” definition in Appendix A (see p. 20 of the redline)
- ▶ Regulations expanded to apply to non-residential projects with 30 or more parking spaces (originally, the EV regulations were proposed to apply to non-residential projects with 50 or more parking spaces).

There were no changes made to section B.6, B.7, B.8, and B.9 since last reviewed by the Council in October. *(Please refer to page 249, Council agenda packet for details on these amendments.)*

COUNCIL ZONING MAP AMENDMENT:

18 Bridge Street (Tax Map 58, Lot 2) & 22 Bridge Street (Tax Map 58, Lot 1): The property at 18 Bridge Street is a +/-2.9 acre lot that is split-zoned CB and R-3. The CB zoning designation extends 200 feet from the centerline of Bridge Street. However, the improved and developable portion of the lot already extends well past the existing CB District boundary line, and the land use of the entire property is identified as “Central Business District” on the Master Plan Future Land Use Map. The proposed zoning map amendment (see “Option A”, depicted below) would extend the CB zoning an additional 225 ft. so that the front half of the property can be redeveloped for uses allowed in the CB District, consistent with the desired land use of the property as reflected on the Future Land Use Map. The recommendation to adjust the zoning boundary on this parcel is also among the key recommendations of the West Lebanon Revitalization Advisory Committee’s Action Plan for West Lebanon. As a gateway to West Lebanon, the redevelopment of this property could serve as a catalyst for future redevelopment and financial investment in downtown West Lebanon.

To help create a vibrant and attractive gateway to West Lebanon, staff recommends that the Council also consider a similar partial rezoning of the adjacent lot at 22 Bridge Street, which is under common ownership with 18 Bridge Street (see “Option B”, depicted below). Although 22 Bridge Street is located entirely within the protected shoreland buffer, a portion of the lot beyond the CB district boundary is already cleared. If also rezoned to the CB District, the availability of a larger developable area could substantially increase the likelihood that the cleared portions of both lots could be redeveloped and mirror the recent development activity located across the Connecticut River in White River Junction, VT.



B.10 - 18 & 22 Bridge St rezoning - R-3 to CB



The Council and Mr. Corwin continued to discuss: Wetlands; Medical Center signage, Prohibited signage for commercial properties; and EV charging station installations for new construction.

ACTION:

Councilor Wilkie MOVED that the Lebanon City Council hereby schedules public hearings for Wednesday, January 18, 2023, beginning at 6:00 pm, in Council Chambers, City Hall, and remote via the City's Virtual Platform, for the purpose of receiving public input and taking action to:

- 1. Adopt certain amendments to Ordinance #2, the City of Lebanon Zoning Ordinance; and***
- 2. Place other proposed amendments to Ordinance #2 on the March 2023 municipal ballot for consideration by Lebanon Voters.***

Seconded by Councilor Whittlesey.

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

Councilor Simon MOVED to extend the meeting to 10:30 PM.

Seconded by Councilor Whittlesey.

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

E. Review and Discussion of Draft Strategic Plan

Included in the agenda packet: ([*Pages 285-295, Council agenda packet*](#))

- 1. [Lebanon Strategic Plan web page](#) including Miro Board of Draft Strategic Plan***

Due to time constraints, the Council will discuss this topic at their next meeting on January 18, 2023.

At the request of City Manager Mulholland, Chief Innovation Officer Melanie McDonough briefly reviewed the web page that included the Miro Board Draft of the Lebanon Strategic Action Plan tasks with the Council.

ACTION: NONE TAKEN

11. CITY MANAGER REPORT: NONE

12. COUNCIL REPRESENTATIVES TO OTHER BODIES: NONE

13. FUTURE AGENDA ITEMS: NONE

14. NON-PUBLIC SESSION:

Councilor Whittlesey MOVED to go into NON-PUBLIC SESSION for the purpose of discussing RSA 91-A:3, II(d) – “Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

Seconded by Councilor Heistad.

Roll Call Vote:

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

None voted Nay.

Staff present: City Manager Shaun Mulholland.

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

Council went into NON-PUBLIC SESSION at 10:05 PM

The Council discussed potential acquisition of property subject to a NDA.

Councilor Whittlesey MOVED to come out of NON-PUBLIC SESSION.

Seconded by Councilor Wilkie

Roll Call Vote:

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

None voted Nay.

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

Council came out of NON-PUBLIC SESSION at 10:35 PM

The Council was now in Public Session.

15. ADJOURNMENT:

Mayor McNamara adjournment the meeting.

The meeting was adjourned at 10:35 PM.

Respectfully submitted,
Dona E. Gibson

Recording Secretary