FINAL

LEBANON CITY COUNCIL
REGULAR SESSION MINUTES
Wednesday, September 6, 2023, 7:00 p.m.
Council Chambers
Remote Via Microsoft Teams: 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, Finance Director Vicki Lee, Deputy Finance Director Alesia Williams, GIS Coordinator Mark Goodwin, HR Specialist Jim Alexander, Planning Department Administrative Assistant Crystal Taplin

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

2. **PLEDGE OF ALLEGIANCE:** Councilor Heistad 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:**
   - Mr. Andrew Boisvert, 168 Bank Street Extension – Riverside, came forth and spoke about his concerns with the bad sewer smell that almost drove him out of his home. This is not only affecting his home, but also his neighbors. He spoke to the Lebanon Water Department several times throughout the years and was told multiple times that it was being worked on. His grandmother also called multiple times and spoke with different people until her passing. In order to mitigate the sewer smell, he has had to run the washing machine which has caused his water bill to go through the roof.

City Manager Mulholland noted they have done a number of things regarding this issue and have increased the types of chemicals, which they have now maximized for safety. He also spoke about looking into a portable filtration unit and has an upcoming meeting with the Department of Public Works (DPW) to see what they are looking at, noting they do not have a price on that yet and will notify anyone who is affected by this issue once he finds out more information.

5. **RECOGNITIONS: NONE**

6. **ACCEPTANCE OF MINUTES:**
   - August 16, 2023 (Work Session)

Amendments: REMOVE: Councilors Wilkie and Simon from the present list as they were not present for the Work Session portion of this meeting.

- August 16, 2023 (Regular Meeting)

Amendments: None

***Councilor Heistad MOVED* to approve the August 16, 2023 (Work Session) and the August 16, 2023 (Regular Session) minutes as amended and presented in the September 16, 2023 agenda packet**

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

7. APPOINTMENTS:

- Library Board of Trustees, Renee Dunn (Alternate Member)

Councilor Wilkie *MOVED to Nominate Renee Dunn as an Alternate Member of the Library Board of Trustees.*
The Vote on the NOMINATION was approved (9-0)

- Planning Board, Jeremy Rutter (Reappointment Regular Member)

The Planning Board *made the request to Nominate Jeremy Rutter for Reappointment as a Regular Member of the Planning Board.*
The Vote on the NOMINATION was approved (9-0)

- Zoning Board, Jeremy Katz (Reappointment Regular Member)

Councilor Liot Hill *MOVED to Nominate Jeremy Katz for Reappointment as a Regular Member of Zoning Board.*
The Vote on the NOMINATION was approved (9-0)

8. PUBLIC HEARING ITEMS: NONE

9. OLD BUSINESS

A. Clarification Regarding the Lebanon Open Space Trust (L.O.S.T.) Fund and the Conservation Commission's Authority

City Manager Mulholland reviewed and paraphrased portions of the background and history of the Open Space (L.O.S.T.) Fund in order to clarify what the Council is being asked to do. He noted that the Conservation Commission has been doing what they were supposed to be and there is not a real problem here. City Attorney Matt Decker and he reviewed this item and came to the conclusion that a formal motion needs to be made, noting that what this motion and resolution does is clarify the errors made and incorrectly reiterated by the Mayor at the time twice.

Included in agenda packet *(Pages 82-122)*

1. Draft Resolution of Clarification for Lebanon Open Space Trust (LOST) Fund
2. City Council minutes of September 7, 1988
3. City Council minutes of January 18, 2006
4. July 26, 2023 Memorandum from Attorney Matt Decker of Drummond Woodsum.

BACKGROUND

The City Council created the Lebanon Open Space Trust (LOST) Fund during 1987/1988 in connection with the approval of a Boston Lot Forestry Plan. The Council approved the establishment of the LOST Fund on September 7, 1988. Subsequent action by the City Council approved the transfer of 100% of the Current Use land use change tax to be deposited into the Fund.

On January 18, 2006, the City Council made the following motion:

Motion made by Councilor Moses for discussion purposes that the City Council expand the purpose of the LOST fund per RSA 36-A and annually and review the resulting budget, and that the existing 100% allocation of current use penalty monies to the LOST fund will continue. Seconded by Councilor Hill.

Mayor Dean reiterated the motion twice during the discussion. The reiterations of the motion are different than the original motion made and seconded. See highlights below showing the difference.

"Councilor Moses moved that the Council expand the purpose of the LOST Fund per RSA 36-A and annually review and approve the resulting budget, and that the existing 100% allocation of current use penalty monies to the LOST fund will continue.

There being no further discussion, a vote was held, and the motion passed by a vote of five in favor, two opposed (Mayor Dean and Councilor Nash)."

The minutes seem to indicate the City Council intended to clarify that the LOST Fund is a conservation fund permitted under the provisions of RSA 36-A:5, I. The motion does not clearly specify this, however.

RSA 36-A:5 Appropriations Authorized. –

I. A town or city, having established a conservation commission as authorized by RSA 36-A:2, may appropriate money as deemed necessary for the purpose of this chapter. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 36-A:4 may be placed in a conservation fund and allowed to accumulate from year to year. Money may be expended from said fund by the conservation commission for the purposes of this chapter without further approval of the town meeting.
II. The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the conservation fund and shall pay out the same only upon order of the conservation commission. The disbursement of conservation funds shall be authorized by a majority of the conservation commission. Prior to the use of such funds for the purchase of any interest in real property or for a contribution to a qualified organization for the purchase of property interest under RSA 36-A:4a, I(b), the conservation shall hold a public hearing with notice in accordance with RSA 675:7.
III. In the municipality that has adopted the provisions of RSA 79-A:25, II, the specified percentage of the revenues received pursuant to RSA 79-A shall be placed in the conservation fund.

As Lebanon is a city, it does not have a town meeting. The City Council is the legislative body of the City. The motion approved on January 18, 2006 to "annually review and approve the resulting budget", is contrary to the provisions of the statute.

The City Manager in cooperation with the City's legal counsel has generated a resolution to clarify and correct the record relative to the LOST Fund and the Conservation Commission's authority thereto. The Conservation Commission has been operating in accordance with the provisions of the statutes since 1988. The resolution does not change the authority of the Conservation Commission; it merely clarifies the intent and validates that the Conservation Commission has been carrying out its functions appropriately.

Resolution – Lebanon City Council

Lebanon Open Space Trust (LOST) Fund

BE IT HEREBY RESOLVED by the Lebanon City Council, that:

WHEREAS, on July 15, 1987, the City Council reviewed a "Boston Lot Forestry Plan" proposed by the Conservation Commission, which included a recommendation by the Conservation Commission that income from tree harvesting in the Boston Lot "be placed in a Conservation Fund" for four specific projects:

1. **Blaze and mark the bounds at Boston Lot.**
2. **Improve access at Boston Lot for timber removal and subsequent recreational uses.**
3. **Complete a survey map for the Farnum Hill Reserve and Goodwin Park.**
4. **Purchase land or development rights of marginal land for conservation and/or recreational uses (wetlands, ridgetops, geologic features, etc.); and**

WHEREAS, on July 15, 1987, the City Council adopted a motion "that the City Council adopt the Boston Lot Forestry Plan and authorize the Conservation Commission to implement it"; and

WHEREAS, as of July 15, 1987, RSA 36-A:5, which authorizes New Hampshire municipalities to appropriate moneys for the establishment and maintenance of a conservation commission and to place such appropriated moneys in a conservation fund, was silent as to the manner in which money may be expended from a conservation fund; and

WHEREAS, effective July 24, 1987, RSA 36-A:5 was amended to specify that money in a conservation fund may be expended "by the conservation commission" and "without further approval of the town meeting" (a/k/a the municipal legislative body); and

WHEREAS, on September 7, 1988, at a City Council public hearing "for the purpose of discussing the establishment of the Lebanon Open Space Trust Fund", the Chairman of the Conservation Commission, with reference to the July 15, 1987 City Council Meeting Minutes, asserted that "the [conservation] fund had already been approved by the City Council last fall when establishing the Boston Lot Forestry Plan" and requested "that the Council's vote of last fall stand and that the name of the trust fund be established as the L.O.S.T. fund"; and WHEREAS, on September 7, 1988, the City Council adopted a motion "that the name of the fund used to collect donations for conservation land and easements be established as the L.O.S.T. (Lebanon Open Space Trust) fund." and,

WHEREAS, the Council's actions in 1987 and 1988 appear to have defined the permitted uses of the LOST Fund more narrowly than the purposes of a "conservation fund" as set forth in RSA 36-A; and

WHEREAS, on January 18, 2006, the City Council reviewed a request by the Conservation Commission to expand the purposes of the LOST Fund consistent with RSA 36-A to include "maintenance, research and all manner of conservation related items", as part of which the Commission Chairperson represented that "…the Conservation Commission intends to submit a proposed budget and come back to the Council on an annual basis with a proposed budget for the expanded LOST fund; this would be part of the regular budget cycle, and the Commission hopes this would satisfy the oversight concerns that some Councilors have raised."; and

WHEREAS, on January 18, 2006, the City Council adopted a motion "that the Council expand the purpose of the LOST Fund per RSA 36-A and annually review and approve the resulting budget, and that the existing 100% allocation of current use penalty monies to the LOST fund will continue." (emphasis added); and

WHEREAS, RSA 36-A:5 specifies that money appropriated into a conservation fund by the municipal legislative body (a.k.a., the City Council) may be expended by the Conservation Commission "for the purposes of this chapter [RSA 36-A] without further approval of the town meeting [i.e. legislative body]"; and

WHEREAS, the actions taken by the City Council in 1987, 1988, and 2006, and the context within which such actions were taken, have caused uncertainty regarding the authorized purpose(s) for use of money in the LOST Fund, and regarding the Council's role in oversight of spending from the LOST Fund.

NOW THEREFORE,
1. The purpose of this resolution is to clarify the purpose of the LOST Fund, and the City Council's oversight thereof, as follows:

a. The LOST Fund is a "Conservation Fund" as permitted by RSA 36-A:5, I.

b. The City Council, in its role as the legislative body of the City of Lebanon, has the general authority under RSA 36-A:5, I, to appropriate money into the LOST Fund, and has the specific authority under RSA 36-A:5, III and RSA 79-A:25, II, to specify a percentage of revenues from current use taxation under RSA 79-A to be placed into the LOST Fund. In exercising its authority to appropriate money into the LOST Fund, the City Council may request a proposed budget or other information from the Conservation Commission detailing the Conservation Commission's needs and plans for money to be appropriated. The Council's review of the proposed budget shall be only for appropriation purposes, and such review shall not constrain the Conservation Commission's spending of money from the LOST Fund for the purposes of RSA 36-A.

c. Per RSA 36-A:5, I, the Conservation Commission has the general authority to expend money from the LOST Fund "for the purposes of this chapter [RSA 36-A]" without further review or approval of the Council, in the Council's capacity as the City's legislative body.

d. The Council, in its capacity as the City's governing body, retains authority within RSA 36- A to review and approve certain actions of the Conservation Commission. See, e.g., RSA 36-A:4, I ("Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights…."). With regard to Conservation Commission actions requiring governing body approval, money shall not be expended from the LOST Fund for such purpose unless or until the Council has approved such action.

e. The Council's motion in 2006 to "expand the purpose of the LOST Fund per RSA 36-A" was not intended to, and did not have the effect of, granting the Conservation Commission any optional powers under RSA 36-A in general, or under RSA 36-A:4-a specifically.

2. The Conservation Commission continues to operate, and the individual members of the Conservation Commission past and present have operated and continue to operate, within the authority granted to them under State Law and City Code. The Commission and its volunteer members have served, and continue to serve, the people of this City in an exemplary manner.

BE IT FURTHER RESOLVED that this resolution be written upon the minutes of the Lebanon City Council meeting.

Dated this ~~16 day of August, 2023~~ 6th day of September, at Lebanon, New Hampshire

City Clerk Jaseya Ewing

DATED SIGNED: TBD

ACTION:

Councilor Liot Hill ***MOVED, that the Lebanon City Council hereby approves the Resolution clarifying the status and intent of the Lebanon Open Space Trust (LOST) Fund to be a "Conservation Fund" as permitted by RSA 36-A:5, I, and the Conservation Commission's role and authority relative to the LOST Fund, as presented in the September 6, 2023 City Council Agenda Packet with one change amending the motion further that the resolution referred to in the motion shall include the date, August 16 shall be dated September 6th 2023, replacing the date listed as August 16th, 2023.***

Seconded by Councilor Heistad.

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

10. NEW BUSINESS

A. Dog Licensing Civil Forfeiture Update

Included in the agenda packet: ***(Pages 123-126)***

1. September 6, 2023 Memo from City Clerk Jaseya Ewing, re: Dog Licensing – Civil Forfeiture Notice – Returns

City Manager Shaun Mulholland reviewed the Dog Licensing Civil Forfeiture Update.

BACKGROUND

In accordance with NH RSA 466:14, at the June 21, 2023 City Council Meeting, City Clerk Jaseya Ewing presented the Dog Licensing Warrant for Civil Forfeiture Notice to the Council for approval. NH RSA 466:16 requires the City Clerk to report back to the Council on or before August 31st with the number of owners who received and paid the civil forfeiture, the number of dogs in the City which have been seized and held, and the number of owners who have received summons to a district or municipal court for failure to pay the civil forfeiture or license their dog.

Please see the attached memo from City Clerk Jaseya Ewing providing the numbers as required by RSA 466:16.

ACTION: ***No Council Action is required, item for discussion purposes only.***

B. Review and Discussion of 2023 2nd Quarter Budget Report and Release of Public School Impacts Fees

Included in the agenda packet: ***(Pages 127-164)***

1. September 6, 2023 memo from the Finance Department RE: 2nd Quarter Financial

Report (June 30, 2023)
2. General Fund 2nd Quarter Report
3. Landfill 2nd Quarter Report
4. Water 2nd Quarter Report
5. Wastewater 2nd Quarter Report
6. Airport 2nd Quarter Report
7. Memorandum of Understanding between the City of Lebanon and The Lebanon School District, SAU 88

Finance Director Vicki Lee and Deputy Finance Alesia Williams first reviewed the Release of Collected Public Schools Impact Fees.

Release Of Collected Public Schools Impact Fees

A Memorandum of Understanding (MOU) was developed in 2010 between the City and the School District for the quarterly transfer of collected Public Schools Impact Fees to the Lebanon School District for application toward the payment of debt on the (then) new middle school.

On October 12, 2021, the Planning Board authorized a broader use of Public Schools Impact Fees to include construction, renovation, improvement, or expansion of K-12 school buildings and related building systems, equipment, and furnishings. A revised MOU was developed and signed on November 22, 2021.

To date $822,664.96 has been disbursed to the Lebanon School District.

7/17/2013	$83,690.78	7/15/2015	$1,627.50	2/7/2018	$41,262.70
11/6/2013	$14,651.99	11/4/2015	$936.00	9/5/2018	$12,564.45
5/21/2014	$19,407.00	3/2/2016	$3,156.00	2/6/2019	$1,833.10
8/6/2014	$2,122.75	5/18/2016	$864.00	8/7/2019	$8,822.20
2/18/2015	$723.00	5/17/2017	$5,230.00	4/15/2020	$40,432.02
5/20/2015	$2,819.00	12/6/2017	$6,140.75	7/15/2020	$123,709.65
12/2/2020	$57,567.42	1/21/2021	$102,409.40	8/4/2021	$12,695.86
1/19/2022	$9,035.45	4/20/2022	$3,216.15	10/19/2022	$261,738.35

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7/15/2015	$1,627.50	11/4/2015	$936.00	3/2/2016	$3,156.00
5/18/2016	$864.00	5/17/2017	$5,230.00	12/6/2017	$6,140.75
2/7/2018	$41,262.70	9/5/2018	$12,564.45	2/6/2019	$1,833.10
8/7/2019	$8,822.20	4/15/2020	$40,432.02	7/15/2020	$123,709.65
12/2/2020	$57,567.42	1/21/2021	$102,409.40	8/4/2021	$12,695.86
1/19/2022	$9,035.45	4/20/2022	$3,216.15	10/19/2022	$261,738.35

2/1/2023	$2,185.00	4/19/2023	$3,824.44

This request is for the City Council to authorize disbursement of $3,142.57 in collected Public School Impact Fees (through 06/30/2023) to the Lebanon School District.

Council Discussions: NONE

ACTION:
Councilor Wilkie *MOVED, that in accordance with Section 213.10 (Administration of Impact Fees) of the Lebanon Zoning Ordinance, and the November 22, 2021 Memorandum of Understanding between the City of Lebanon and the Lebanon School District, SAU 88, the City Council hereby authorizes the disbursement of $3,142.57 in collected Public Schools Impact Fees to the Lebanon School District to be applied toward the construction, renovation, improvement or expansion of K-12 school buildings and related building systems, equipment, and furnishings*

Seconded by Councilor Heistad.

****The Vote on the Motion was approved (8-0).*** Councilor Whittlesey was not present at the time this vote was taken.

2nd Quarter 2023 Budget Report

Finance Director Vicki Lee and Deputy Finance Director briefly reviewed the 2nd quarter budget report which represents, in summary form, the year-to-date expenditures/revenues activity through June 30, 2023.

Finance Director Vicki Lee noted that on the chart on page 129 of the agenda packet this shows the expenditures by departments. In general, there is nothing outstanding. ***(All the remaining Charts and supplemental information can be found on pages 129-164, Council agenda packet.)***

ACTION: None need by the Council. For informational purposes only.

C. Annual review and re-adoption of City Council Policy CC-100, Cash Management & Investment

Included in the agenda packet: ***(Pages 165-175)***
1. September 6, 2023, Memo from Vicki Lee, Finance Director, re: Review and Adoption of the 2023 Cash Management and Investment Policy
2. City Council Policy CC-100, Cash Management, and Investment Policy

Vicki Lee, Finance Director and Alesia Williams, Deputy Finance Director gave an annual review for the re-adoption of City Council Policy CC-100, Cash Management & Investment

BACKGROUND
The purpose of the City's Cash Management and Investment Policy is to ensure that the administration of the City's cash management system is handled at its highest public trust. Finance Director Vicki Lee is charged with oversight of the City's cash management system.

The Policy applies to all cash, cash equivalents (assets that are readily convertible into cash), and investments in the custody of the City Treasurer in accordance with State law. This Policy does not apply to cash, cash equivalents, and investments in the custody of the Trustees of Trust Funds and the Board of Trustees of the Library who must formally adopt their own Investment Policies that are reviewed and confirmed at least annually for all investments made by them (or by their agents) for trust funds in their custody (NH RSA 31:25 and 202-A:23).

The custody and investment of City funds are to be made in a manner that provides maximum security of principal invested, meets the cash flow needs of the City and conforms to applicable State law. Funds in the custody of the Trustees of the Trust Funds are with Citizens Bank; City funds in the custody of the City Treasurer are with Mascoma Bank.

New Hampshire RSA 47:6 requires the City Council to review and adopt an investment policy at least annually. The Council last reviewed and re-adopted the Cash Management and Investment Policy August 3, 2022. No changes are proposed to the Policy.

Before taking a vote on the Motion for the Annual review and re-adoption of City Council Policy CC-100, Cash Management & Investment City Manager Mulholland first wanted to reviewe Item D. Annual review of City Council Policy CC-101, Fund Balance as listed in Item D below.

D. Annual review of City Council Policy CC-101, Fund Balance

Included in the agenda packet: : ***(Pages 176-181)***
1. City Council Policy #CC-101, Fund Balance Policy

City Manager Mulholland reviewed the background of the Annual City Council Policy CC-101, Fund Balance

BACKGROUND
A fund segregates resources (revenues) and requirements (expenditures) that are legally restricted to specific uses. Budgets are adopted by the City Council on a fund basis. Funds other than the General Fund exist primarily to ensure and demonstrate compliance with limitations on the use of existing resources or as enterprises. The General Fund, as the chief operating fund of the City, has a broader mandate, which may include accumulating sufficient financial resources for contingencies. Accordingly, the Fund Balance Policy is limited to the General Fund.

The purpose of the Policy is to provide adequate financial resources to ensure the continued orderly operation of government and the provision of services to residents and the continued stability of the tax or rate structure that can be threatened by uncertainty emanating from a number of areas including economic uncertainty, unanticipated changes in federal and state policies, imposition of federal and state mandates, unanticipated expenditures resulting from natural disasters or other unforeseen circumstances, errors in estimating expenditures and revenues, potential drain on resources from funds facing financial difficulties, and disparities in timing between revenue collections and expenditures.

The current Fund Balance Policy suggests a range of 19.0% to 24.0% of gross current General Fund budgeted expenditures. The result is consistent with how the New Hampshire Department of Revenue Administration (DRA) calculates its fund balance retention guidelines (middle ranges) minus the uncertainty of factoring in Net Required County, Local Education and State Education Tax Efforts which are not known until the annual tax rate setting process in October.

The Fund Balance Policy is reviewed annually by the City Council, but unlike the Cash Management and Investment Policy it is not required to be readopted. The current Fund Balance Policy was adopted by the City Council June 20, 2018, and reviewed on June 19, 2019, July 15, 2020, August 4, 2021, and August 3, 2022.

City Manager Mulholland noted that we are now into what he refers to as the post-CSO era. GASB and NH DRA (Department of Revenue Administration) recommend to all towns and municipalities that they maintain an Unassigned Fund Balance 5-17% of total appropriations. They also offer another criterion for consideration, having a minimum of two months' worth of a city's general fund expenditures or two months' worth of a city revenues. All he is proposing is a change in the Fund Balance Policy to be more in line with the DRA standards, which would be a maximum of 17% instead of the 24% (19%-24%) the City has now. He is not quite ready to do this because he has to crunch a few more numbers. His recommendation for the Council was to not act on this tonight but simply hold off until he can provide more data/context, then this should be approved on an annual basis.

Council Discussions:
Mayor McNamara noted that 19%-24% was actually arranged when Mr. Jarvi originally crunched his numbers to try to get the Fund Balance up to stabilize the tax rate. Even during those years, the DRA was not recommending 19%-24%, it was a number we generated ourselves.

When asked when the numbers may be available, City Manager Mulholland said it will not be earlier than September 19, 2023.

Councilor Sykes spoke about the previous concerns regarding tax spikes (i.e., CSO Project). He requested more details at the next meeting regarding why that worked, how it worked, and why we feel comfortable with not continuing with that kind of a program as we continue to fight some serious expenses in the City.

City Manager Mulholland explained this would not be ready by the next meeting because he needs to make this easier for the Council to understand. It will make more sense, when this is presented to the Council, if the other factors are included, noting that if we stay at 19% the tax rates are going to go up significantly or there will need to be dramatic cuts in the City's budget. The purpose of the Fund Balance is to deal with emergencies, and we had emergencies this year (i.e., Human Services budget went over; DPW Budget went over due to the disasters we had in July (+/- $500K); we have the next few months with a very active hurricane season and could see more significant damages that are not planned or budgeted for). All of this has to be in context when we discuss this, and with the other pieces that go along with (this policy), our tax base is not growing at the rate we expect it to be.

ACTION: No action is required at this time for the annual review of the Fund Balance Policy which has not been amended since changes were last incorporated and adopted on June 20, 2018.

NOTE: The Action below was taken out of order from what was listed in the agenda packet.

Moving back to the *City Council Policy CC-100, Cash Management, and Investment Policy,* Finance Director Vicki Lee, noted that New Hampshire RSA 47:6 requires the City Council to review and adopt an investment policy at least annually. There are no changes from the policy you adopted last year, but needs the Council's Motion to pass as is.

ACTION:
Councilor Wilkie MOVED, that the Lebanon City Council adopts City Council Policy CC-100, Cash Management, and Investment, as presented in the September 6, 2023, City Council Agenda packet, to be effective upon passage.

Seconded by Councilor Sykes.

***The Vote on the Motion was approved (8-0).* Councilor Whittlesey was not present at the time this vote was taken.**

E. Exemption of Zoning Requirements for City of Lebanon to Establish an Emergency Winter Shelter at 160 Mechanic Street

Included in the agenda packet: ***(Pages 182-183)***

City Manager Mulholland reviewed the background of the Exemption of Zoning Requirements for City of Lebanon to Establish an Emergency Winter Shelter at 160 Mechanic Street, noting the property has now been purchased by the City.

BACKGROUND

On July 19, 2023, the City Council authorized the purchase of 160 Mechanic Street, Lebanon. The authorized purchase of this location was primarily to ensure the State of New Hampshire acquires the required right-of-way area for a planned 2029 transportation project (roundabout intersection) that is part of the improvements to the Mechanic Street corridor.

A *Point-In-Time Count* was completed in January of this year and showed 16 unsheltered individuals "living" in the Lebanon area. As our understanding of the homelessness situation in Lebanon becomes clearer, it is apparent that the City could assist greatly in meeting the needs of our unsheltered population by providing an emergency winter shelter to bring those individuals in from the cold.

As such, City Administration has been working with staff from the Haven to review the feasibility of establishing a temporary emergency winter shelter at this location. Estimates for the rehab of the building along with operational needs are being developed.

The 160 Mechanic Street property is located in the Residential-Two (R-2) Zoning District. The shelter, if established, it would be operational for 120 days out of the year, be City owned and maintained, and would therefore be classified as a Governmental Land Use under the provisions of NH RSA 674:54. Governmental Land Use is not a use that is permitted within the R-2 zone. Section 214 of the Zoning Ordinance requires that Governmental Land Uses proposed by the City be subject to the requirements of the Zoning Ordinance unless expressly exempted from it by vote of the City Council. This requires a waiver from the City Council to allow us to renovate this structure for a governmental purpose.

When asked if this would require a Planning Board review, The City Manager said yes, it is a formal application and explained the process.

In the interest of time, as we hope to have the shelter operational at some point in December, we are asking the Council to exempt the use from the requirements of the Zoning Ordinance, understanding that the public will have an opportunity to comment at a public hearing before the Planning Board currently scheduled for September 25, 2023.

To better inform the neighborhood, a Community Conversation will be held on Monday, September 11, 2023 at the River Valley Community College, 6:00-7:30 PM. Participating in the conversation will be City Manager Mulholland, Human Services Director Lynne Goodwin, Director of Shelter and Community Programs for the Haven Cherry Sullivan, and Executive Director of the Haven Michael Redmond. On September 25th, 2023 this will be coming before the regular Planning Board meeting.

Council and City Manager Discussions:

- The Council discussed the different ways to get this information out to the public regarding the community conversation meeting at River Valley Community College on Sept 11.
- Expected budget for renovation would be +/-$134K, but a few more things need to be added to 160 Mechanic St. (i.e., asbestos tiles need to be removed from the floor.)
- What will be going before the Planning Board is for a "Seasonal Use." In order to get a year-round waiver, we would need to get a waiver from the Fire Marshal's Office for a full sprinkler system, which would be quite costly. However, there will be a two-person fire watch.
- The City Manager is not planning on asking the Council for a supplemental appropriation. He plans on absorbing the additional costs through the existing budget, noting the tax rates are going to be high enough as they are. He will make do with what he has available and may need to make cuts in other places in the budget.

  The goal is, as talked about last spring, to move expeditiously to have a plan in place for an Emergency Shelter by December of this year, before it gets cold, so we can get people off the street. If the Council has concerns, we have another meeting on September 20, 2023, but if we go beyond that point, he (City Manager Mulholland) will not be able to meet the deadline window.

Mayor McNamara noted he would feel differently about this if it were to be a permanent shelter, but given this is an Emergency Shelter for this winter (120 days) he was inclined to support this effort.

City Manager Mulholland will email the final budget agreement from the Upper Valley Haven when it becomes available. The plan is that the Upper Valley Haven will "operate" this shelter, and the City will "manage the building." The draft agreement has been written and a final agreement will be forthcoming. It will take a minimum of 4 four people to run this shelter (24/7) and we are looking at 12-15 beds maximum. The bathrooms need to be renovated, heating units need replacing, and asbestos removal is needed. The operational items will be a budget item for 2024.

<u>ACTION</u>:
Councilor Sykes MOVED* that *in accordance with Section 214 of the Lebanon Zoning Ordinance, the City Council exempts the property located at 160 Mechanic St., Tax Map 105, Lot 27 from all zoning requirements; however in accordance with RSA 674:54 the City Manager is directed to prepare all necessary documentation to notify the Planning Board of the planned emergency shelter so it can hold the required public hearing.

Seconded by Assistant Mayor Below.

Councilor Sykes spoke about his reasons why he felt the City needs to have this Emergency Shelter, noting the City is not/will not be getting aid from and Federal/State Governments.

Councilor Liot Hill concurred with Councilor Sykes and spoke about her reasons regarding the need for this Emergency Shelter. She read into the record a letter from the Granite State Organization project, dated September 3, 2023 as follows:

> "We are a local interfaith group with representatives from several faith communities and the Upper Valley housing crisis is a priority concern. The lack of housing affects us all. People are

unable to accept employment because they can't afford nearby housing. Low-income families who are struggling to pay rent. Most acutely, the unhoused crisis does not belong to one town or city, but it is a regional issue.

We believe it is time to treat the problem as such. Besides the Haven in Vermont and the shelter in Claremont, there are no nearby shelters on the New Hampshire side of the river. This shelter would make a difference, and surrounding communities should contribute financially to this project. New Hampshire GOP members are from Lebanon, West Lebanon, Meriden and Hanover, and we want to support your efforts.

We encourage you to move this project forward and ask you to advise us on how we can help make a Lebanon shelter a reality.

With best retards, the Upper Valley Chapter of Granite State Organizing Projects. Co-signers were acknowledged.

Mayor McNamara also read into the record a letter dated September 5, 2023 from the LISTEN Center as follows:

" Dear Mayor McNamara and members of the Council,

We are writing to share our enthusiastic support for the establishment of the Emergency Winter Shelter at 160 Mechanic St. in Lebanon. As such, we urge the City council, in accordance with Section 214, to exempt the aforementioned property from all zoning requirements so that the City Manager and Planning Board may move forward with this vital initiative.

We, at LISTEN partnered with members of our regions Housing First Committee, and conducted a community-wide survey of individuals and families experiencing homelessness. Our data showed 28 unsheltered individuals living in Lebanon. These are our neighbors with no choice but to live in the woods or in their cars. This number does not include people who are housed in unsecure housing or couch surfing. That's also an increase in what we found during our January 2023 point in time count, which found 11 individuals from Lebanon who are unsheltered each day.

Our homeless neighbors are faced with uncertainty of where they might safely rest that night. They will also face the unknown of how to escape the cold, even for a night, and an Emergency Winter Shelter located at 160 Mechanic Street could literally mean the difference between life and death. These are Lebanon residents who are unsheltered and experiencing homelessness.

On behalf of the LISTEN Community Services in Lebanon and the Lebanon residents we serve, Thank you for your consideration. We look forward to hearing the Council's just decision pertaining to the welfare of our unhoused, unsheltered neighbors.

Sincerely,
Rob Roy McGregor, Executive Director, LISTEN
Angela Zhang, Lebanon Resident Programs Director of Listen Community Services."

Hearing no further comments from the City Council or the public, the Council took the following vote.

****The Vote on the Motion was approved (8-0).* Councilor Whittlesey was not present at the time this vote was taken.**

F. Review and Discussion of Economic Development Commission and Downtown TIF Advisory Board Recommendation for Redevelopment of 20 Spencer Street

Included in the agenda packet:
All supportive documents, maps, and other informational materials can be found on Pages 184-205 in the September 6, 2023 Council agenda packet)

1. July 26, 2023 DRAFT Minutes of the Economic Development Commission Meeting
2. Draft RFP for 20 Spencer Street
3. Draft Appendices to RFP for 20 Spencer Street
4. Draft Selection Process & Criteria – RFP 20 Spencer Street

BACKGROUND
In 2016 the City initiated the Downtown Visioning Study which included the former DPW facility located at 20 Spencer Street, approximately 1.92 acres of land. This location was selected as one of the areas to be redeveloped as part of the visioning study. The property is located within the Downtown Tax Increment Finance District. The City Council requested the EDC and the Downtown TIF Advisory Board to develop and RFP to redevelop the property.

The City issued an RFP for the redevelopment in August of 2019. Two proposals were submitted, one of which was from the Braverman Company, LLC. The proposal involved the construction of a multifamily apartment building with as many as 94 units. Forty-five of those units were proposed to be workforce housing (80-100% AMI). The units would be a combination of 1 & 2 bedrooms. The Braverman Company proposed to purchase the property for $1.5 million.

The former DPW structures on the property were demolished by the City in 2021. A number of environmental issues remained on the site including previously undetected quantities of PCBs. The PCB contaminated soil was removed and transferred to an appropriate disposal site out of state. The site soils still contain levels of Arsenic higher than what is permitted by state standards. However, this only applies to drinking water. The site is served by City water and sewer. There is nothing from the environmental perspective that prohibits development of the site at this point. The total cost of demolition and site clean-up were just under $1 million.

The Braverman Company withdrew from the project in January of 2023. Ken Braverman, the company principal, felt that the economics were not feasible for the project at this time. The cost of capital, construction, and the shortage of construction labor resulted in his decision to withdraw from the partnership with the City.

On June 7, 2023, the City Council requested the EDC and the Downtown TIF Advisory Board to make recommendations as to what the next steps should be to redevelop the property. The Council suggested the EDC & TIF Advisory Board incorporate the Council's Strategic Objectives, Priorities and Strategic Plans into their discussion and review of 20 Spencer Street and the back parking lots, along with looking into what non-profit organizations can bring to the table and how this would potentially affect City property taxes.

The EDC and TIF Advisory Boards held meetings to discuss recommendations and On July 27, 2023, the

EDC voted the following:

> ***Motion by Mr. Brown that the Economic Development Committee recommends that the City Council approve the RFP developed by the Economic Development Committee to go out in September and come back within approximately 120 days, while also pursuing a parallel track to solicit proposals from the non-profit housing community.***
>
> ***Second by Mr. Purcell.***
>
> ****The Vote on the MOTION was approved by the EDC (5-0-0)***

Mr. William (Bill) Dunn reviewed and explained the background behind this project and how the Council's, the EDCs, and TIF District priorities have shifted somewhat over time. He also spoke about EDC's perspective and the reasons they modified the original RFP (Request for Proposals) to reflect what they thought felt was the City Council's current standards from an economic perspective. While the EDC/TIF District Committees understand that the Council has focused on different types of housing, he suggested the Council might want to consider running parallel tracks because if a professional RFP is put out, this might limit options from other respondents that might be either supportive for housing, workforce housing, low income housing, or other options that might be out there (i.e., someone might want to start a shoe factory, or other suggestions by those who may want to develop that property, etc.). We do not expect that any decision be made on this property tonight but ask that you bless us in sending out the revised RFP and see what we get back, which will then come before the Council for your review.

Council Discussions:

Councilor Liot Hill noted that at the EDC meeting, where this discussion took place, we heard from Deputy City Manager David Brooks that this RFP process might be a little to time intensive for some of the nonprofit organizations so we talked about putting this revised RFP out to see who might respond to this parallel track. We do have a few developers who have been interested in looking at the downtown parking lot, so we believed that there would be some potential responses while at the same time inviting the nonprofit community to submit proposals. She thought this would bring back to the Council as many ideas, potential opportunities, and concepts as possible, and would give us (the Council) realistic options. If no one from the nonprofit community responds, we will also know that is not an option.

In response to Mayor McNamara's question regarding if there were any concerns from the EDC that would disincentivize one group over another to submit proposals if a parallel track was pursued, Mr. Dunn noted that when the EDC was working on the parking lots they heard from developers and fielded some informal proposals from social groups, but they have nothing to present to Council at this time. One of the difficulties associated with this entire project is that everybody thinks it has to be housing, and it doesn't. I am also being reminded that the EDC's mission is to also support our businesses who keep saying they need more housing and places for workers to live. The EDC is not pushing for housing, it is pushing for options, and we'd like as many options as possible to bring back to the Council. By opening the process up, or running parallel tracks, he thought it would be more inclusionary and we would probably get more options. At first, he was focused on economic development opportunities but was reminded that if we put through such a rigorous RFP to the development world, we would almost defacto not be inviting other people into the process and further explained his reasons. Informally, the RFP that is going out has been modified to reflect some of the City's new goals and will go out to development communities, which can then be shared with any other nonprofit organization, housing authority, social group, or anybody else who has a concept for this project. The action item for the Council to consider included the wording to allow the City Manager to have those conversations and then bring those concepts back to you.

Councilor Liot Hill explained what had been added into the revised RFP noting that while we want to consider all options, housing has been identified as a big priority for the City Council and further explained the reasons why the RFP has been revised.

In response to Mayor McNamara's question, Mr. Dunn noted that no one would be disqualified for not being 100% compliant (with the RFP). This time, for example, if we see two projects that have very different end goals or accomplishments, then the EDC and TIF will dissect and try to weigh the pros/cons of each of these for the Council's review.

Mr. Kevin Purcell, member of the EDC, agreed with Mr. Dunn and felt that having all options should be on the table, noting that if he is looking through the EDC lens it is different than strictly looking through the housing lens and explained his reasoning. He was in favor of moving this forward. His biggest question, after talking to Deputy City Manager Brooks: Who is the Council targeting for workforce housing? He also felt the AMI (Adjust Median Income) needs to be increased to try to serve that workforce.

Councilor Wilkie was not sure if he was comfortable with this revised RFP and discussed his reasons why he felt the need for lower income affordable housing should be a priority for the Council.

Councilor Liot Hill also spoke about affordable housing being a high priority, but noted that community's benefit from mixed use activities, especially in downtowns. Housing is not the only aim to consider in this context, particularly in the downtown area and further explained her viewpoints, noting she supports housing and all affordable housing but would like to see all the possible options. She would like to see this move forward tonight.

Assistant Mayor Below felt the Council needs to be realistic about what might be possible. He spoke about the Braverman proposal for workforce housing, which fell through probably because it did not pencil in due to the economic climate, and other projects taking place in the City. He was skeptical of the parallel efforts and explained his reasons why. The Council has not decided whether to go the route of issuing a new RFP or trying to work with a nonprofit developer like the (Lebanon) Housing Authority to really focus on what would be subsidized housing to make a project pencil in for people at the lower income spectrum. The City does not have a lot of sites like this one (20 Spencer Street) and we do have a significant amount of costs that went into this project, but a lot of those costs the City caused decades ago and whether we ever redeveloped the site or not, the work needed to be done. The need (for housing) is for a nonprofit developer like the (Lebanon) Housing Authority or Twin Pines, but they don't have the ability to speculate on an opportunity in a way that private developers might, and it takes a lot of time and effort to put together a project and make it work. He did not feel it would be productive to try to pursue the revised draft RFP and explained his reasons, noting he was skeptical of whether, in this economic environment, somebody on the for-profit side of the spectrum can put together a mix of market rate and affordable workforce housing that will pencil in and actually help our housing in the next few years.

Mr. Dunn reiterated again that one of the things he runs into all the time is that folks are confusing the EDC mission with housing and it's not about that at all. The EDC's mission is to explore opportunities and ultimately submit their findings to the Council and gave examples. He suggested the Council allow the EDC/TIF to send the revised RFP out to see what we get back, and then let the City Manager engage in conversation with the other entities who might not respond. Within the EDC, we are simply trying to do our mission and you folks can discuss amongst yourselves what options you might want to see move forward or those that you might want to say no to.

Councilor Sykes was against market rate housing and spoke about his reasons regarding the need for housing on the lower income spectrum. No truly affordable housing project is going to be penciled out for a private developer and it will always take some involvement of the City to help make this happen. He explained his thoughts and concerns about the housing market and bringing properties back into the City's tax roll. He would not like this project being kicked down the road, but 120 days was not kicking this project down the road too far.

Mayor McNamara spoke about his concerns regarding housing and the need for a continuum of housing options. He hoped there are some creative proposals brought forward that might look at that continuum of housing and gave examples (i.e., Owner-occupied housing and looking at folks who do not qualify for subsidized housing but cannot afford to purchase a home - the missing middle).

Councilor Wilkie gave his reasons why Lebanon cannot compare ourselves to our regional neighbors. As far as the EDC goes, it is unlikely we are going to see a housing proposal that meets the needs we want from the private market. He is anticipating that workforce housing through the Lebanon Housing Authority or Twin Pines would be a realistic housing approach, noting 120 days would give the Council more time to decide if we are looking for housing or economic development and explained his reasoning. He was leaning very strongly in favor of not-for-profit housing.

Councilor Heistad was encouraged to hear concerns for the lower end of our economic market and spoke about the upcoming generation(s) and the prospects of them finding housing and staying in Lebanon. We need places that are affordable enough so that kids can get a new job or come back and start a new life here and stay in Lebanon and further explained his reasons. He felt the Council needed to look at the bigger picture rather than just one group of people who need housing.

Councilor Simon concurred with what everyone else was saying and did not feel 120 days was an unreasonable amount of time to throw the net out to see what we get back. He was in favor of moving forward with a revised RFP.

City Manager Mulholland noted that if the goal of the Council is to get the maximum tax value of the property, he highly recommended they approve the revised RFP. If we are trying to achieve pieces of our Strategic Plan, then we should highly consider the workforce concept and he read excerpts of the Strategic Plan. The only way workforce housing is being built in any quantity is when it is subsidized by the government (i.e., Would that be State, Federal, or municipality?). He spoke with Hypertherm and Novo Nordisk about what their needs/problems were, and they both said they need housing. He also spoke about how unaffordable the City was to live in for blue-collar workers, and why the City's businesses cannot hire people, which is due to housing that is unaffordable or non-existent. He felt if nonprofits would not respond to the RFP because they will have to put money together to do this, he suggested the Council decide which way they want to go.

Mr. Dunn spoke again about what the EDC is doing and gave examples, noting he was advocating for the ability to go out and look for solutions and felt the City Manager needs to be instrumentally involved in that (process).

After more discussions regarding affordable housing and the mission of the EDC, City Manager Mulholland felt the Council needed to take a step back and figure out where they want to go.

ACTION:
***Councilor Liot Hill MOVED*, that the Lebanon City Council authorizes the City Manager to initiate the RFP as proposed by the EDC for the redevelopment of 20 Spencer St. allowing 120 days for respondents to submit proposals AND/OR authorizes the City Manager to work with not- for-profit housing organizations to develop proposals for workforce housing to be considered by the City Council.**

Seconded by Councilor Simon.

Council Discussions before final vote:

After more extensive discussions and comments from Councilor Liot Hill, Assistant Mayor Below, Mayor McNamara, Councilor Whittlesey, and Councilor Sykes regarding the revised RFP from the EDC, affordable housing, and what the Council's direction should be for 20 Spencer Street and workforce housing in the future, the Council voted as follows:

****The Vote on the Motion FAILED (4-5)***. Voting against: Councilors Sykes, Zook, Heistad, Wilkie, and Assistant Mayor Below,

REVISED MOTION:

***Assistant Mayor Below MOVED*, that the Lebanon City Council authorizes the City Manager to work with non-profit housing organizations to develop proposals for workforce housing to be considered by the City Council**
Seconded by Councilor Sykes

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

City Manager Mulholland will draft a proposal for the Council to review, noting we need to be very clear what the Council wants.

11. City Manager Report:
City Manager Shaun Mulholland updated the Council on the following:

- CDS (Congressionally Directed Spending) Grant for the sidewalk project from the American Legion to the intersection of Slayton Hill Road on Mechanic Street: Reduced to $1M that is before Congress, instead of $3M.
- Community Conversation dates: Will take place quarterly. Invite will be sent to Councilors. City Councilors will facilitate meetings.
    - September 26, 2023, 7:00 PM: Assistant Mayor Below and Councilor Zook to facilitate.
    - October 24, 2023, 7:00 PM: Councilors Simon/Whittlesey to facilitate.
- Gas Hearing

- 10-Year Plan

12. COUNCIL REPRESENTATIVES TO OTHER BODIES: NONE

13. FUTURE AGENDA ITEMS: NONE

14. NON-PUBLIC SESSION:

A. NH RSA 91-A:3, II(c) – "Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself..."

Councilor Wilkie MOVED *to Enter a Non-Public Session for the purpose of discussing NH RSA 91-A:3, II(c) – "Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself..."*

Seconded by Councilor Liot Hill

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)***

Staff Present: City Manager Mulholland and Human Resources Specialist Jim Alexander.

City Council entered into Non-Public Session at 9:45 PM

Councilor Wilkie MOVED to come out of the Non-Public Session.
Seconded by Councilor Whittlesey

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)***

City Council came out of the Non-Public Session at 10:02 PM

THE COUNCIL WAS NOW BACK IN PUBLIC SESSION.

15. SEALING OF THE MINUTES OF NON-PUBLIC SESSION

***Councilor Whittlesey MOVED* to SEAL THE MINUTES of the September 6, 2023 Non-Public Session because it was determined that divulgence of this information likely would affect adversely the reputation of any person other than a member of this board.**

Seconded by Councilor Liot Hill.

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 unanimously approved (9-0).

16. ADJOURNMENT:

Councilor Whittlesey MOVED for adjournment.
Seconded by Councilor Wilkie.

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

The meeting was adjourned at 10:03 PM.

Respectfully submitted,
Dona E. Gibson
Recording Secretary