

FINAL

**LEBANON CITY COUNCIL  
REGULAR SESSION MINUTES  
Wednesday, March 20, 2024 7:00 p.m.  
Council Chambers**

**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 (Arrived 7:53P), Christian Simon, George Sykes, Douglas Whittlesey, and Karen Zook (Arrived 7:15PM)

**MEMBERS ABSENT:** Devin Wilkie

**STAFF PRESENT:** City Manager Shaun Mulholland, Deputy City Manager David Brooks, Deputy Director of Planning & Development Tim Corwin, Director of Planning & Development Nathan Reichert, Solid Waste Manager Erica Douglas, Human Resources Director Samantha Lauzon, Finance Director Vicki Lee, Deputy Finance Director Alesia Williams, Planning 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 Simon 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:**

- **AMERICANS WITH DISABILITIES ACT PROCLAMATION**

**WHEREAS,** The Americans with Disabilities Act, signed into law on July 26, 1990, brought our nation closer to the promise of equal rights for all. This landmark legislation enshrined into law equal access and protection from discrimination for people with disabilities. Passed by a bipartisan Congress and signed by President George H.W. Bush, the Americans with Disabilities Act banned discrimination in employment and ensured equal access to public services and accommodations, telecommunications, and transportation; and

**WHEREAS,** Enactment of the ADA was a hard-won victory. Today, thirty-four years since the ADA literally opened doors for people with disabilities, this community is making its mark in every sector of American life. As we celebrate the thirty-fourth anniversary of the enactment of the Americans with Disabilities Act, let us recommit to building a city that promotes independence and equality for all; and

**WHEREAS,** people with disabilities who call Lebanon, NH home, make significant contributions to the diversity, prosperity, and vitality of our city; and

**WHEREAS,** people with disabilities still face stubborn disparities in education, employment, and housing; and

**WHEREAS,** we are reminded that disability is a natural part of the human experience that in no way

diminishes the rights of individuals to live independently, enjoy self- determination, make choices, contribute to society, pursue meaningful careers and enjoy full inclusion and integration; and

**WHEREAS**, the City of Lebanon, NH recommits to ensuring that our community is accessible and inclusive, and that no barriers keep people with disabilities from achieving their dreams.

**NOW, THEREFORE**, I, Timothy McNamara, Lebanon City Mayor, hereby, proclaim July 25, 2024 as “Disability Justice Day” in Lebanon, New Hampshire. I encourage all businesses and community members to learn more about the housing resources made available by Visions for Creative Housing Solutions and the services offered by other non- profits serving people with disabilities in our community, and to celebrate them for their contributions to our community.

Proclaimed this 20<sup>th</sup> Day of March in the year 2024.

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Timothy J. McNamara  
Mayor, City of Lebanon

Item 10 A was taken out of order from what was presented in the Council agenda packet and was discussed as presented below. The remainder of the Council agenda was presented in the order as discussed by the Council.

**10. NEW BUSINESS:**

**A. Presentation of 2023-2024 Lebanon Historic Landmark Designations**

Included in the agenda packet: *(All supportive documents and information can be found on pages 59-67, Council agenda packet)*

1. Designated Property Details
2. Historic Landmark Designation Program – Inventory and Plaque Status Verification

Ms. Nicole Ford Burley, Chair of the Heritage Commission, reviewed the background and the requirements needed to achieve the Lebanon Historic designation.

**BACKGROUND:**

The Lebanon Heritage Commission was established in 2006 to take the place of the Historic District Commission. In addition to its regulatory role within the Lebanon Historic District, the Heritage Commission plays an advisory role citywide, and is responsible for the dissemination of information regarding the City’s historical resources and for conducting the Historic Landmark Program.

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

The Historic Landmark Designation Program was created to identify and aid in the protection of sites of significant community value in the City. Among the action items of Chapter 11, Historic Resources, in Lebanon’s Master Plan, is the following: “Continue identifying structures that qualify for the State and/or National Historic Register and the Historic Landmark Designation Programs.” (#11.1.A3). The Program aims to increase awareness in, and encourage, property owners to invest in the rehabilitation of their buildings, in turn to conserve property values and strengthen the local economy. There may also be some

direct benefits to the property owner; for example, with the recent expansion of Economic Revitalization Zone boundaries for tax credit eligibility, landmark designation could bolster qualification.

The Landmark Designation Program is an honorary celebration of our community's legacies and does not subject properties to any special or additional regulations or restrictions within the City or otherwise. Property owners of proposed designated landmarks are contacted by mail prior to submission for Council nomination.

For a building to receive Historic Landmark Designation it must possess historical, architectural and/or cultural significance. For example, qualifying sites may be associated with historical events or with the lives of significant persons in our past, or the site may embody the distinctive characteristics of a particular style.

For more program details, visit: <https://lebanonnh.gov/1103/Historic-Landmark-Designations>.

In this twenty-sixth (26th) year of the City's Historic Landmark Designation Program, the Lebanon Heritage Commission has identified four (4) properties for designation as local Historic Landmarks. Since the Program's inception in 1997, there have been ninety-six (96) other properties selected for Landmark Designation throughout the City.

Mayor McNamara read and presented the awards for this year's local Historic Landmark Designations for the following properties: *(Note: Photos of these properties were included in the Council agenda packet.)*

**\*250 Meriden Road, owner: family of Ms. Evelyn Morse**

This residence originally served as a Lebanon district school in District 9, also known as the Hough District School. The one-room schoolhouse educated students who lived in the vicinity of LaPlante, Meriden, and Daisy Hill Roads. After the closure of the school near Great Brook Road in 1898, the Hough School served students all the way to the East Plainfield town line. In 1855, the school educated 11 students. By 1900, it was host to around 16 students; by 1915, it was only 7. The school was closed and sold to Earl Kinne in 1934, when it was converted into a private residence.

**\*39 N. Park Street, owner: Lebanon Housing Authority**

Constructed in 1911, the Hotel Rogers was developed by George S. Rogers and designed by architect John A. Fox. The steel and brick structure cost around \$100,000 to build and boasted 44 rooms with hot and cold running water. The ground floor hosted a dining room and storefronts along North Park Street. Some of the businesses that occupied the first-floor shops between 1911 and 1970 included the Carrie L. Lowe dry goods and women's wear store (known as "a mecca for women"), Chipman's Pharmacy, the Modern Record Shop, the American Finance loan office, Stylers Beauty Salon, and Twin State Television. The exterior of the building was superficially damaged by the 1923 fire that destroyed the neighboring town hall, but the structure remained largely unchanged through the 1960s. In 1970, the hotel was closed, and the building was sold to the Lebanon Housing Authority, who converted the building into senior housing. Renovations included the addition of a fourth story (replacing the original decorative parapet and "Hotel Rogers" sign), removal of the first-floor storefronts, new windows, and other interior and exterior modifications.

**\*44 Bank Street, owner: Catherine Filiano**

44 Bank Street was built before 1860 by John Gustin, a local tinsmith. The Gustin family occupied the home until 1895. In 1923, the residence passed into the Lewis family, and Roy Lewis, co-proprietor of the long-running Lewis Brothers hardware store, who resided at 44 Bank Street until his death in 1969. Karen Wadsworth, former mayor of Lebanon and five-time representative to the New Hampshire House of Representatives, occupied the house for nearly two decades in the latter part of the 20th century. The

house is a two and a half story side hall plan, gable-fronted wooden frame house. The brick that so distinguishes the exterior is a veneer added by Roy Lewis as part of extensive interior and exterior renovations during his tenure.

**\*10 Great Brook Road, owner: Jennifer Muller**

Known as the Ticknor House for its original owner or the Gray House for the family that resided in it for a full century, this house is believed to have been built by John Ticknor in 1786. An inscribed stone in the kitchen hearth provides the 1786 date, and many of the building's original features are still extant, including wide floorboards and exposed wall and ceiling beams. John Ticknor was born in Lebanon, Connecticut in 1761, and was living in Lebanon, New Hampshire by the time of the 1790 census. He and his wife, Mabel (Green), remained in Lebanon until at least 1800 before moving to Plainfield. William Gray and his wife Harriet (Moore) purchased the house in 1858, and it would remain in the Gray family for the next 101 years. William sold the house to his son George and his wife Julia (Hastings), and upon George's death, it passed to his son Arthur and his wife Lilla (Kinney). They in turn sold it to their son Raymond in 1944, and in 1959, it passed out of the Gray family.

**ACTION: No action is required by the Council. This item is for informational purposes only**

**6. ACCEPTANCE OF MINUTES:** March 6, 2024 (Regular Meeting)

*Councilor Heistad MOVED to approve the March 6, 2024 minutes as written and presented in the March 20, 2024 City Council agenda packet.*

*Seconded by Councilor Whittlesey.*

**Councilor Zook arrived at approximately 7:12 PM.**

***\*The Vote on the Motion was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.***

**7. APPOINTMENTS:**

- Economic Development Commission, Dean Cashman (Regular Member)

***Councilor Sykes MOVED to NOMINATE Dean Cashman as a Regular Member of the Economic Development Commission. Term: 03/24-03/26***

***\*The Vote on the NOMINATION was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.***

- Diversity, Equity, and Inclusion Commission, Simone Whitecloud (Reappointment Alternate Member)

***Councilor Simon MOVED to NOMINATE Simone Whitecloud for Reappointment as an Alternate Member of the Diversity, Equity, and Inclusion Commission. Term: 03/24-03/26***

***\*The Vote on the NOMINATION was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.***

- Lebanon Energy Advisory Committee, William Stearns (Alternate Member)

***Assistant Mayor Below MOVED to NOMINATE William Stearns as an Alternate Member of the Lebanon Energy Advisory Committee. Term: 03/24-03/26***

***\*The Vote on the NOMINATION was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.***

## **8. PUBLIC HEARING ITEMS:**

- A. Ordinance #2024-05, Adoption of New City Code Chapter 164, Trees** – A public hearing for the purpose of receiving public input and taking action to adopt Ordinance #2024-05 to add a new Chapter 164, Trees, to the Code of the City of Lebanon

Included in the agenda packet: *(All supportive documents and information can be found on pages 34-41 Council agenda packet)*

1. Ordinance #2024-05, including recommended edits (highlighted in red) as suggested by the City's attorney
2. March 13, 2024 Legal Opinion by Attorney Matthew C. Decker, RE: Draft Ordinance 2024- 05 (Trees)

City Manager Mulholland reviewed the background for adding a new Trees chapter (164) in Ordinance #2024-05.

### **BACKGROUND**

The City Manager along with the Department of Public Works and the Recreation, Arts and Parks Department have been working in collaboration with the Tree Advisory Board to develop City Code Chapter 164 regarding trees. NH RSA 31:51 is the enabling legislation that allows municipalities to make regulations for the planting, protection, and preservation of shade or ornamental trees upon lands appropriated for public use.

The proposed new chapter outlines the authority to manage trees on public property and rights- of-way. Various provisions of NH RSA Chapter 231 provide statutory authority to municipalities related to public ways and rights-of-ways. There are several NH Supreme Court decisions that further delineate the authority of municipalities regarding trees.

There is an administrative policy that further articulates the management of trees under the statutory provisions and the provisions of Chapter 164 once the chapter is enacted.

In accordance with City Code Chapter 115-3, the City Manager has obtained a legal review of the draft ordinance, which concludes that the ordinance language is consistent with the laws of New Hampshire and the City Charter, is within the City Council's authority to adopt, and is legally enforceable. In the process of reviewing the draft ordinance, the City's attorney has offered a set of minor clarifying edits mostly to the proposed definitions, which are shown in the redline version of the document that was included on pages 36-40 in the Council agenda packet..

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

### **Council Comments:**

Assistant Mayor Below suggested the Tree Board start to think about what they would like included in a general policy for our land conservation management plan, which is under the purview of the Conservation Commission and the Planning Department.

In response to Councilor Heistad's question regarding hiring a professional Tree Warden, City Manager Mulholland and Mayor McNamara noted they have been looking into this but due to budget constraints

they will be unable to provide one at this time. Mayor McNamara said they will continue to try and find some innovative ways to find a certified arborist.

**ACTION:**

***Assistant Mayor Below MOVED, that the Lebanon City Council hereby adopts Ordinance #2024-05 to add a new Chapter 164, Trees, to the Code of the City of Lebanon, including recommended edits as suggested by the City’s attorney, as presented in the March 20, 2024 City Council Agenda Packet, to be effective upon passage.***

***Seconded by Councilor Heistad.***

***\*The Vote on the Motion was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.***

- B. Amend Ordinance 18, Salary Plan** – A public hearing for the purpose of receiving public input and taking action to amend Ordinance No. 18, Salary Plan, Article II, Non- Affiliated & LPASE Employees, to add the position of Chief Building Official & Health Officer (Grade 13, Non-Affiliated) to the compensation and classification schedule

Included in the agenda packet: [\*\(All supportive documents and information can be found on pages 43-45, Council agenda packet\)\*](#)

Ms. Samantha Lauzon briefly reviewed the background and summarized the reasons for adding the position of Chief Building Official and Health Officer as an amendment to Ordinance No. 18.

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

**BACKGROUND**

The City Council was asked to take action to amend Ordinance #18, Salary Plan, as follows:

1. Article II, Non-Affiliated & LPASE Employees:
  - I. Add the exempt position of Chief Building Official & Health Officer, as a Grade 13 position within the Planning & Development Department.

**Article II, Non-Affiliated & LPASE Employees**

City Administration is proposing the addition of a Chief Building Official & Health Officer position within the Planning & Development Department. This Grade 13, exempt position is being created to direct the plan review, permitting, and inspection of all construction activities within the City of Lebanon and to ensure compliance with adopted codes and ordinances. The position will oversee the City’s role in restaurant and food inspections, enforce other health codes, as applicable, and provide accountability for the supervision and operation of the Code Enforcement Division of the Planning & Development Department. The position will supervise the Division’s staff, providing professional oversight, advice, and direction, and will report to the Planning & Development Director.

**Amendment Process**

Amending Ordinance #18 requires three separate presentations (see City Charter subsections §419:22, §419:24, §419:25, §419:52), followed by a Public Hearing, and the vote of at least two-thirds (2/3) of all members of the City Council - six (6) members - to adopt.

The first presentation was recognized by the City Council on February 21, 2024. The second presentation was acknowledged on March 6, 2024. The Council was asked to finalize the amendment process by acknowledging the third presentation and acting to amend the Salary Plan following the close of the public hearing.

The table below reflects all proposed changes (as shown in **red** text), to include the addition of new positions, changes in position titles and/or classification. These changes would be effective upon passage.

The City Council was asked to act on the following:

**1. Acknowledge Third Presentation:**

**ACTION:**

***Councilor Whittlesey MOVED, that the Lebanon City Council acknowledges the third of three presentations to amend Ordinance #18, Salary Plan, Article II, by adding the position of Chief Building Official & Health Officer (Grade 13, Non-Affiliated) in the Non-Affiliated & LPASE Employee compensation and classification schedules as outlined in the March 20, 2024, City Council Agenda Packet.***

*Below is an excerpt of the Non-Affiliated & LPASE Employees' compensation and classification schedules impacted by the proposed change described above. Changes to the compensation and classification schedules are shown in **red** type; new positions and retitled or reclassified positions are shown in **red bold** type; position deletions are shown stricken and in **red italics** type.*

| REGULAR FULL-TIME / REGULAR PART-TIME NON-AFFILIATED & LPASE<br>EMPLOYEES 2024 SALARY & GRADES |                                                     |         |         |            |            |
|------------------------------------------------------------------------------------------------|-----------------------------------------------------|---------|---------|------------|------------|
| Grade                                                                                          | Position Title                                      | Hourly  |         | Weekly     |            |
|                                                                                                |                                                     | Minimum | Maximum | Minimum    | Maximum    |
| 13                                                                                             | <b>Chief Building Official &amp; Health Officer</b> | -       | -       | \$1,734.53 | \$2,341.63 |
|                                                                                                | Chief Innovation Officer                            |         |         |            |            |
|                                                                                                | Cyber Security Analyst                              | -       | -       | -          | -          |
|                                                                                                | Deputy Finance Director                             | -       | -       | -          | -          |
|                                                                                                | Deputy Human Resources Director                     | -       | -       | -          | -          |
|                                                                                                | Deputy Fire Chief**                                 | -       | -       | -          | -          |
|                                                                                                | Information Systems Manager**                       | -       | -       | -          | -          |
|                                                                                                | Maintenance Manager                                 | -       | -       | -          | -          |
|                                                                                                | Police Captain**                                    | -       | -       | -          | -          |
|                                                                                                | Deputy Planning and Development Director            | -       | -       | -          | -          |
|                                                                                                | Systems and Operations Administrator                | -       | -       | -          | -          |

\*\*Denotes LPASE Employees

**2. RESOLUTION:**

**FOR THE PURPOSE OF amending Ordinance #18, Salary Plan.**

***NOW THEREFORE BE IT RESOLVED, that the Lebanon City Council hereby amends Ordinance #18, Salary Plan, Article II, by adding the position of Chief Building Official & Health Officer (Grade 13, Non-Affiliated) in the Non-Affiliated & LPASE Employee compensation and classification schedules as outlined in the March 20, 2024, City Council Agenda Packet Seconded by Councilor Sykes.***

***\*The Vote on the Motion was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.***

## **9. OLD BUSINESS:**

### **A. Discuss possible NHMA Policy Positions for the 2024 NHMA Legislative Policy process**

Included in the agenda packet: *(All supportive documents and information can be found on pages 47-48, Council agenda packet)*

#### **1. 2025-2026 NHMA Explanation of Proposed Policy form**

City Manager Mulholland noted that the first meeting of the NHMA Policy Committees will be on April 5<sup>th</sup>. The deadline for submitting any policy positions will be April 15, 2024. So far, NHMA has not received any. He thought potentially there could be a policy position on the use of AI (Artificial Intelligence), but this would be difficult to articulate and explained his reasons. If the Council wants to present something they should do so at their April 3, 2024 meeting.

## **BACKGROUND**

It is the time of year when the New Hampshire Municipal Association (NHMA) begins planning for the Legislative Policy Conference in the Fall. The policy process begins with solicitation of policy proposals from local officials to create an initial issues list. The deadline for submission of policy proposals is April 15, 2024.

NHMA's legislative policy committees - Finance and Revenue; General Administration and Governance; and Infrastructure, Development and Land Use – will review all policy proposals in order to make recommendations which will go to the NHMA Legislative Policy Conference in September

## **Council Comments:**

In response to Councilor Sykes' question regarding where language changes about contracts stand with the NHMA, City Manager Mulholland said that Mayor McNamara made a Motion but it never received a second. They were pretty much opposed to mandating other communities to do certain things, noting this goes against the grain of local decision making. Councilor Sykes noted that it has always been his position that if something was the right thing to do last year, but failed, it is still the right thing to do this year. Mayor McNamara suggested that if Councilor Sykes wanted to put something together as an agenda item, the Council could discuss it and take a vote on it at their April 3, 2024 meeting.

## **ACTION: No Action taken at this meeting.**

### **B. Action to Adopt Amendment to City Council Rules: §A191-8, Order of Business, as presented on March 6, 2024**

Included in the agenda packet: *(All supportive documents and information can be found on pages 49-58, Council agenda packet)*

1. Proposed amendment to City Council Rules, §A191-8, Order of Business
2. City Council Rules, as adopted on November 16, 2022

Deputy City Manager David Brooks reviewed the background for the proposed amendment to City Council Rules, §A191-8, Order of Business as listed below:

The business of all regular meetings of the Council shall be transacted in the following order unless the Mayor elects to change the order of business for good cause. If any member of the Council objects to the proposed change to the order of business, the Mayor shall ask that the Council vote on the proposed change, by a vote of at least 2/3 of the members present, to suspends the rules and changes the order of business.

#### **BACKGROUND**

In accordance with §A191-13 of the Council Rules, proposed amendments must be presented in writing at the preceding regular meeting, prior to adoption. Adoption requires a 2/3 vote of all members of the Council.

On March 6, 2024, the Council reviewed and discussed a proposed amendment to §A191-8, Order of Business, to amend the process by which the order of business may be changed. Currently, the Council Rules call for an affirmative vote of at least 2/3 of the members present to suspend the rules and change the order of business during a meeting. However, based on past practice, the Council rarely, if ever, holds a vote on the issue of whether to change the order of business during a given meeting.

The proposed amendment to §A191-8 would allow the Mayor to change the order of business for good cause. Only if a member of the Council objects to the proposed change would the Mayor call for a vote on the question. In that instance, a vote of 2/3 of the members present would be required to change the order of business.

#### **ACTION:**

*Assistant Mayor Below MOVED, that the Lebanon City Council hereby amends the Council Rules to include the amendment to §A191-8, Order of Business, as presented on March 6, 2024.*

*Seconded by Councilor Simon.*

*\*The Vote on the Motion was approved by members present (7-0). Councilor Liot Hill was not present at the time this vote was taken. Absent: Councilor Wilkie.*

#### **10. NEW BUSINESS:**

- B.** Request for Zoning Amendments: Cicotte Properties, LLC – Text Amendment for Light Industrial (IND-L) District

Included in the agenda packet: *(All supportive documents and information can be found on pages 68-77, Council agenda packet)*

1. Memorandum from Planning and Development Department staff, dated March 13, 2024, including associated attachments.

#### **BACKGROUND:**

On January 17, 2024, the City Council voted to move a proposed zoning amendment requested by Cicotte Properties, LLC through the amendment process outlined in Section 1000 of the Zoning Ordinance. The request by Cicotte Properties, LLC is to amend Section 303.2 of the Zoning Ordinance to add “auto sales and service” as a use allowed by Conditional Use Permit in the Light Industrial (IND-L) District.

Since the Council’s action on January 17, 2024, the amendment has been reviewed by the City’s legal counsel, the Planning Board, the Zoning Board of Adjustment, and the Conservation Commission. A summary of the proposed amendment is outlined in the attached memorandum from the Planning & Development Department. The City attorney’s legal opinion and excerpts of the Planning Board and Zoning Board of Adjustment draft meeting minutes are attached. The Conservation Commission meeting minutes are not available as of the preparation of the agenda but will be provided when available.

Ms. Johanna Cicotte, owner of Cicotte Properties, LLC, and Attorney Barry Schuster came forth to discuss the proposed Zoning Amendment change as listed above.

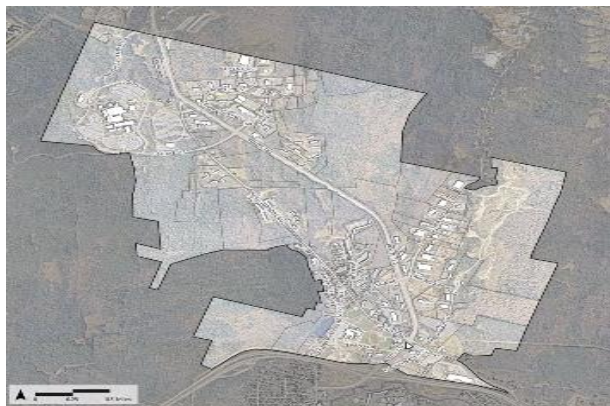
Attorney Schuster reviewed the background behind the proposed zoning amendment as outlined in Section 100 of the Zoning Ordinance, Section 303.2 to add “auto sales and service” in the IND-L Zone. At this point in time, they would like a Conditional Permit to allow automotive sales and service, and spoke about correcting the language as recommended by Attorney Johnson, changing “vehicular sales” to “automotive sales and service.” He noted that having a Conditional Use Permit would still require approval by the Planning Board and a Planning Board Site Plan Review, so it is not making a Permitted Use with no further review but there would be two layers of Planning Board review.

Ms. Johanna Cicotte spoke about why this proposed amendment was important to her and her business.

#### **Council Comments:**

In response to Mayor McNamara’s request for an explanation about the planned corridor studies timeframe, Mr. Corwin said they have identified the next steps, which include stakeholder interviews and a larger community meeting that he thought would be held on April 24<sup>th</sup>, but there will an announcement made. After public input, VHB will pull together a plan based on the public’s feedback. There will be a survey sent out as well as a final wrap-up meeting. That plan will include recommendations for Zoning changes. We expect to have those recommendations and the final plan by June or July of 2024, at which point we will start crafting the specific language relevant to the recommended zoning amendments and then bring those back to the Council for review in the fall and then for adoption in January (2025).

Mr. Corwin pulled up the graphic map noting the study will take the entire section starting at Exit 18 N and goes up Route 120, branches out onto Heater Road (both east & west) and up through LaBombard Road and Mount Support Road up to DHMC, and all of Centerra up to the border with Hanover.



He pointed out that one of the goals is to examine what the future Land Use Map means and to identify certain areas with mixed use neighborhoods to adjust the zoning to match the future Land Use Map and what the future language should be. He did not feel that any anticipated changes (to the Zoning) would have to go before the voters at this time. If there were changes that needed to go before the voters, these could be bifurcated from the Council amendments.

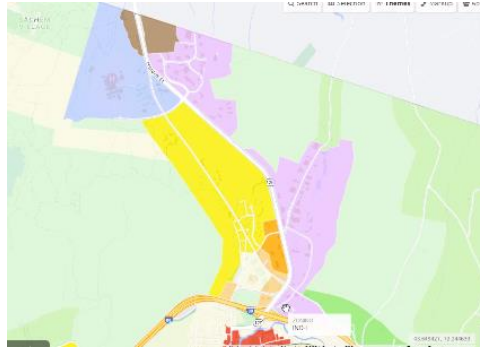
**Councilor Liot Hill arrived at approximately 7:53 PM.**

In response to Mayor McNamara's question regarding why the Planning Board voted against this, Mr. Corwin explained his impression on why this happened, noting he felt there was some confusion when the proposal was brought before the Planning Board and explained his reasons.

Attorney Schuster respectfully disagreed about there being confusion and read the motion made by Mr. Ford-Burley as presented on [page 75, Council agenda packet](#) and further explained the discussion that took place and why the motion was made. He also noted this was the first time he has seen the map listed above, which is a large, complex piece of property.

Mayor McNamara also said this was the first he has seen the plan, as well.

Mr. Corwin pulled up a graphic map of the potential zoning and noted that vehicular sales/services would be allowed in the purple areas (see map below), noting there are also Light Industrial areas in the City (i.e., the Airport and the Timken property).



The Council continued to discuss the areas involved in the IND-L areas; the reasons why the Planning Board made their motion; the decision by the Council 24 years ago that made properties nonconforming; the difference between a Conditional Use Permit vs. Permitted Use; what the Council could do to help the applicant without changing all the zoning from 120 through Mt. Support Road and the Airport; the standards/performance criteria and explanation associated with a Conditional Use Permit; questions regarding special exceptions that would not be permitted in the IND-L Zone (i.e., fireworks factory, etc.); taking advantage of this opportunity (to allow Vehicular Sales/Services as proposed by Cicotte Properties, LLC) being mindful of real-world consequences if this doesn't move forward because business opportunities can appear and disappear just as quickly; and, being careful about losing opportunities for businesses who are providing jobs and tax revenues.

Mayor McNamara informed the Council that they were not voting on this proposed amendment tonight, they are just voting on having a Public Hearing for April 3, 2024. He also said he normally tends to defer to the Planning Board on such matters, but seeing the extent of the area, it just looks huge to him. He did not doubt the study needs to be done, but the timing was different than what he originally understood.

Councilor Liot Hill felt the request by Cicotte Properties, LLC was reasonable and after asking a few more zoning questions, she suggested using a more targeted approach rather than modifying an entire zone (as highlighted in the dark geo-map area below) and explained her reasons.



Mr. Nathan Reichert (Director of Planning & Development) noted the area along Exit 18 has been controversial over the years and has redefined itself several times through different zoning efforts. He spoke about the history of this particular neighborhood. From the staff's perspective we did not feel we had a really great answer to the questions the Council was posing and that is really one of the synthesis points of the study we are asking for. The studies core interests are: What do we do in this neighborhood from a zoning perspective? What is it that we need to do to amend the existing zoning topography and use, so that the neighborhood is better benefited for the folks living there? Engaging with the people of the neighborhood is the core part of the study and is the reason this was authorized.

Councilor Liot Hill said there is a reason the City's Charter allows the Council to make certain zoning changes, but big zoning changes have to go the voters. Small zoning changes can be handled by the Council. She supported narrowing the zoning change (on map above) so we can satisfy the interest of allowing a property owner to move forward with a reasonable request while also protecting the broader interest in how this bigger neighborhood moves forward.

Councilor Simon concurred with Councilor Liot Hill and Councilor Sykes comments and spoke about his reasons for moving forward with this proposal.

Councilor Sykes wanted to make sure the timeline would not take too long to make the suggested change.

Mr. Reichert wanted to consult with legal counsel about Councilor Liot Hill's proposed change noting we may have to go back through all their recommendations from the Conservation Commission and Planning Board in order to bring this back to the Council because it is a subject matter change, but the timeline would probably line up fairly quickly (a couple of months).

Assistant Mayor Below spoke about his reasons for moving forward with the Public Hearing, noting that if the Council does not feel comfortable with this zoning change, they can always revisit it in the future. He did not feel it was necessary to wait until the study has been done.

#### **ACTION:**

***Councilor Sykes MOVED that that the Lebanon City Council hereby schedules a public hearing for Wednesday, April 3, 2024, beginning at 6:00pm, in Council Chambers, City Hall, and Remote via the City's Virtual Platform, for the purpose of receiving public input and taking action to amend Section 303.2 of the Zoning Ordinance to add "Vehicular sales" as a use allowed by Conditional Use Permit in the Light Industrial (IND-L) District.***

**Seconded by Councilor Liot Hill.**

**\*The Vote on the MOTION was approved by members present (8-0).**

- C. Request for Zoning Amendment: Text Amendment for Section 214 (Governmental Uses) of the Zoning Ordinance**

Included in the agenda packet: *(All supportive documents and information can be found on pages 78-85, Council agenda packet)*

1. Proposed amendment (redline) of Section 214 of the Zoning Ordinance, prepared on March 11, 2024
2. Memorandum of Background Information on Section 214 of the Zoning Ordinance from Attorney C. Christine Johnston, dated March 10, 2024
3. NH RSA 674:54, Governmental Land Uses

Deputy City Manager David Brooks reviewed the background behind the request as listed above.

**BACKGROUND:**

“Governmental use” is defined in NH RSA 674:54, I, as meaning: “a use, construction, or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.” Pursuant to the statute, governmental uses are not subject to local land use regulations, including zoning regulations and site plan review regulations. Projects that meet the statutory definition of “governmental use” may be reviewed by the governing body or by the Planning Board, but any comments issued pursuant to such reviews are non-binding and advisory only.

By contrast, Section 214 of the Lebanon Zoning Ordinance regulates Governmental Uses as follows: “Governmental Uses shall be governed by RSA 674:54; provided, however, that governmental uses proposed by the City of Lebanon shall be considered to be subject to this Ordinance, unless expressly exempted from it by vote of the City Council.” Rather than rely on NH RSA 674:54, which exempts governmental uses from local zoning regulations, Section 214 specifically requires the City’s governmental use projects to conform to the requirements of the Zoning Ordinance.

Requiring the City’s governmental use projects to comply with local zoning regulations has the potential effect that certain projects will be designed in a suboptimum manner in order to comply with Zoning Ordinance requirements that were primarily drafted and intended to apply to private land developments and not public infrastructure projects. Alternatively, it requires those projects to obtain zoning relief from the Zoning Board of Adjustment. This concern was recently brought to the Council’s attention in the context of the Trues Brook Road bridge reconstruction project, which would have required both a Variance and a Special Exception from the Zoning Board. Similarly, the Lahaye Drive/Mt. Support Road Intersection Project and the Lahaye Drive Multi-Use Path/TAP Project would have required Special Exceptions from the Zoning Board. The City Council ultimately exempted all three projects from the requirements of the Zoning Ordinance.

The conditions for granting a variance or special exception, as the case may be, are listed in the Zoning Ordinance and the Zoning Board is tasked with approving or denying the request on the merits of the application. Even if approved, any aggrieved abutter could appeal the ZBA decision. Any appeal could

adversely affect a project's construction schedule and potentially lead to an undesirable result that is contrary to public interest.

As explained further in the memorandum from Attorney Christine Johnston, the statutory exemption of governmental uses from local zoning regulations reflects the nature of governmental uses, which have fundamentally different issues than private development. It is City staff's position that modifying Section 214 to exempt all governmental uses from the requirements of the Zoning Ordinance will ensure that municipal improvement projects, such as building roads, replacing bridges, constructing public facilities, and other governmental needs, are optimally designed to serve the public interest and are not jeopardized by having to obtain approval from the Zoning Board of Adjustment. However, it is understood and acknowledged that projects undertaken by the City, or on City land or property, which do not meet the statutory definition of a Governmental Use, would continue to be fully subject to the provisions of the local zoning ordinance and land use regulations.

City Attorney Christine Johnston came forth and reviewed her Memorandum of Background Information on Section 214 of the Zoning Ordinance and spoke about why the statute was written, noting that Governmental Uses are fundamentally different than private development. We hope that most private development will have some kind of benefit to the greater public but Governmental Uses are inherently aimed at achieving some kind of public good. *(Please refer to her memo dated March 11, 2024 and the TITLE LXVI Planning and Zoning Statute as listed on pages 81-85, Council agenda packet for details).*

Below is the proposed amendment (redline) of Section 214 of the Zoning Ordinance

## ARTICLE II GENERAL PROVISIONS

### SECTION 214 GOVERNMENTAL USES.

~~Governmental uUses shall be governed byas defined in RSA 674:54; whether proposed by the City of Lebanon or another governmental entity, shall be subject to the provisions of that statute and shall not be subject to the City of Lebanon Zoning Ordinance. Any use, construction, or development of land occurring on governmentally owned or occupied land but which is not a governmental use as defined in RSA 674:54 is fully subject to the City of Lebanon Zoning Ordinance; provided, however, that the City Council may vote governmental uses proposed by the City of Lebanon shall be considered to be subject to this Ordinance, unless to expressly exempted from it by vote of the City Council any non-governmental use by the City of Lebanon from compliance with the Ordinance.~~

#### **Council Comments:**

Mayor McNamara reminded the Council that what they will be doing tonight is to put this in motion for the next several months to go through the various boards for their comment.

Councilor Liot Hill said the Council specifically made the decision to subject themselves to zoning about 15 years ago and questioned if the City has had any substantial delays on major projects due to this type of zoning issue.

Mayor McNamara spoke about his reasons why he felt comfortable with this (text amendment) and did not see a downside moving forward with this process.

Councilor Zook noted the Council could get caught up in zoning because zoning has very specific statutory requirements, noting the City is constrained in a way that a private citizen is not, and further

explained her reasoning.

Mr. Corwin said that what been done over the last 8-10 years is that we automatically schedule a Public Hearing for Governmental Use application, but the statute actually provides that “you provide notice of a project to the governing body and the Planning Board” and then those two can choose whether or not to hold a Public Hearing. Councilor Zook added that while the Planning Board does not vote on Governmental Uses, it is still a valuable process.

Mayor McNamara noted that times have changed over the past 15 years and it seems like it is worth getting the input from the Planning Board, the Zoning Board, the Conservation Commission.

**ACTION:**

***Assistant Mayor Below MOVED, that the Lebanon City Council in accordance with the City of Lebanon Zoning Ordinance, Article X, Section 1000.3, Amendment Procedures, submits the Zoning Ordinance amendment as shown in the redline dated March 11, 2024, included with the March 20, 2024 City Council agenda packet, to the Planning Board, Conservation Commission, and Zoning Board of Adjustment for their review and comment. The City Council hereby sets the following tentative review schedule:***

***Planning Board – April 22, 2024***

***Zoning Board of Adjustment – May 6, 2024***

***Conservation Commission – May 9, 2024***

***City Council Final Review – June 5, 2024***

***City Council Public Hearing – June 19, 2024***

***Seconded by Councilor Simon.***

***\*The Vote on the MOTION was approved by members present (8-0).***

- D.** Discussion and Set Public Hearing for April 17, 2024: Supplemental Appropriation in the amount of \$724,700 for Landfill Gas to Energy Project

Included in the agenda packet: ***(All supportive documents and information can be found on pages 86-96, Council agenda packet)***

1. Change Order Request from Waldron Engineering & Construction, Inc., dated March 1, 2024.
2. Letter to Solid Waste Manager Erica Douglas from Vergent Power Solutions, dated October 30, 2023, regarding the Factory Protection Plan for CR1000S Microturbine at Lebanon Landfill, including brochure.
3. Landfill Gas-to-Energy Summary of Alternatives spreadsheet, updated through March 5, 2024.

Ms. Erica Douglas (Solid Waste Manager) reviewed the background and explained the reasons behind her request for a Supplemental Appropriation for the Landfill Gas to Energy Project specifically noting that they have run into a multi-year delay due to a required study for National Grid.

**BACKGROUND:**

Various components of the proposed Landfill Gas-to-Energy Project have required amendments due to changes in the scope of services requested by the City and provided by City’s consultant, Waldron Engineering & Construction, Inc. Attached is a Change Order Request from Waldron, which includes work outside the original scope that has already been completed, additional costs associated with the expanded scope of work requested by the City, and costs associated with project delays outside the City’s

and the consultant's control. Specifically, National Grid requested a 16-month study for their substation on Poverty Lane, which Liberty Utilities will utilize in this project. This has caused major delays on the project and increased the costs for maintaining the equipment onsite along with the costs for labor and other materials for the subcontractors as outlined in the change order. The air permit was also submitted originally with catalytic converters, which required multiple redesign efforts, and permitting resubmittals to have them removed. Had this redesign not been done, it would have added significant cost to the project.

In addition, requested funds incorporate anticipated cost increases in the Factory Protection Plan, which covers all maintenance, any repairs as well as replacement of all turbine engines in year 10 of the plan. Due to the delays, the previous warranty extension on the microturbines will run out in August. In order to avoid potential cost increases during commissioning, we will need to sign our contract for the Factory Protection Plan prior to commissioning.

Lastly, requested funds will cover Capstone Factory training costs for two (2) staff members. See Vergent Factory Protection Plan letter dated October 30, 2023 outlining training cost.

Although these additional costs will be bonded by the City, the bond will be repaid from the Solid Waste Enterprise Fund, so there will be no impact on the property tax rate.

#### **Council Comments:**

In response to Councilor Liot Hill's inquiry about what the holdup was with the National Grid, Assistant Mayor Below gave a summary of the situation and specifically noted that Liberty Utilities took an entire year before they engaged with the National Grid. Arguably there is a delay here due to Liberty Utilities failure to act to get their agreement with National Grid for upgrades on their side of the substation. Beyond that, National Grid said they needed 18 months from the time Liberty Utilities signed their contract before they would be able to complete the work, which is now on track to be completed in a matter of months, perhaps by fall of this year (2024).

#### **ACTION:**

***Councilor Simon MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, April 17, 2024, beginning at 7:00pm in Council Chambers, City Hall, and Remote via the City's Virtual Platform, for the purpose of receiving public input and taking action to appropriate \$724,700 to supplement current funding for the Landfill Gas-to-Energy capital project, and to authorize the issuance of bonds/notes in accordance with the Municipal Finance Act (NH RSA 33). Seconded by Councilor Liot Hill.***

***\*The Vote on the MOTION was approved by members present (8-0.)***

#### **E. Presentation of 2022 Financial Audit**

Included in the agenda packet: *(All supportive documents and detailed information can be found on pages 97-206, Council agenda packet)*

1. March 4, 2024 Letter of Governance by Independent Auditors Plodzik & Sanderson, P.A.
2. City of Lebanon Annual Financial Report – Fiscal Year Ending December 31, 2022
3. Municipal Airport Passenger Facility Charges Report – Fiscal Year Ending December 31, 2022

Mr. Kyle Gingras of Plodzik & Sanderson (Audit Manager for the City of Lebanon) was present and briefly summarized their review of the 2022 City of Lebanon's Financial Audit as detailed in the Council

agenda packet. He noted there was one deficiency (*page 194, Council agenda packet*) but that was only due to a missing policy over the use of Airport revenues, which is an easy item to fix.

**ACTION:** *No action was required by the Council: Item was for informational purposes only.*

**F. City Manager Job Description**

Included in the agenda packet: (*All supportive documents and information can be found on pages 207-222, Council agenda packet*)

1. ICMA Code of Ethics
2. Draft City Manager Job Description with proposed changes

City Manager Mulholland reviewed the background and requested the Council add the proposed change to the City Manager's Job Description.

**BACKGROUND:**

The International City Manager's Association (ICMA) has a Code of Ethics that its members must abide by in order to be a member of the ICMA. The City Manager has implemented ADM- 108, which is the administrative policy on ethics that City staff must comply with. The City Manager is recommending that the job description for the position of City Manager be amended to include the ICMA Professional Code of Ethics to the extent its tenets are not contrary to the City's ethics provisions.

Proposed change to the City Manager's Job Description is listed below:

*18.19. Uphold and follow the City's Ethics Policies and the International City Management Association's Code of Ethics to the extent it is not consistent with the City's Ethics Policies.*

**ACTION:**

*Councilor Whittlesey MOVED, that the Lebanon City Council hereby amends the City Manager job description to include the provisions of the ICMA Code of Ethics.*

*Seconded by Councilor Liot Hill.*

*\*The Vote on the MOTION was approved by members present (8-0).*

**11. CITY MANAGER REPORT:**

**City Manager Mulholland updated the Council on the following:**

- Westboro Yard Update: City Manager Mulholland spoke about the conversations he had at a meeting with the New Hampshire DOT Commissioner/staff regarding the ongoing issue of building a \$17M bridge. The Council also held discussions regarding the railroad transloading site.

**12. COUNCIL REPRESENTATIVES TO OTHER BODIES:**

- Councilor Liot Hill extended her, and the City Council's, thanks to the Lebanon Police Department for their response to the Lebanon High School's incident /lockdown and for their response to the river incident this past week.

**13. FUTURE AGENDA ITEMS:**

**14. NON-PUBLIC SESSION: NONE**

**15. ADJOURNMENT:**

***Councilor Whittlesey MOVED for adjournment.***

***Seconded by Councilor Heistad.***

***\*The Vote on the MOTION was unanimously approved by members present (8-0).***

**The meeting was adjourned at 9:41 PM.**

Respectfully submitted,

Dona E. Gibson

Recording Secretary