



**LEBANON PLANNING BOARD
APRIL 22, 2024 - 6:30 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

1. Call to Order

- A. To participate in this meeting, please [join live via Microsoft Teams](#) or call 929-229-5356 (access code: 642 962 236#). If you have trouble accessing this meeting, please [email tim.corwin@lebanonnh.gov](mailto:tim.corwin@lebanonnh.gov).

2. Notice of Regional Impact

3. Study Items

- A. Review and Comment for proposed Zoning Amendment: Text Amendment for Section 214 (Governmental Uses) of the Zoning Ordinance
- B. Master Plan Discussion
- C. Discussion and Set Public Hearing: Impact Fees

4. Committee Reports

- A. **City Council Subcommittees:**
--Class VI Roads Advisory Committee
--Lebanon Energy Advisory Committee
- B. **Other Subcommittees:**
--City Council Representative
--Heritage Commission
--Pedestrian & Bicyclist Advisory Committee
--Upper Valley Lake Sunapee Regional Planning Commission
--UV Subcommittee of the Connecticut River Joint Commissions
--Upper Valley Transportation Management Association
--Mascoma River Local Advisory Committee
--West Lebanon Revitalization Advisory Committee
--Planning & Development Department – Task Status
- C. Minor Site Plan Committee

5. Other Business

6. Approval of Minutes

- A. None

7. Adjournment

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to [LebanonNH.gov/Live](https://lebanonnh.gov/live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note:

Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Planning Board

FROM: Planning and Development Department Staff

RE: Proposed Amendment to Section 214 of the Zoning Ordinance – Governmental Uses

DATE: April 18, 2024

On March 20, 2024, City staff presented to the City Council a proposed amendment to Section 214 (“Governmental Uses”) of the Zoning Ordinance for initial consideration. Following the presentation, the City Council agreed to move the proposed amendment forward for further review.

Section 1000.3 (“Amendment Procedures”), subsection C requires review and comment by the Planning Board regarding any proposed zoning amendment:

All proposed [zoning] amendments shall be forwarded to the Planning Board and Conservation Commission. Planning Board and Conservation Commission shall place the proposed amendment on their agenda for discussion and comment at least thirty (30) days prior to the City Council public hearing. The Planning Board and Conservation Commission shall forward their comments and recommendations to the City Council at least seven (7) days prior to City Council public hearing.

For the Board’s reference and review, attached are the relevant materials from the March 20, 2024, City Council agenda packet, which including the following:

- Staff Memo providing a description of the proposed amendment.
- A redline of Section 214 of the Zoning Ordinance.
- A legal memo providing background on Section 214.
- A copy of RSA 674:54 (“Governmental Uses”).

Additionally, a legal opinion from the City’s attorney prepared pursuant to Section 1000.3.B.2 of the Zoning Ordinance is forthcoming and will be provided at the Planning Board’s meeting on April 22, 2024.

Once review has been completed by the Planning Board and the other land use boards, the City Council will hold a public hearing followed by a vote on whether to adopt the amendment.

Attachments

**Agenda
Lebanon City Council
March 20, 2024**

10. New Business:

**10.C – Request for Zoning Amendment: Text Amendment for
Section 214, Governmental Uses, of the Lebanon Zoning Ordinance**

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 attached 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 aren't 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.

Action

If the Council decides to move forward with the proposed amendment to Section 214, the following motion is offered for consideration:

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

Included in this Section:

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

DRAFT AMENDMENT TO SECTION 214 OF THE CITY OF LEBANON ZONING ORDINANCE

ARTICLE II GENERAL PROVISIONS

SECTION 214 GOVERNMENTAL USES.

Governmental ~~u~~Uses ~~shall be governed by as 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.~~

TO: Lebanon City Council; Shaun Mulholland, City Manager

FROM: C. Christine Johnston

DATE: March 10, 2024

RE: Background Information –Section 214 of Zoning Ordinance

This information is provided pursuant to a request from the City Manager’s Office for background information on Section 214 of the City’s Zoning Ordinance and the current discussion of a potential amendment to that section.

Section 214 currently reads 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.”

In other words, governmental uses by any governmental entity other than the City are not subject to the Zoning Ordinance, but governmental uses proposed by the City itself are subject to it unless the Council votes specifically to make it exempt.

Historical background of the regulation of governmental uses of land:

Historically, municipalities have not been subject to their own zoning ordinances unless they have affirmatively chosen to include a provision in the zoning ordinance stating that the ordinance applies to the municipality itself. *McGrath v. Manchester*, 113 N.H. 355 (1973). In 1996, however, there was still some confusion about whether subdivision and site plan regulations applied to municipal land use projects. RSA 674:54 was first enacted in 1996 to answer this question and provide a clear process for municipalities to follow for their own land use projects.

The original form of the 1996 bill would have made almost all governmental projects subject to local land use ordinances and regulations to the same extent as private developments. However, significant concerns were raised by NH DOT, the university system, other state agencies, and some municipalities. Aside from the costs associated with the application and hearing process before various land use boards, the major concerns involved the very real potential for significant delays that could make many projects difficult or impossible to complete, and the potential that approvals would be denied, either at the local level or by a court on appeal. Although the new land use docket and the Housing Appeals Board have sped up land use appeals somewhat, complicated cases can still be tied up on appeal for a year or more, and a further appeal to the NH Supreme Court usually takes another year. Furthermore, many appeals go to court and are remanded back to the local land use board, only to be appealed again after the next round. This kind of delay can make some projects impossible to complete or take so long that they are no longer useful or effective.

Ultimately, the bill that was adopted in 1996 as RSA 674:54 was one that had been changed to substantially the form it is in today, in which a governmental entity planning a project for a governmental use is required to notify the Planning Board and governing body of the project, provide details, and obtain non-binding comments before the project can occur. In reaching this final language (which is, other than a few additions over the years, still the law today), the legislature concluded that there are fundamentally different issues involved with governmental land uses than there are with private development. While some private development may be focused on the common good (and that is usually the goal of land use regulation, of course), governmental land uses are intended to carry out governmental functions, which are, by definition, intended to benefit the public good in some way. The reason we have local government is to provide services and structure that society needs. When a government needs to build a road, replace a bridge, operate a wastewater treatment facility, build a fire station, expand or renovate City offices, develop a park, etc., such projects are all intended to directly or indirectly benefit the public. The legislature recognized that government can't be subjected to all of the same regulations as private developers because, if it is, government can't function in the way that we all need it to.

As a practical matter, very few cities and towns around New Hampshire have provisions in their zoning ordinances that specifically subject the municipality itself to its own zoning restrictions. Of the 13 cities, Lebanon is one of only two in which city land use projects are entirely subject to zoning (Nashua is the other one). Two others subject themselves to some but not all zoning: The City of Laconia requires its projects to obtain a conditional use permit from the planning board but is otherwise exempt; Keene includes standards for the construction of public infrastructure, regardless of who constructs them, but otherwise does not subject itself to its own land use regulations. The remainder of the cities are not subject to their own zoning.

RSA 674:54:

This statute applies to “governmental uses” of land, which are defined in the law as “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.” RSA 674:54, I.

- When a governmental entity plans a land use project which is “statutorily or traditionally governmental in nature” and which “constitutes a substantial change in use or a substantial new use,” it must provide written notice to the governing body and planning board of the municipality in which the project will occur.
- The notice must include plans, specifications, explanations of the proposed changes available at the time, a statement of the governmental nature of the use, and a proposed construction schedule.
- This notice must be provided at least 60 days before the beginning of construction.
- Either the governing body or planning board of the municipality where the project will occur may conduct a public hearing relative to the proposed governmental use. If a hearing is to be held, it must occur within 30 days after receipt of the notice. A representative of the governmental entity which provided the notice must be available at

the hearing to present the plans, specifications, and construction schedule, and to provide explanations.

- Within 30 days after the hearing, the governing body or planning board may issue non-binding written comments to the entity proposing the project regarding whether the proposal conforms (or not) with the normally-applicable land use regulations.

Of course, sometimes governmental entities are involved in land use projects which are not traditionally or statutorily “governmental” in nature (such as building a housing development). In those cases, the government would be fully subject to the provisions of the local zoning ordinance and land use regulations. RSA 674:54, II-a.

Certain kinds of projects are exempt from both local zoning and from the RSA 675:54 process:

- The layout and construction of public highways of any class
 - Distribution lines or transmission apparatus of governmental utilities (not including wireless communications facilities)
 - Erection, installation, or maintenance of poles, structures, conduits, and cables, or wires in, under, or across any public highways under RSA 231
 - Licenses or leases for telecommunication facilities in, under, or across railroad rights of way (other than wireless communications facilities)
 - The Governor also may declare any governmental use exempt from RSA 674:54 in the event of exigent circumstances where the delay entailed by compliance with that statute would endanger public health or safety
- RSA 674:54, III and IV.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Governmental Use of Property

Section 674:54

674:54 Governmental Land Uses. –

I. In this section, "governmental use" means 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.

II. The state, university system, community college system of New Hampshire, county, town, city, school district, or village district shall give written notification to the governing body and planning board, if such exists, of a municipality of any proposed governmental use of property within its jurisdiction, which constitutes a substantial change in use or a substantial new use. Written notification shall contain plans, specifications, explanations of proposed changes available at the time, a statement of the governmental nature of the use as set forth in paragraph I, and a proposed construction schedule. Such notification shall be provided at least 60 days prior to the beginning of construction. Either the governing body or planning board of the municipality may conduct a public hearing relative to the proposed governmental use. Any such hearing shall be held within 30 days after receipt of notice by the governing body or planning board. A representative of the governmental entity which provided notice shall be available to present the plans, specifications, and construction schedule, and to provide explanations. The governing body or planning board may issue nonbinding written comments relative to conformity or nonconformity of the proposal with normally applicable land use regulations to the sponsor of the governmental use within 30 days after the hearing.

II-a. Any use, construction, or development of land occurring on governmentally owned or occupied land, but which is not a governmental use as defined in paragraph I, shall be fully subject to local land use regulations.

II-b. The construction and operation of any solid waste disposal facility on land owned or occupied by any city or town within another city or town shall be subject to local land use regulations to the same extent as if the land were owned and occupied by a private entity. Nothing in this paragraph shall affect the construction and operation of a solid waste facility on land owned by a solid waste management district formed under RSA 53-A or RSA 53-B or any combination of municipalities authorized by an act of the general court, if the land is located within a city or town that is part of the district.

III. This section shall not apply to:

(a) The layout or construction of public highways of any class, or to the distribution lines or transmission apparatus of governmental utilities, provided that the erection of a highway or utility easement across a parcel of land, shall not, in and of itself, be deemed to subdivide the remaining land into 2 or more lots or sites for conveyance for development purposes in the absence of subdivision approval under this title. For purposes of this subparagraph, "transmission apparatus" shall not include wireless communication facilities.

(b) The erection, installation, or maintenance of poles, structures, conduits and cables, or wires in, under, or across any public highways under RSA 231, or licenses or leases for telecommunication facilities in, under, or across railroad rights of way. For purposes of this subparagraph, "structures" shall not include wireless communications facilities.

IV. In the event of exigent circumstances where the delay entailed by compliance with this section would endanger public health or safety, the governor may declare a governmental use exempt from the requirements of this section.

Source. 1996, 262:1. 1998, 281:2. 2007, 29:1, eff. May 14, 2007; 361:32, eff. July 17, 2007.

March 21, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Proposed Zoning Amendment
Governmental Uses; Section 214**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a proposed amendment to revise Section 214 (“Governmental Uses”). The proposed amendment would provide that “governmental uses” as defined in RSA 674:54, whether by the City or by another governmental entity, are subject to the process in RSA 674:54. Uses by the City which do not constitute governmental uses would be fully subject to the provisions of the Zoning Ordinance unless the City Council voted to make a particular use exempt.

I have reviewed the following documents in connection with this opinion:

- Proposed amendment language dated March 11, 2024
- Staff Memo to City Council provided March 20, 2024 regarding the requested amendment

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

My answer to the three questions in Section 1000.2.B(2) is “yes” and I discern no legal or administrative issues of concern with that request.

Please do not hesitate to contact me about any aspect of this.

Sincerely,



C. Christine Johnston