

FINAL

**LEBANON CITY COUNCIL
REGULAR SESSION MINUTES
Wednesday, June 5, 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, Christian Simon, George Sykes, Douglas Whittlesey, And Devin Wilkie

MEMBERS ABSENT: Karen Zook

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager David Brooks, DPW Administrative Services Manager Kelly Crate, Finance Director Vicki Lee, Deputy Finance Director Alesia Williams, Chief Innovation and AI Officer Melanie McDonough, Director of Planning & Development Nathan Reichert, Human Resources Director Samantha Lauzon, Planning Administrative Assistant Crystal Taplin, City Manager Intern Klaleh Punni

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. Robert Moses (Ward-3 and CCB Chair of Trustees) came forth and informed the Council about the changes coming to the CCB, noting he had sent the Council an email informing them of the changes being made that included Childcare supervision; will now be expanding childcare to K-6th graders; and, the introduction of a program to train more childcare providers.
5. **RECOGNITIONS:**
 - **Resolution Honoring Eagle Scout Logan Rafter**

WHEREAS, Logan Rafter, a member of Boy Scout Troop 279, has successfully completed all the requirements for the rank of Eagle Scout, the highest rank in Boy Scouting; and

WHEREAS, the journey to Eagle Scout is a rigorous and demanding process that begins with learning the fundamentals of scouting, including the Scout Law, Oath, and Spirit, and progresses through the ranks of Scout, Tenderfoot, Second Class, First Class, Star, and Life; and

WHEREAS, Logan Rafter has demonstrated exceptional dedication, leadership, and service through his participation in community service projects, leadership roles, and the completion of merit badges required for the Eagle rank; and

WHEREAS, as a Life Scout, Logan Rafter mentored younger scouts, continued working on Eagle requirements, and successfully planned and executed an Eagle project that significantly benefited the community; and

WHEREAS, Logan Rafter’s Eagle Project involved the creation and installation of a historical marker for a historic site located on Ticknor Road in Lebanon, preserving an important piece of local history and educating the community about its heritage.

NOW, THEREFORE BE IT RESOLVED, that the Lebanon City Council, on behalf of the City of Lebanon, hereby recognizes and honors Logan Rafter for his outstanding achievement in attaining the rank of Eagle Scout. Logan serves an inspiration to other young individuals within our city to pursue excellence, service, and the pursuit of their dreams.

Dated this 5th day of June 2024.

Timothy J. McNamara, Mayor
on behalf of the Lebanon City Council

6. ACCEPTANCE OF MINUTES:

- May 8, 2024 (Special Meeting)

Amendments: Page 23; end of Lines 1-3 ADD: “Seconded by Councilor Wilkie”: Page 23; Line 5, Remove Assistant Mayor Below from Voting Yea list.

- May 15, 2024 (Regular Session)

Amendments:

- Page 38, Line 33: Change “Amendment” to “Amended”
- Page 38, Starting on Line 29: Change to read: “Assistant Mayor Below suggested that §3 of the proposed Ordinance as written in Council packet be changed to read: The Ordinance shall become effective on August 1, 2024”:
- Page 38, Line 31: Strike Seconded by Councilor Liot Hill;
- Page 38, Line 33: Add: “Councilor Whittlesey, as maker of the Motion agreed to incorporate that change to his motion and Councilor Wilkie, as the Councilor who seconded the Motion, also agreed to the change.

Councilor Heistad MOVED to approve the May 8, 2024 (Special Meeting) and the May 15, 2024 (Regular Session) minutes as amended and presented in the June 5, 2024 City Council agenda packet.

Seconded by Councilor Liot Hill.

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

7. APPOINTMENTS:

- Pedestrian & Bicyclist Advisory Committee, Nelson Rooker (Alternate Member)

Mayor McNamara MOVED to NOMINATE Nelson Rooker as an Alternate Member of the Pedestrian & Bicyclist Advisory Committee. Term: 06/24-06/27

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

- Library Board of Trustees, Ellen Hubbell (Alternate Member)

Assistant Mayor Below MOVED to NOMINATE Ellen Hubbell as an Alternate Member of the Library Board of Trustees. Term: 06/24-06/25

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

8. PUBLIC HEARING ITEMS:

- A. Supplemental Appropriation in the Amount of \$1,100,000 for Replacement of Central Fire Station (Station #1) Capital Project** – A public hearing for the purpose of receiving public input and taking action to appropriate \$1,100,000 to supplement current funding appropriations for the Lebanon Central Fire Station (Station #1) Replacement capital project.

Included in the agenda packet: **(All supportive documents and information can be found on pages 60-63, Council agenda packet)**

1. April 17, 2024 Memorandum from Fire Chief Jim Wheatley to the City Manager

City Manager Mulholland reviewed background and summarized the April 17, 2024 Memo from Fire Chief Wheatley, noting that the survey revealed that ground improvements will be required to ensure long-term stability and durability of the new building. He spoke about the backfill that makes the ground somewhat unsteady. This requires enhanced improvements to the property's foundation to make sure the building does not collapse. If this is not done, there is a risk that cracks in the foundation will form, or that the building might collapse (i.e., in the case of an earthquake). This project will be bonded over a 20-year period.

BACKGROUND

The replacement of the Lebanon Central Fire Station (Station #1) was approved as part of the 2024 City of Lebanon Capital Budget. The engineering and design process for the new station is underway. The results of recent geotechnical surveys in areas directly around the existing building indicate that subsurface improvements are required to ensure the long-term stability and durability of the new building. The subsurface improvements are estimated to cost \$1,100,000 dollars.

At the request of Mayor McNamara, Mr. Aaron Smart from SW Cole (Engineering Firm), came forth and explained the technical conditions of the ground soil underneath the existing Fire Station, what would be needed to ensure long-term stability and durability of the new building, and the associated costs for ground improvements. They would like to put these buildings on spread footings because they are the most cost efficient and are easy to build on. He spoke about the subsurface conditions (thin layer of fill directly under the Fire Station which is over a very thick deposit of natural clay and silt) and further explained what this soil composition means for this project and how they plan to address this situation so that over the life of the building it will not tilt or shift.

Mayor McNamara noted that the current Fire Station has been there for over 70 years and asked if the existing building had not compressed the clay to the point where it is okay now? Mr. Smart noted that their concern is the loads we deal with now, along with the building codes, are not the same that they dealt with when the Fire Station was initially built so they are governed now by loads and load designs that are different from 50 years ago.

Councilor Whittlesey asked what the risk would be if they go in there and find it (soil conditions) is worse. Mr. Smart said that when you deal with these sorts of deposits (clay/silt) and when you do this ground improvement, the materials and the method of installation can be done for a variety/wide range of subsurface conditions. It becomes a fix-all for all different types of subsurface conditions. With this deposit we can make a really good engineering judgement and say that this deposit is relatively homogenous. They have done subsurface explorations on the neighboring property (to the west) and found the same deposit and the same levels on that property as well.

Mayor McNamara asked if the current building code requires the City to do this. Mr. Smart noted that the current engineering practice usually shoots for an inch of settlement and if the owners decide that they want to take the risk, then that is up to the owners. It is not up to the engineers. It is the engineers' responsibility to weigh in and tell you what we think will work.

Councilor Heistad spoke about the Hopkins Center noting that when that building was built, they decided to use pilings to support it. Unfortunately, those pilings never reached refusal on the south side so the building developed cracks in the walls.

In response to Assistant Mayor Below's question, Mr. Smart noted there would be no additional test borings done. This would not be of any benefit at this time and would not change his recommendations.

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

ACTION:

Councilor Liot Hill MOVED the following:

FOR THE PURPOSE OF advancing and implementing the Central Fire Station (Station #1) Replacement Capital Project.

NOW THEREFORE BE IT RESOLVED, by the City of Lebanon, that funds be appropriated in the amount of \$1,100,000 (One Million, One Hundred Thousand Dollars) for expenditure in the Capital Improvements Fund to supplement current funding for the Central Fire Station (Station #1) Replacement Capital Project.

BE IT FURTHER RESOLVED, by the City of Lebanon, that the City Treasurer, with the approval of the City Manager, is authorized to issue, in accordance with the Municipal Finance Act (NH RSA 33), a bond issue or bond issues in an amount not to exceed \$1,100,000, and that, except as herein otherwise provided, discretion to fix the dates, maturities, denomination, interest rate, form, and other details of said issue(s) is hereby delegated to the City Treasurer, with the approval of the City Manager.

This resolution shall be effective upon passage.

Seconded by Councilor Sykes.

Before taking a vote, the Council and City Manager Mulholland discussed the bond market; what would be covered by the contingency funds for this building; and, purchasing some of the building materials and storing them now before they become more expensive.

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

- B. Provisional Dedication and Acceptance of Proposed Barden Hill Trail and Proposed "Connector" Segment between Atherton Road and Durkee Road, both as Class A Trails pursuant to NH RSA 231-A:5, and Discontinuance of a Section of Class VI Road #14 (Barden Hill Road); Discontinuance of a Section of Class VI Road #19 (Durkee Road); Discontinuance of a Section of Class VI Road #20 (Atherton Road); and Discontinuance**

of Class VI Road #21 (McCallister Road) – A public hearing for the purpose of receiving public input and taking action on a proposal from Patch Forest, LLC for the provisional dedication and acceptance of the proposed Barden Hill Trail and the proposed “Connector” segment between Atherton Road and Durkee Road, both as Class A Trails pursuant to NH RSA 231-A:5; and for the discontinuance of a section of Class VI Road #14 (Barden Hill Road); discontinuance of a section of Class VI Road #19 (Durkee Road); discontinuance of a section of Class VI Road #20 (Atherton Road); and discontinuance of Class VI Road #21 (McCallister Road).

Included in the agenda packet: **(Note: All supportive documents, map and detailed information can be found on pages 64-76, Council agenda packet)**

1. Patch Forest, LLC Settlement Proposal, Proposed Terms of Compromise, received April 18, 2024.
2. Draft Class VI Road Map
3. GPS depiction of proposed Connector segment
4. Draft – Proposed Concept Map of Class VI Road and Class A Trails on Patch Forest, LLC property, dated May 21, 2024
5. Proposed Parking Easement Plan

BACKGROUND

Patch Forest, LLC has submitted a new proposal to discontinue certain sections of Class VI public roads passing through the Patch Forest property in exchange for the dedication of Class A municipal trails and a public parking area.

The proposed discontinuances are a section of Class VI Road #14 (Barden Hill Road); a section of Class VI Road #19 (Durkee Road); a section of Class VI Road #20 (Atherton Road); and all of Class VI Road #21 (McCallister Road) in Lebanon.

In conjunction with the proposed discontinuances, Patch Forest proposes to:

1. Identify, create, and dedicate an alternate Barden Hill Trail for acceptance by the City as a Class A Trail per NH RSA 231-A:5.
2. Grant an easement to the City for construction of a small public parking area off of Methodist Hill Road, to facilitate public access to the new Barden Hill Trail at its easterly end.
3. Identify, create, and dedicate a “Connector” segment between the best sections of Atherton Road and Durkee Road (which will not be discontinued) for acceptance by the City as a Class A Trail per NH RSA 231-A:5, in order to create a single, unbroken right-of-way from the southernmost point of Atherton Road, at the Enfield town line, to the westernmost point of Durkee Road, at NH Route 120.

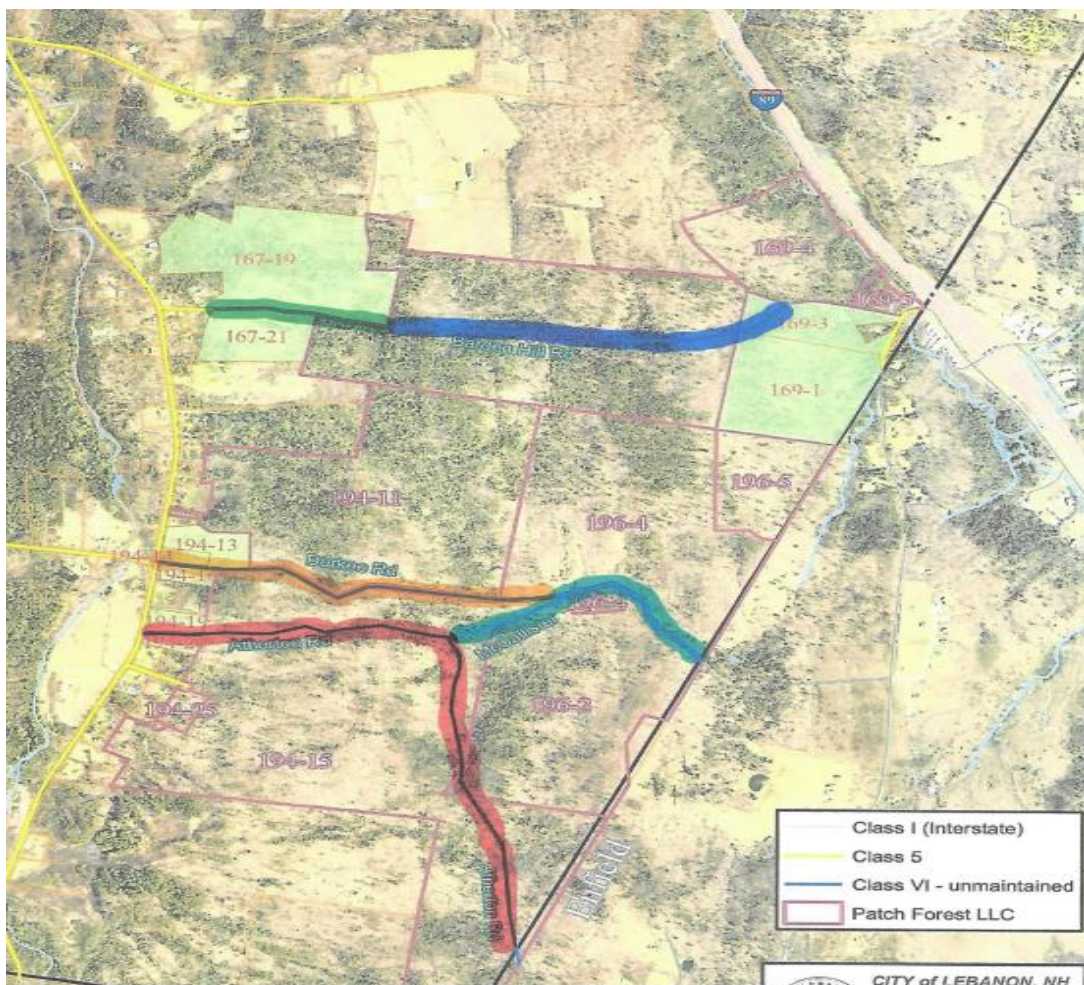
The settlement proposal **(Pages 67-76, Council Agenda packet)** stems from litigation between Patch Forest, LLC and the City, which has been temporarily stayed to allow the parties to negotiate a potential resolution concerning the Class VI roads on the Patch Forest property that would avoid costs of litigation to both parties. The current proposal from Patch Forest, if approved by the Council, would end the litigation.

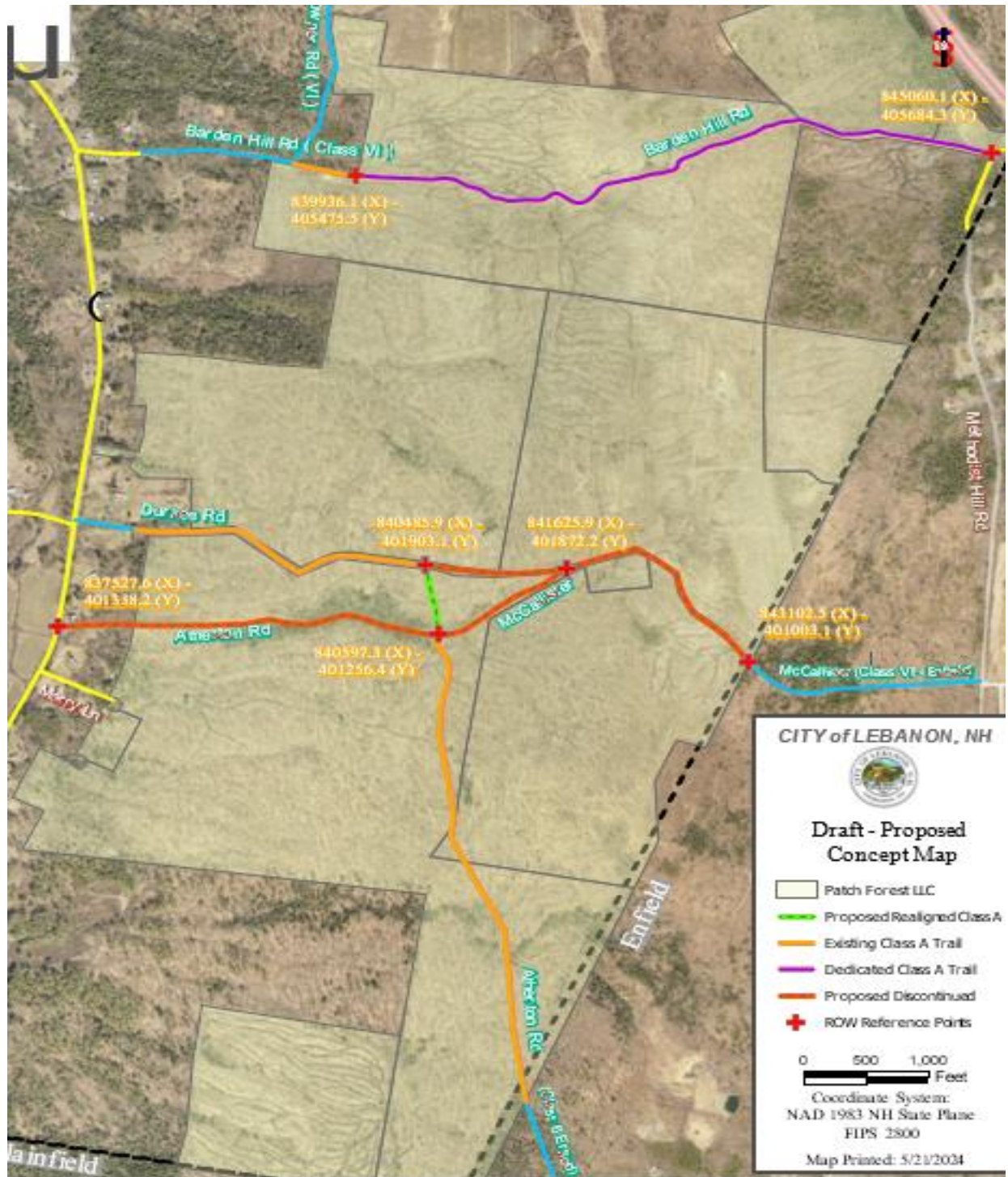
Matthew Decker, Legal Counsel for the City and Brad Wilder, Legal Counsel for Patch Forest, LLC reviewed and discussed the current settlement proposal from Patch Forest, LLC.

City Attorney Decker came forth and spoke about the history of all four (4) of these roads and the Council’s reclassification of these roads to Class A Trails which specified certain restrictions for them. Last summer,

Patch Forest brought forward a second proposal where they wished to dedicate a Barden Trail in the vicinity of the Barden Hill historical road and also wanted to dedicate a parking area on the east end of the trail. That was not accepted by the Council but the feedback they received from the Council was that they would like a southern route, in addition to the Barden Hill Trail. Tonight is the third proposal that adds a southern route and felt the parties agreed this is the final stab at this. If this proposal is acceptable to the Council, then we may be able to resolve the court case. If not, then we would move ahead with a court trial. He reminded the Council and public that the reason why they are here, and why these roads are in dispute at all, is because they are unable to locate layout documents for these roads. Historically, there would have been (in the 1700/1800's) a record of the layout from either a town meeting or the Lebanon Council, establishing a public highway from point A to point B that described the route and width of the roads. We were unable to locate these for the roads being contested and this is why the Class VI Committee was tasked with the job of analyzing whether these were public highways by prescription (20 years of continuous public use adverse to the interests of the landowner at the time). The Class VI Committee's conclusion was that these roads are public highways, and he agreed with their conclusion. However, a reasonable mind might disagree (i.e., the judge in this case) and that is why this is open for negotiation.

City Attorney Decker presented and explained the layout and history of roads on the following maps (all included in agenda packet).





Attorney Decker noted that because of the dedication of Barden Hill Trail and the green connector (on the map above) were being done under RSA:231A:5. Patch Forest, as the dedicator of their property can dictate the minimum Use Restrictions on the trail and the Council would not have the authority to reduce those restrictions and further explained the uses that would be permitted. The Council could restrict uses

but could not expand uses. On the connector trail (shown in green on the map), snowmobile use will not be permitted. He also noted that the detailed proposal in the agenda packet would be used by him and Attorney Wilder as a Settlement Agreement to resolve the court case.

Attorney for the Patch Family, LLC., Brad Wilder, came forth and noted one correction on the map that showed the green connector. The objective is to make this a dedicated Class A Trail. He also noted there has been a lot of discussions on discovery, history, and the legal parameters if this case ends up being resolved by the judge in Superior Court. His concern tonight is that a lot of people may express their concerns, from an emotional angle, about what the Council should or should not do in this case and explained his reasoning. As part of the lawsuit, a judge could do a number of things (i.e., ruling in the City's favor or making a determination that none of these roads exist by prescription and simply classify them as private property). The law in this case states they must exist by prescription unless the City can point to some other means by which these roads exist. He further reviewed what the judge's decision might be. To the extent that we have the opportunity to reach an agreement that serves everybody's interest in this case, and it is workable. He further spoke about his reasons how the proposal put forth regarding these four (4) roads would be able to accomplish this.

Attorney Wilder presented a video on the connector trail (which can be viewed in its entirety on the City's website under the June 5, 2024 City Council Meeting). For the connector trail, the sap lines would be removed or relocated to the sides of the trail.

Attorney Wilder spoke about a letter he received from Deputy City Manager Brooks that was sent to the City Council. The letter was from the Chairperson (Mark Gardner, received April 25, 2024) of the Enfield Planning Board that suggested the Council take caution in accepting this proposal and giving up trails. He spoke about his concerns with this letter and reiterated what the City could potentially lose if this case goes into litigation.

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

- **Ms. Janice Lahaye (383 Meridan Road in Lebanon):** In response to her question regarding the width of these trails, City Attorney Decker noted that Barden Hill Trail is 1-rod (16.5') and should accommodate a snowmobile groomer; The Connector Trail will be 3-rods.
- **Mr. Casale (35 Churchill Lane):** He spoke about his concerns regarding prescriptive evidence for these roads, noting that a lot of evidence for prescriptive evidence is gone due to logging operations (on the property) and furthered his reasonings. He also questioned who would have oversight for the uninterrupted free passage on these roads and if this proposal would set a precedent for other large parcels of land with the State/Region and beyond.
- **Ms. Barbara Hirai (Ward-1):** She spoke about her reasons why this proposal compromise should be settled tonight, noting this one shows a lot of thought, even though we may not be getting all we want.
- **Ms. Nicole Ford Burley (Ward-3 and City Historian):** She spoke about her reasons why she was against the discontinuance of these historic roads in the proposal. These trails/roads should not be given up due to their historical significance to the City.

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

Council Comments:

Mayor McNamara noted this case has been discussed for almost 4-years now and the Council has been through multiple reiterations of this. We have heard the ramifications of leaving this up to a judge and felt this proposal is a reasonable solution to this problem that would finally bring it to closure.

In response to Councilor Whittlesey's request regarding the state of the roads for the discontinuance of Atherton and McCallister roads, Attorney Decker noted his role is to provide legal advice and the Council should not take his opinion regarding the quality of roads. With that said, he noted Mark Goodwin and he have been out on those roads 4-5 times and the sections to be discontinued are not pleasant to use in their current condition.

ACTION:

Assistant Mayor Below MOVED, that in coordination with the City Manager's negotiation of the settlement of a legal dispute (Grafton County Superior Court Case No. 215-2020-CV-00042, Patch Forest, LLC v. City of Lebanon) concerning the status of sections of certain public rights-of-way known as Barden Hill Road, Atherton Road, Durkee Road, and McCallister Road, the Lebanon City Council hereby acts, on a provisional and contingent basis, to approve the following proposed terms of said settlement over which the Council has statutory authority:

- 1. BE IT FURTHER MOVED, that the Lebanon City Council hereby provisionally approves the proposed dedication by Patch Forest, LLC of an alternate "Barden Hill Trail" as a Class A Trail pursuant to RSA 231-A:5 across the land owned by said Patch Forest, LLC, to be established at a width of one rod (16.5 feet), with a westerly end at point 839936.1(X)-405475.5(Y) and an easterly end at point 845060.1(X)-405684.3(Y) as shown on the "Draft – Proposed Concept Map" depicting Coordinate System: NAD 1983 NH State Plane FIPS 2800, printed May 21, 2024, subject to trail use restrictions imposed by the grantor and other terms as set forth in the "Patch Forest, LLC Settlement Proposal, Draft – For Settlement Discussions" document included in the June 5, 2024 City Council agenda packet, and following the City Manager's and Patch Forest, LLC's joint procurement of a survey plan depicting the course and location of such proposed trail.***
- 2. BE IT FURTHER MOVED, that the Lebanon City Council hereby provisionally approves the acceptance of a proposed easement over property situated at 2 Methodist Hill Road (Tax Map 169, Lot 5) to enable the construction and maintenance by the City of a small public parking area, in accordance with a sketch plan included in the June 5, 2024 City Council agenda packet, to facilitate public access to the proposed new Barden Hill Trail at its easterly end, subject to restrictions imposed by the grantor and other terms as set forth in the "Patch Forest, LLC Settlement Proposal, Draft – For Settlement Discussions" document included in the June 5, 2024 City Council agenda packet.***
- 3. BE IT FURTHER MOVED, that the Lebanon City Council hereby provisionally approves the proposed dedication by Patch Forest, LLC of a "Connector" segment between Atherton Road and Durkee Road, as a Class A Trail pursuant to RSA 231-A:5 across the land owned by said Patch Forest, LLC, to be established at a width of three rods (49.5 feet), running from the Atherton Road/McCallister Road intersection at GPS coordinate point 840597.3(X)-401256.4(Y) in a northerly direction across a brook (at the point of an existing snowmobile bridge) until it intersects with Durkee Road at GPS coordinate point of 840485.9(X)-401903.1(Y) as shown on the "Draft – Proposed Concept Map" depicting Coordinate System: NAD 1983 NH State Plane FIPS 2800, printed May 21, 2024, subject to trail use restrictions imposed by the grantor and other terms as set forth in the "Patch Forest, LLC Settlement Proposal, Draft – For Settlement Discussions" document included in the June 5, 2024 City Council agenda packet, and following the City Manager's and Patch Forest, LLC's joint procurement of a survey plan depicting the***

course and location of such proposed trail.

4. ***BE IT FURTHER MOVED, that, conditioned upon the Lebanon City Council’s anticipated future formal acceptance of the proposed Barden Hill Trail and of the “Connector” segment referenced in sections 1 and 3 of this motion, respectively, the Lebanon City Council hereby provisionally approves the proposed complete discontinuance, in their entirety, and relinquishment of any right, title, or future interest, in the following public rights of way as shown on the “Draft – Proposed Concept Map” depicting Coordinate System: NAD 1983 NH State Plane FIPS 2800, printed May 21, 2024, and included in the June 5, 2024 City Council Agenda Packet:***
 - A. ***A section of Class A Trail #14 (Barden Hill Road) (f/k/a Class VI Road #14) between points 839936.1(X)-405475.5(Y) and 845060.1(X)-405684.3(Y);***
 - B. ***A section of Class A Trail #19 (Durkee Road) (f/k/a Class VI Road #19) between points 840485.9(X)-401903.1(Y) and 841625.9(X)-401872.2(Y);***
 - C. ***A section of Class A Trail #20 (Atherton Road) (f/k/a Class VI Road #20) between points 837527.6(X)-401338.2(Y) and 840597.3(X)-401256.4(Y); and***
 - D. ***Class A Trail #21 (McCallister Road) (f/k/a Class VI Road #21) between points 840597.3(X)-401256.4(Y) and 843102.5(X)-401003.1(Y).***
5. ***BE IT FURTHER MOVED that the section(s) of public rights of way outside of the coordinate points referenced in section 4 of this motion shall be unaffected by these discontinuances.***
6. ***AND BE IT FURTHER MOVED, that the Lebanon City Council shall take further action to ratify and confirm the foregoing provisional acts upon receipt of the City Manager’s report that the City Manager’s office and Patch Forest, LLC have carried out the terms of the “Patch Forest, LLC Settlement Proposal, Draft – For Settlement Discussions” document.***

Seconded by Councilor Whittlesey.

Councilor Below spoke to his motion noting he felt this has been a long time coming and there has been a lot of work done from both parties. It’s not just as easy as holding onto every Class VI Road because there is ambiguity on some of these, as well as a litigation risk. He thought this is a good resolution of the issues and creates two very useful trails which are more useful than the conditions that exist now.

Councilor Heistad was disappointed that we are not taking a higher road in terms of how we negotiate with other towns (i.e., Enfield), and the owner of the house at the end of the road. He spoke about his reasons why he felt the needs of Enfield’s southern end are not being addressed.

Councilor Sykes, while not happy with the probable loss of some portions of these roads, felt the City Council has an obligation to keep the best interests of the citizens of Lebanon in mind when making decisions, along with financial responsibilities and an obligation to negotiate in good faith. It is not a perfect solution but thought this (proposal) had some good things about it. His intention was to reluctantly vote in favor of this motion.

Councilor Liot Hill spoke about her reasons why she was in favor of voting for this proposal, noting the Council is trying to achieve the best possible outcome for the largest number of people. We are also trying to achieve a good resolution for one of the largest agricultural uses in the City of Lebanon and want

an outcome that will also allow a long-standing family business to continue doing their work. She believed that this negotiated proposal is probably as good as it gets. The Council has taken into account the Class VI Roads recommendations; the testimony offered by our City Historian about the importance of preserving as much of the Class VI Roads as possible; the physical historic record; the Town of Enfield's request to have connections; various users who wanted to have a loop so that trails would not simply be out and back; and, the litigation risks of continuing this dispute. She intends to support this proposal recognizing it is not perfect, but it achieves multiple objectives that have been attested to in the record and will benefit the people of Lebanon for decades/centuries to come.

Councilor Wilkie was not happy with this but was content with it. This is the best solution we can come up with.

****The Vote on the Motion was approved by members present (7-1). Councilor Heistad opposed.***

9. OLD BUSINESS: NONE

10. NEW BUSINESS:

A. Abatement Request for 78 Bank Street

Included in the agenda packet: **(All supportive documents and detailed information can be found on pages 78-91, Council agenda packet)**

1. Letter from Marlee Dixon and Greg Hagley, received May 7, 2024
2. Memo from DPW Director Jay Cairelli, dated May 22, 2024, summarizing water and sewer fees assessed against 78 Bank Street
3. Memo from Planning & Development Department Staff, dated May 13, 2024, summarizing impact fees assessed against 78 Bank Street
4. Impact Fee Acknowledgment/Invoice Form for 78 Bank Street

Available, but not included in this Section:

5. [City Code Chapter 68, Fees](#)
6. [City Code Chapter 136, Sewer Service](#)
7. [City Code Chapter 182, Water Service](#)
8. [Zoning Ordinance Section 213, Impact Fees](#)

BACKGROUND

On May 7, 2024, the City Manager's Office received a letter from Marlee Dixon and Greg Hagley requesting an abatement of water, sewer, and impact fees assessed against their property at 78 Bank Street in Lebanon. Ms. Dixon and Mr. Hagley purchased the property in January 2024 and converted it from a professional office use to a single-family residence.

The Department of Public Works and the Planning & Development Department have each provided memos summarizing the amounts of the water, sewer, and impact fees assessed against the property based on its conversion to a single-family residence and have cited the relevant sections of the City Code or Zoning Ordinance used as the basis for the assessments.

As noted in City Code Chapter 68-9, Abatement, "the City Council may abate, for good cause shown, any water investment fee or water development fee assessed on any person or organization pursuant to this article. Such abatements may be made on such terms and conditions as the City Council shall deem equitable under the circumstances." Similarly, City Code Chapter 136-124, Abatement of sewer

development charges, states “The City Council may abate, for good cause shown, any sewer development charge assessed on any person or organization pursuant to this article. Such abatements may be made on such terms and conditions as the City Council shall deem equitable under the circumstances.”

However, as noted in the Planning & Development Department memo, Section 213.9 of the Zoning Ordinance provides that the Planning Board has jurisdiction over appeals regarding the assessment of impact fees.

Council/Staff/Applicant Discussions:

At the request of Mayor McNamara, Marlee Dixon and Greg Hagley (owners of 78 Bank Street, Lebanon, NH) came forth to summarize the reasons behind their request for an abatement of water/sewer, and Impact Fees assessed against their property, which they converted from a professional office use to a single-family residence.

Ms. Dixon briefly described the history of their situation. Starting on 12/17/23, she clearly stated our intention was to convert the property into a home and to obtain a permit to install a bathtub. At this point they were assessed a \$250 sewer fee and were notified they would have to get a building permit. We got the permit and put the bathroom in, closed on the property, and moved in. Two weeks after we had moved in, we were given information that we had to put forth sewer and water applications and were charged \$2777 in sewer fees and \$800 in water fees because we were proposing adding a three-bedroom house to a commercial building we were now converting back to a residential building. They did not add anything (to the building) and there was no work that needed to be completed. She stated that the former business water usage was estimated at 28 gal./day and their water usage would go up substantially. They closed on the property on January 31, 2024, and in March were contacted by the City saying they would need to change their site from a commercial site to a residential building, noting she had talked to the City of Lebanon previously letting them know this was their plan. Also, with that email came a notice about the Impact Fee charge of \$5,700, which they had no knowledge about. So, in total, to just convert the house (to residential), and change the zoning with the addition of one bathroom, we have excessive fees of \$9,000. She noted they did make other offers on other houses around Lebanon, and this was the first one they actually were able to sign a contract on. This is a huge financial burden given the need to add other things (i.e., refrigerator, stove, all the electrical work, etc.) to make it livable. (Note: All of the applicant’s details were included in the June 5, 2024, agenda packet.)

Mayor McNamara noted the City has two types of fees: 1) water/sewer fees) and 2) Impact Fees. His understanding is that any appeal of the Impact Fees is in the purview of the Planning Board. For the Water/Sewer Fees, the Council has the ability to act on the sewer fees but do not have the ability, in the past, to act on the water fees but may have the ability to do that. He requested the Council focus on the water/sewer fees with the realization that by our Statutes, Ms. Dixon and Mr. Hagley may need to go before the Planning Board to appeal the Impact Fees.

City Manager Mulholland wanted to make sure the Council, Ms. Dixon, and Mr. Hagley understood that this is an informal hearing for the Council and there is a standard that needs to be met in this proceeding. The standard is that a “good cause” needs to be shown, which is a legal standard. It is important that when the Council makes a decision, it has to show “good cause.” We also need to consider the precedent that everyone else is operating under, which is an equity issue.

Mr. Brian Vincent, City Engineer, came forth noting he had reviewed the application on behalf of the applicant(s), and went through the whole process that we go through with any other application. Their case was difficult because they were moving into a building that was formerly an office (building) and

that office was occupied by 6-7 employees. The sewer use for that office was low. We did research to look for a permit because they (applicants) would get credit for any existing permit present for the property, but records did not show a permit present for this property. As a result, by City Code, we have to revert that actual water usage over the past five (5) years. We pulled water meter data for 2019 to March 2024 and we applied that credit to this application. The challenge is that credit was quite low because it (78 Bank Street) was an office building, and it went through a period of COVID. As a result, the building had low usage. The Code does not provide anything relative to pandemics or any other prior usage in the 1970's/1980's. Originally, this application was for a 4-bedroom house, but they revised this to a 3-bedroom house and the usage in a house setting is much higher than an office usage. To make it worse, the office usage had to be actual usage and not projected usage. When calculations are done, we use projected usage for future use and if there is not a permit, we have to use existing usage for past use. When all the math is done, it is an expensive permit because the Sewer Development Charge is based on the sewer unit and sewer units that were developed for this project were 3.9 units (cost is \$306 per sewer unit) so it was \$2600 +/- for the development charge plus the application fee (\$250). This is all based on the City Code.

There was also a water usage application for a single-family house that is a fixed usage fee. Out of the four elements for this charge, only three applied to this one: Application Fee = \$50; Water Investment Fee = \$70; and the Water Development Fee = \$680 for a total of \$800. This again was also calculated according to the City Code. We follow the requirements of the code.

In response to Mayor McNamara's request regarding water records that go back before COVID, Mr. Vincent said yes, they could pull those record and if they take the period of COVID out it would make a difference, but it is just not the way it is structured in the code. We face this situation with every application we have had that did not have an existing Sewer Permit for the last five (5) years. Mr. Vincent also noted that it is his understanding that this property was converted from a single-family home to a law office (commercial property) in the mid 1980's.

Councilor Whittlesey noted that in the agenda packet there was a Special Exception to permit a professional office in a residential building and questioned why we are treating this as a change of zoning if it is a Special Exception. A Special Exception should not change the zoning consideration so it should actually be viewed as a commercial to residential because it was just a Special Exemption for the previous owner, that no longer applies on the sale of the property. Would those Development Fees, by Statute, still apply? Mr. Vincent stated there is no proposal to change or amend anything in the Zoning Ordinance. Councilor Liot Hill noted that the "USE" continues with the ownership. The property is being given an exemption, not the owner.

Nathan Reichert, Director of Planning & Development, clarified that most Special Exemptions carry with the land and not with owner.

Council Whittlesey questioned why the City was not making the applicants aware of (these fees) at the time of the original inquiry in December versus March. Mr. Vincent explained that the Planning Department does not have anything to do with Building Codes/Permits. Public Works does things relative to driveway permits, excavation permits, sewer/water permits. When we see an application come through, that is when we act on it. While he was not sure of the exact timing, he said they probably got the application in maybe January. He said it has to go through a review process and costs will not be known until the process is completed. The research to figure out if it (a property) has an existing permit takes

time and at the same time he needs to get water meter data, have that reviewed and that converted over to the gallons/day projected out over five (5) years. Once he gets through that process, he starts developing the structure for costs relative to Sewer Development charges. This can take 3-5 weeks. The applicants had already built a bathroom and we allowed for a CO (Certificate of Occupancy) so they could move in before we got through this review process and that's when it came to light what these costs were.

Assistant Mayor Below questioned how far back the imposition of the Water Investment Fee went into effect. Mr. Vincent noted that the earliest he has seen is somewhere around the 1990s. We could go back to look at those fees, but what the code provides is going back to the past five (5) years. He has no mechanism to go back into the 1980s and apply the water meter data and doubts if there is a record of this at this point.

Assistant Mayor Below and Mr. Vincent continued their discussions regarding the use impacts of the property, if its original use was residential, then turned into a commercial use, and then returned as a residential use.

City Manager Mulholland noted the Sewer Development Fee is only 5-years old and then the Water Investment Fees were also added. The reasons why these were added was due to the CSO Projects and the debt the City incurred because of these. The concept was to have new people moving into Lebanon to buy into that system because the residents of the City had been paying for these costs (CSO Projects) and further explained his reasoning.

Councilor Liot Hill noted this was a property that was formally residential but never paid a Sewer Development Charge or Water Investment Fee. She and Ms. Dixon discussed the size of the house; the sale price of the home; the Real Estate agents involved with the sale; the permit issued to the previous owner; and the temporary CO (with conditions that needed to be met) so the applicants could move into the property. Councilor Liot Hill noted she was concerned about the internal process for a change in use and questioned if it was typically allowed to issue a CO before all permits have been issued and paid for. Mr. Vincent said it depends on the scenario, noting that in this case the applicants must have had a Building Permit because they built the bathroom. However, the Sewer/Water permits had not been completed yet, so he approved a temporary CO so they could move in. The Planning Department made this (temporary CO) contingent upon getting through the Water/Sewer Permitting.

Mr. Reichert said it is atypical to issue a temporary CO without fees being paid but they try to be as flexible as they can from the standpoint of recognizing that people need a place to live. While sometimes the physical pieces may be complete, there are still conditions that have to be made (i.e., the fees in this case) and further explained the process for issuing a temporary CO.

Assistant Mayor Below thought there was a problem with both the Ordinances regarding these fees, as well as the Impact Fee Ordinance and explained his reasoning (i.e., charges going from one use to a different use; charges/fees going back to a previous use; problems with the Impact Fees where these can be paid over and over again each time the use changes). He also discussed the equitability in the legislative purpose of these Ordinances. This home is listed under the property records as having existed since the 1800s (at least 150 years) and was paying whatever fees it was paying over decades before the City built a water/sewer system. He further explained his reasons why he felt there is "Good Cause" shown and thought this was a logical problem with the structure of our Ordinances (i.e., no allowances for the impact of the pandemic; and, the fact that this was a use that was allowed and not subject to these fees

long before some of these fees were created). He felt we should ask the City Administration to look into modifying this Ordinance, as well as having the Planning Board modify their Impact Fees so that fees are not paid over and over again each time a use is changed.

City Manager Mulholland, Councilor Liot Hill and Assistant Mayor Below continued to discuss the potential for other developers coming back to the Council asking for rebates in their Development Fees.

Councilor Liot Hill felt there was a major equity issue here and spoke about other developments that have paid Development Fees, noting that everybody has to buy equity into the system. When uses change, then the new use has to buy into the system. Converting from commercial to residential is not so unusual in the City. Redevelopment in Lebanon is something that happens and gave recent examples of people who have been hit with large charges and were not given abatements. We have to be careful about this (abatement) because we cannot be seen as treating people differently. If there is a question about the policy, she agreed we should change the policy, but did not think we could use an individual abatement request to change the policy. This has to be changed separately. There could potentially be “good cause” shown if we look at the five-(5) year period to modify the credit (i.e., the COVID Pandemic). The larger issue to her was the applicant’s house, which could have cost about 20% more if it was sold as a residential property. So, in knowing the discount on the home and how the City tried to be amenable with the applicants by trying to work within the applicant’s timeframe for moving in, she ultimately felt everyone has to comply with the contingencies of their COs, noting other property owners who are engaged in major building projects within the City who are very frustrated with some of the contingencies in their COs. While the \$9000 in fees is a huge bill, it is still a good deal with the fees included, because the building is probably worth \$540K or more.

In response to Councilor Wilkie’s questions regarding the precedent of a residential property use being changed to a commercial use and then changed back to a residential property, Mr. Vincent said no, this has not happened since he has been with the City. Councilor Willkie also asked if it was typically made clear to a developer of the fees involved. Mr. Vincent said there is a process for this, which is ad hoc but noted due diligence is on the buyer of the property and gave examples. On the application form there are a couple of examples of scenarios regarding what could happen and (the application) shows the fees. Councilor Wilkie noted the fees on the application may seem apparent to a developer who is either creating new housing or converting commercial space into residential space but was uncertain if an individual property owner would know about these fees and explained his reasons. His point was that this fee seems like a hidden fee that really is not something that can be compared to, even to those other conversions we have recently seen, because of the exceptional nature of this property being a residential property throughout most of its existence.

Councilor Whittlesey spoke about the IRS Tax Law which shows a clear delineation between the average person building an ADU/room/building for rent versus someone who does this professionally. He also explained his reasons why there is a difference between an individual who purchases a property for their own use and a developer who purchases a property speculatively to make money. These are two very different situations.

Councilor Sykes spoke about the probable “future use of a building” which should be considered in the Impact Fees and the reasons why he felt this application for abatement did not show “good cause.” We have to operate in a system for all taxpayers and make sure the systems we use are consistent, predictable, and achieve balance in terms of paying for the City’s bills.

Assistant Mayor Below said the problem we have is that we do not take into account the fact that a particular property has been contributing to the City’s infrastructure as, in this case, a residential use. Now we are saying you have to pay, almost as if the property has never contributed. He continued to explain his reasons and noted he thought the equitable thing that needs to be done is to change our Ordinances, including the Impact Fees Ordinance and reiterated his reasons why this should be done. He felt “good cause” was shown.

Councilor Heistad spoke about his reasons why he thought this abatement request was fair.

Mayor McNamara did think this differs from non-residential buildings, noting non-residential buildings have less impact on water resources. He also thought that even if this were to be assessed, we would need to go back and look at pre-COVID numbers for the 4-5 years when it was an operational office.

Councilor Liot Hill would like to offer some relief but spoke about her reasons why she felt relief was not warranted. She could agree with a compromise to offer some relief by identifying a more reasonable credit that would be based on pre-COVID office use.

The Council continued discussions regarding getting the data points before they make a decision on this abatement.

City Manager Mulholland, at the request of the Council, will try to obtain the following data for their review before the Council votes on this abatement request:

- Usage fee for the office building.
- What the actual usage (water/sewer) for a five (5) year period preceding COVID.
- What the usage would be deemed to have been under current office fees.

ACTION: Council Deferred to a future meeting.

Councilor Liot Hill MOVED to extend the meeting to 10:30P

Seconded by Councilor Wilkie.

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

- B. Presentation of First Reading & Set Public Hearing for July 3, 2024: Amendment to Ordinance #18, Salary Plan**

Included in the agenda packet: **(All supportive documents and detailed information can be found on pages 92-95, Council agenda packet)**

Ms. Samantha Lauzon, Human Resources Director, reviewed the background behind the amendment to Ordinance #18, Salary Plan.

BACKGROUND

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

1. Article II, Non-Affiliated Employees to:
 - I. Reclassify the exempt position of City Clerk/Tax Collector, within the City Clerk/Tax Collection Department, to Grade 13.

- II. Reclassify the exempt position of Human Services Director, within the Human Services Department, to Grade 13.
- III. Retitle the Chief Innovation Officer position to Chief Innovation and AI Officer
- 2. Article II, LPASE Employees to:
 - IV. Add the non-exempt position of Public Works Crew Leader, within the Public Works Department, to Grade 7.
- 3. Article II, Seasonal/Temporary & Stipend Employees to:
 - V. Implement wage adjustments to the following positions:
 - a. Ballot Clerk - \$20/hr.
 - b. Moderator - \$30/hr.
 - c. Ward Clerk - \$27/hr.
 - d. Chair Supervisor of the Checklist - \$27/hr.
 - e. Supervisor of the Checklist - \$25/hr.

Article II, Non-Affiliated Employees

- I. The City Clerk/Tax Collector job description has been updated to accurately reflect the duties and responsibilities of the position, which resulted in a reclassification of the position from a Grade 12 to a Grade 13.
- II. The Human Services job description has been updated to accurately reflect the duties and responsibilities of the position, which resulted in a reclassification of the position from a Grade 12 to a Grade 13.
- III. The Chief Innovation Officer position has been retitled to Chief Innovation and AI Officer.

Article II, LPASE Employees

City Administration is proposing the addition of the Public Works Crew Leader position. The Public Works Crew Leader is a non-exempt, Grade 7, LPASE position, within the Public Works Department.

Currently, the Maintenance Superintendent is responsible for overseeing multiple work crews, who are simultaneously performing work at various locations. This position has been created to address the need for additional oversight of the Department's work crews.

Article II, Seasonal/Temporary & Stipend Employees

Due to the difficulty hiring and retaining specific positions within the Seasonal/Temporary & Stipend classification, Administration is proposing wage adjustments, for five Election positions:

- a. Ballot Clerk
- b. Moderator
- c. Ward Clerk
- d. Chair Supervisor of the Checklist
- e. Supervisor of the Checklist

Additionally, Administration is proposing that the Chair Supervisor of the Checklist position and the Supervisor of the Checklist, be relocated from stipend positions to hourly positions.

Amendment Process

Samantha Lauzon, Human Resources Director, will be present to discuss all proposed amendments and answer any questions the City Council may have.

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 Council is asked to recognize the first of three presentations on June 5, 2024, and to schedule a public hearing for July 3, 2024, to amend the Ordinance. The second and third presentations will occur on June 19, 2024, and July 3, 2024, respectively.

The tables below reflect 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 immediately.

ACTION:

1. Acknowledge First Presentation:

Councilor Whittlesey MOVED, that the Lebanon City Council acknowledges the first of three presentations to amend Ordinance #18, Salary Plan, as outlined in the tables contained on pages 92 through 95 of the June 5, 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 EMPLOYEES 2024 SALARY & GRADES					
Grade	Position Title	Hourly		Weekly	
		Minimum	Maximum	Minimum	Maximum
7	Administrative Secretary	\$27.34	\$38.67	-	-
	Assessing Clerk	-	-	-	-
	Assistant City Clerk	-	-	-	-
	Assistant Human Services Director	-	-	-	-
	Communications Specialist	-	-	-	-
	Library Administrative/Technical Assistant	-	-	-	-
	Public Works Crew Leader**	-	-	-	-
12	Wastewater Treatment Superintendent**	\$40.91	\$55.23	-	-
	Water Treatment Superintendent**	-	-	-	-
	Administrative Services Manager**	-	-	\$1,636.34	\$2,209.02
	City Assessor**	-	-	-	-
	City Clerk/Tax Collector	-	-	-	-
	City Engineer**	-	-	-	-
	City Planner**	-	-	-	-

	Deputy Library Director	-	-	-	-
	Energy & Facilities Manager**	-	-	-	-
	Human Services Director	-	-	-	-
	Police Lieutenant**	-	-	-	-
	Prosecuting Attorney	-	-	-	-
	Solid Waste Manager	-	-	-	-
13	Chief Building Official & Health Officer	-	-	\$1,734.53	\$2,341.63
	Chief Innovation and AI Officer	-	-	-	-
	City Clerk/Tax Collector	-	-	-	-
	Cyber Security Analyst	-	-	-	-
	Deputy Finance Director	-	-	-	-
	Deputy Human Resources Director	-	-	-	-
	Deputy Fire Chief**	-	-	-	-
	Human Services Director	-	-	-	-
	Information Systems Manager**	-	-	-	-
	Maintenance Manager	-	-	-	-
	Police Captain**	-	-	-	-
	Deputy Planning and Development Director	-	-	-	-
	Systems and Operations Administrator	-	-	-	-

**Denotes LPASE Employees.

B. Seasonal/Temporary & Stipend Employees

POSITION TITLE	HOURLY	
ELECTION POSITIONS (HOURLY)		
Ballot Clerk	-	\$20.00
Election Assistant	-	\$15.63
Supervisors of the Checklist	-	\$15.63
Moderator	-	\$30.00
Ward Clerk	-	\$27.00
ELECTION DAY STIPEND		
Chair Supervisor of the Checklist	-	\$27.00
Supervisor of the Checklist	-	\$25.00

2. Schedule Public Hearing:

Councilor Whittlesey FURTHER MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 3, 2024, beginning at 7:00 p.m. 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 Ordinance No. 18, Salary Plan, as fully described and contained in the June 5, 2024, City Council Agenda Packet.

Seconded by Councilor Wilkie.

Councilor Heistad recused himself from this vote because his wife is an election official.

**The Vote on the Motion was approved (7-0-1). Councilor Heistad was recused.*

Councilor Heistad returned as a regular member of the Council.

C. Discussion and Set Public Hearing for June 19, 2024: Ordinance #2024-04 to Amend City Code Chapter 179, Vendors

Included in the agenda packet: [\(All supportive documents and detailed information can be found on pages 96-114, Council agenda packet\)](#)

1. Proposed Ordinance #2024-04
2. City Code Chapter 179, Vendors
3. Legal opinion from Attorney Christine Johnston, dated May 22, 2024
4. Vendor Parking Spaces diagrams from 2017 and proposed for 2024

Deputy City Manager David Brooks reviewed the background to Amend Ordinance #2024-04, City Code Chapter 179, Vendors

BACKGROUND

The City Manager’s Office coordinates the permitting of vendors operating around Colburn Park and along the pedestrian mall pursuant to City Code Chapter 179, Vendors. The Code Chapter was adopted in 1990 and has been amended on several occasions since that time.

Over the last several months, the City Manager’s Office has been drafting proposed amendments to Chapter 179 in an effort to address a variety of operational issues that have arisen in recent years. Primary amendments include adjustments and clarification of the number and location of spaces within which vendors may operate and updates to the proposed fee structure for vendors as further described below. In addition, the Department of Public Works has proposed new language to address disposal of food waste and grey water waste from food truck vendors, in particular. However, because large portions of the current chapter have been reformatted, the current proposal is to repeal and replace the chapter language in full.

With respect to the number and location of vendors, the current language of Chapter 179 provides that “up to five parking spaces on the north side of [South Park Street] between the crosswalk entrance and the easterly corner of Colburn Park” are available for vending activity. (Note: although the term “parking spaces” is used, this has always been understood and interpreted as “vendor spaces”). However, for many years, the City has permitted vending areas both west and east (before and after) the crosswalk on South Park Street. As depicted in the attached Vendor Parking Spaces diagram from 2017, two seasonal vendors were allowed to occupy a total of six parking spaces west of the crosswalk and two seasonal vendors and one daily or weekly vendor were allowed to occupy a total of eight parking spaces east of the crosswalk.

In recent years, it has become evident that most vendors cannot fit within the allotted areas as shown on the 2017 Vendor Parking Spaces diagram. Vendors are often unable to detach (or reattach) their food trailer from their towing vehicle because of space limitations due to other vendors or from private vehicles parking immediately adjacent to the food trucks/trailers. As a result, the currently proposed amendments include a reduction in the total number of vendor spaces from five to four, but with enough space for each towing vehicle and trailer.

It has been observed that most of the food trucks operating on South Park Street have service windows that open on the passenger side of their vehicle. When the vendors are located on the north side of South Park Street, customers are required to stand immediately next to moving traffic in the travel lane of the roadway, which has long been a cause for concern. In an effort to begin to address this issue, the current proposal would allow two vendor spaces on the south side of South Park Street, such that the service windows would open toward the adjacent sidewalk and away from moving traffic.

In addition, the current language of Chapter 179 provides for the regulation of sales by vendors within the general area of Colburn Park and the pedestrian mall. In recent years, the City Manager's Office has received requests to expand the area where vending on City land is allowed to include the area formerly known as "Hough Square", near the intersection of Hanover, Hough, and High Streets. Many businesses located in Hough Square are similarly situated to those along the pedestrian mall in that the front of their buildings and storefronts coincides with the edge of the public right-of-way.

Also, in recent years, the Department of Public Works has been alerted to vendors disposing of grey water into the public stormwater system, which is a violation of City Code and federal law. As a result, DPW staff have recommended amendments to Chapter 179 concerning the proper disposal of grey water at the City's wastewater treatment facility with an applicable fee schedule and penalties for illicit discharges. As proposed, any vendor who elects not to use the City's wastewater treatment facility must provide proof of an acceptable alternative disposal location as part of their application for a vendor permit.

Finally, during the NH legislature's last session, legislation was passed that regulates the disposal of food waste by persons generating one ton of such waste per week or more if a facility authorized to manage food waste is located within 20 miles. Although the legislation does not take effect until February 1, 2025, proposed language has been added to Chapter 179 informing food truck vendors that the Lebanon Solid Waste Facility is authorized and has capacity to accept food waste for purposes of compliance with the provisions of NH RSA 147- M:27, V.

Additional proposed amendments to the chapter include new definitions; clarification that sidewalk vending is permitted for business fronting on North Park and West Park Streets; update and clarification of information required for vendor permit applications; updates to the permit fee and electricity usage fee for seasonal vendors; and a general reformatting of some of the existing language.

Council Comments:

Mayor McNamara noted he was sensitive to the hour and has no doubt that this will be a long and vigorous discussion. There are some unique features regarding this item (i.e., the curb is a foot tall) and suggested the Council schedule a Public Hearing for June 19th but we start earlier and do a walk-about. There is a desire to be expedient about this item due to licensing of the vendor food trucks because the 1st licenses run April/May/June, and the 2nd licenses run from July/August/September/October.

With respect to the visibility issues, Deputy City Manager Brooks presented and explained the following aerial image at the intersection/crosswalk area where there is a problem.



Deputy City Manager Brooks suggested that one possibility, in addition to the site walk, might be to consider moving forward with the amendments proposed (**Pages 98-105, Council agenda packet**) and in the fall work through the changes in locations and/or numbers so that the existing vendors can operate now and start with the new language next year.

Councilor Liot Hill thought the vendors would be on the north side of Colburn Park and was surprised to see them on the south side. In the last couple of weeks, she heard significant concerns raised from the public and was not comfortable moving forward with a Public Hearing that would include spaces (for vendors) on both sides of the street. She was comfortable dealing with the licensing issues for the north side of the street using the lottery system. She noted the Council has not had the opportunity to discuss or vet this plan.

The Council discussed vendors being located on the north/south sides of Colburn Park; whether or not to move this forward to a Public Hearing on June 19th; and the potential of losing vendor trucks in the area that would cause concerns with the public.

City Manager Mulholland said all the vendor trucks could be moved to the north side of the road (starting July 1) to provide time for the Council to discuss the issues. The Council could also strike out the south side section (in the proposed City Code) right now so when the Public Hearing is published the south side element will not be included.

The Council continued lengthy discussion on the placement of vendor food trucks; the length of the vendor food trucks; what the City Code Regulations require; freeing up the number of parking spaces used by food vendor trucks (i.e., getting rid of the vehicles that tow the vendor's food trucks); visibility/safety issues for vehicles/pedestrians; changing NH RSA 147-M:27, V. on page 103, Item E in agenda packet to **NH RSA 149** and making this paragraph more clear; how the dates for the food truck vendors should be reviewed; for pedestrian safety, figuring out a way to have vendors turn their trucks so pedestrians can access them from the sidewalk instead of in the street.

Due to timing constraints, Mayor McNamara made the decision unilaterally that Items E/F/G will not be discussed at this meeting.

The Council continued to discuss the options for visibility and vendor truck spacing/location.

City Manager Mulholland will use his authority under his charter to regulate City highways to move the four food truck vendors to the north side of the roadway (by Colburn Park) until the Council can come up with a better solution. This will allow the vendors to continue their business and will give the Council time they need to consider multiple options for a Public Hearing.

ACTION: NONE TAKEN. Will be discussed at a future meeting.

***Councilor Liot Hill MOVED to extend the meeting to 10:40PM
Seconded by Councilor Whittlesey.***

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

D. Discussion and Set Public Hearing for June 19, 2024: Ordinance #2024-08 to Amend City Code Chapter 100, Library Trustees

Included in the agenda packet:

1. Proposed Ordinance #2024-08
2. City Code Chapter 100, Library Trustees

BACKGROUND

City Code Chapter 100 establishes the authority of the Board of Trustees of the Lebanon Library under NH RSA 202-A relative to the City Charter and is intended to be a declaration of applicable state law as to the operation of the Lebanon Library and the Lebanon Library Board of Trustees.

Chapter §100-4 (Hiring of library employees; terms of conditions of employment), specifically refers to library employees whose positions are “set by the contract between the City and the Lebanon Professional and Salaried Employees Association (LPASE).” However, there are currently no library employees who are members of LPASE, and therefore, clarification of the existing language is necessary.

In the event that any library employees may seek to join or create a different bargaining group in the future, the City Manager recommends that the specific reference to LPASE be replaced with a more generic term of “certified employee bargaining unit”.

ACTION:

*Assistant Mayor Below MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, June 19, 2024, beginning at 7:00 p.m. in Council Chambers, City Hall, and Remote via the City’s Virtual Platform, for the purpose of receiving public input and taking action on proposed Ordinance #2024-08 to amend City Code Chapter 100, Library Trustees, to replace the reference to a specific employee bargaining group with a more generic term.
Seconded by Councilor Liot Hill.*

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

NOTE: The following items (E., F., and G.) were not discussed at this meeting due to time constraints and will be placed on a future Council Agenda.

- E. Review and Endorsement of Updated Master Plan Chapter 5, Natural Resources - NOT DISCUSSED**
- F. Request for Zoning Amendments: Text Amendment for Section 214 (Governmental Uses) of the Zoning Ordinance – NOT DISCUSSED**
- G. Discussion of Proposed Acquisition of Westboro Yard – NOT DISCUSSED**

11. CITY MANAGER REPORT: NONE

12. COUNCIL REPRESENTATIVES TO OTHER BODIES: NONE

13. FUTURE AGENDA ITEMS: NONE

14. NON-PUBLIC SESSION: NOT DISCUSSED

- RSA 91-A:3, II(d) – “Consideration of the acquisition, sale, or lease of real or personal property

15. ADJOURNMENT:

Assistant Mayor Below MOVED for adjournment.

Seconded by Councilor Whittlesey.

****The Vote on the MOTION was unanimously approved (8-0)***

The meeting was adjourned at 10:30 PM.

Respectfully submitted,

Dona E. Gibson

Recording Secretary