



**LEBANON CITY COUNCIL
JULY 17, 2024 - 6:00 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: 379 212 083#). If you have trouble accessing this meeting, please [email Shaun Mulholland](#).
- B. The July 17, 2024 Lebanon City Council Meeting is hereby called to order.

2. Pledge of Allegiance

3. Boards and Committee Reports (2nd Quarter 2024)

4. Public Forum Announcement by the Mayor

Any member of the public who desires to speak on any item may do so when the item is taken up by the Council and will be allowed to speak on the subject for not more than three minutes. **(Note: Speakers are asked to state their name, ward of residence, and to use the microphone provided.)**

5. Open to the Public

6. Recognitions

- A. Resolution Honoring Bob Therrien's Lifetime Service
- B. Resolution Honoring Bob Sherman

7. Approval of Minutes

- A. MOTION TO approve the minutes as presented in the July 17, 2024 agenda packet.

8. Appointments: None

9. Public Hearing Items

- A. Ordinance 2024-07: Chapter 136, Sewer Service – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service.
 - i. Presentation:
 - ii. Opening of the Public Hearing:
 - iii. Questions & Comments by the Public:
 - iv. Closing of the Public Hearing:
 - v. Council Deliberation & Action:
- B. Ordinance 2024-09: Chapter 124, Public Stormwater System, Use of – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-09 to amend City Code Chapter 124,

- Public Stormwater System, Use of.
 - i. Presentation:
 - ii. Opening of the Public Hearing:
 - iii. Questions & Comments by the Public:
 - iv. Closing of the Public Hearing:
 - v. Council Deliberation & Action:
 - C. Ordinance 2024-10: Chapter 182, Water Service – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-10 to amend City Code Chapter 182, Water Service.
 - i. Presentation:
 - ii. Opening of the Public Hearing:
 - iii. Questions & Comments by the Public:
 - iv. Closing of the Public Hearing:
 - v. Council Deliberation & Action:
 - D. Request to Rescind Prior Authorizations to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds – A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations to transfer funds to capital projects, and to transfer appropriated, but unspent funds back to the General Fund.
 - i. Presentation:
 - ii. Opening of the Public Hearing:
 - iii. Questions & Comments by the Public:
 - iv. Closing of the Public Hearing:
 - v. Council Deliberation & Action:
- 10. Old Business: None**
- 11. New Business**
- A. Joint Request from Planning Board and Diversity, Equity & Inclusion (DEI) Commission for Creation of Housing Task Force
 - B. Discussion and Set Public Hearing for August 7, 2024: Supplemental Appropriation of \$250,000 for South Main Street Bridge Replacement Capital Project
 - C. Creation of Food Truck Task Force
 - D. New Hampshire Municipal Association (NHMA) Policy Positions
- 12. City Manager Report**
- 13. Council Representatives to Other Bodies Report**
- 14. Future Agenda Items**
- 15. Non-Public Session**
- 16. Adjournment**

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 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.

Lebanon City Council Agenda
July 17, 2024

Future Board/Committee/Commission Appointments
Board/Committee: Economic Development Commission
Position: Citizen Member
Applicant: B. Carter
City Councilor: G. Sykes
Assigned Date: 7/1/2024

Proposed Future Agenda Items: Dates may be tentative, and this list is not considered all-inclusive.
August 7, 2024 – Notice of Public Quorum

August 7, 2024 – Regular Meeting (7:00pm)
Public Hearing Items:

- A. Re-Allocation of Previously Approved Borrowing Authorization for Kimball Street Infrastructure Improvements Project – A public hearing for the purpose of receiving public input and taking action to consider the re-allocation among the General Fund, Water Fund, and Sewer Fund of previously approved borrowing authorization for the 2022 Kimball Street Infrastructure Improvements Capital Project.
- B. Supplemental Appropriation of \$250,000 for South Main Street Bridge Replacement Project - A public hearing for the purpose of receiving public input and taking action on the supplemental appropriation amount of \$250,000 for South Main Street Bridge Replacement Capital Project.

Old Business:

- A. NHMA Policy Positions & Principles

New Business:

- A. Dog Licensing Civil Forfeiture Update
- B. Review and Action on Properties Qualified for Tax Deeding

August 21, 2024

Old Business:

- A. NHMA Policy Positions & Principles



RESOLUTION

HONORING BOB THERRIEN'S

LIFETIME SERVICE

WHEREAS, Bob Therrien dedicated his life to public service, significantly contributing to the well-being of the community; and

WHEREAS, Bob served as a police officer in Hartford, VT, and Lebanon, NH, until his retirement in 2002, demonstrating unwavering commitment to maintaining public safety; and

WHEREAS, Bob's service extended beyond law enforcement, as he also participated as a City of Lebanon election official, ensuring fair and transparent democratic processes, and volunteered for initiatives such as Toys for Tots and the Police Cadet Academy, positively impacting the lives of local residents; and

WHEREAS, Bob faithfully served on the Soldiers Memorial Building Advisory Board from 2006 to 2014, and as the Guardian for the Soldiers Memorial Building from 2014 to 2024, preserving the historical and cultural heritage of Lebanon; and

WHEREAS, he provided invaluable advice to the Department of Public Works on essential upkeep and repair needs of the Soldiers Memorial Building, managed contributions instrumental in preservation efforts, and promoted the building's significance through various activities, enhancing its visibility and historical appreciation; and

WHEREAS, Bob's collaboration with the Lebanon Heritage Commission ensured the preservation and respect of artifacts and memorabilia within the building, facilitated access for organizations like the Lebanon Historical Society, and demonstrated his dedication to the community's historical legacy.

THEREFORE, BE IT RESOLVED that we, the members of the Lebanon City Council, express our deep admiration and respect for Bob Therrien's outstanding lifetime contributions to our community. We extend our heartfelt gratitude to his family.

BE IT FURTHER RESOLVED that this resolution be recorded in the minutes of the Lebanon City Council meeting and a copy be presented to Bob Therrien's family members.

Dated this 17th day of July 2024 at Lebanon, New Hampshire.

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



RESOLUTION

HONORING BOB SHERMAN

WHEREAS, Bob Sherman – aka “Radio Bob” - has been a fixture in local radio for the past 50 years; and

WHEREAS, Bob – an Upper Valley native and Lebanon resident – has, in addition to his continuous presence on local radio, also actively served the community for decades with organizations including with the United Way, the Lebanon Chamber of Commerce, Rotary Club, and the Upper Valley Business Alliance; and

WHEREAS, Bob has also always been an integral part of the fabric of the community, whether on the radio, in the PTO, in the North Country Community Theater, or delivering Christmas dinners to the homebound.

THEREFORE, BE IT RESOLVED, that the Lebanon City Council, on behalf of the City of Lebanon, hereby recognizes and honors Bob Sherman on the occasion of his retirement from WTSL radio and thanks him for all of his service to our community.

BE IT FURTHER RESOLVED that this resolution be written upon the minutes of the Lebanon City Council meeting and a copy be presented to Bob Sherman.

Dated this 3rd day of July 2024 at Lebanon, New Hampshire.

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

**Agenda
Lebanon City Council
July 17, 2024**

7. Acceptance Of Minutes:

Minutes To Be Accepted

- July 3, 2024 (Regular Meeting)

MOVED, to approve the minutes as presented in the July 17, 2024 agenda packet.

DRAFT

**LEBANON CITY COUNCIL
REGULAR SESSION MINUTES
Wednesday, July 3, 2024 7:00 p.m.
Council Chambers**

Remote Via Microsoft Teams: LebanonNH.gov/Live

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

MEMBERS ABSENT:

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager David Brooks, City Manager Intern Klaleh Punni, Public Works Director Jay Cairelli, Deputy Director Planning & Development Tim Corwin; Director of Planning & Development Nathan Reichert; HR Director Samantha Lauzon; City Engineer Rod Finley; Energy & Facilities Manager Tad Montgomery; Chief Innovation & AI Officer Melanie McDonough; City Engineer Brian Vincent

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.
- Councilor Liot Hill arrived at 7:13PM. She was out of town and attended the meeting remotely.

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

4. OPEN TO PUBLIC: No one came forth.

5. RECOGNITIONS:

- **Resolution Honoring Bob Sherman:**

Mr. Sherman was unable to attend this meeting so this Resolution will be presented at the July 17, 2024, City Council Meeting.

6. ACCEPTANCE OF MINUTES: June 19, 2024 (Regular Meeting)

Amendments: P. 29, Line 19: Add Cemetery before Board; P 15, Line 29: remove “approved”: P 22, Line 43: For clarification, sentence should read: “We do not have any studies that indicate that this will bring additional revenue to Downtown West Lebanon”: Page 23, Line 9: For Clarification, the middle of the sentence should read: “all of which are included in the NH Department of Transportation Ground Water Management Permit (GWMP) and what is proposed to be on their property and in what is proposed to be the City’s Property”: P. 25, Line 4: For clarification the sentence should read: “Mayor McNamara noted that while this was not a Public Hearing, we would open discussion to the public....”: Page 25 Line 40: For clarification, before semicolon change to read: “while moving food trucks out of sight. Colburn Park is not a good idea”; P.28, Line 26: Change “more” to “additional”: P 28, Line 35: Change end of sentence to read: “Mayor McNamara reached out to some local architects to see if they were interested in participating in this project, or another property at the site that the City might consider for this type of

project (i.e., single family, detached housing that is relatively small with a goal of affordability.”: P. 29, Line 12: Change “most” to “other” and change “will” to “may” and remove “too”

Councilor Heistad MOVED to approve the June 19, 2024 (Regular Meeting) minutes as amended and presented in the July 3 2024 City Council agenda packet.
Seconded by Councilor Wilkie.

****The Vote on the Motion was approved (7-0-1). Councilor Liot Hill was not present at the time this vote was taken. Abstained from Vote: Councilor Whittlesey was not present at this meeting.***

7. APPOINTMENTS:

- West Lebanon Revitalization Advisory Committee, Laurel Stavis (Appointment as a Regular Member)
Councilor Whittlesey MOVED to NOMINATE Laurel Stavis as a Ward 1 Regular Member of the West Lebanon Revitalization Advisory Committee. Term: 07/24-07/27

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

Councilor Liot Hill arrived remotely at approximately 7:13 PM.

8. PUBLIC HEARING ITEMS:

A. 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.

Councilor Heistad recused himself from this discussion/vote because his wife is a Ballot Clerk.

Included in the agenda packet: **(All supportive documents and information can be found on pages 34-37, Council agenda packet)**

1. Proposed Amended Ordinance 18, Salary Plan

Ms. Samantha Lauzon, HR Director, reviewed the background to Amend Ordinance 18, Salary Plan

BACKGROUND

The City Council was 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
 - b. Moderator

- c. Ward Clerk
- d. Chair Supervisor of the Checklist
- e. Supervisor of the Checklist

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, the 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.

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

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 acknowledged by the City Council on June 5, 2024. The second presentation was acknowledged on June 19, 2024. The Council is 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.

*Below is an excerpt of the Non-Affiliated & LPASE Employees' compensation and classification schedules impacted by the proposed changes 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	-	-	-	-
9	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	-	-	-	-

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

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

ACTION:

1. Acknowledge Third Presentation:

Councilor Whittlesey MOVED, that the Lebanon City Council acknowledges the third of three presentations to amend Ordinance #18, Salary Plan, as outlined in the tables contained on pages 35 through 36 in the July 3, 2024, City Council Agenda Packet.

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, as outlined in the tables contained on pages 35 through 36 in the July 3, 2024 City Council Agenda Packet.

Seconded by Councilor Wilkie.

Roll Call Vote:

Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara.

None voted Nay.

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

Councilor Heistad returned as a regular member of the Council.

B. Amendment to the Zoning Ordinance: Text Amendment for Section 214 (Governmental Uses) of the Zoning Ordinance – Public hearing for the purpose of receiving public input and taking action on a proposed amendment to Zoning Ordinance Section 214 to clarify the regulation of Governmental Land Uses.

Included in the agenda packet: **(All supportive documents and information can be found on pages 39-54 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 C. Christine Johnston, Esq., dated March 10, 2024
3. NH RSA 674:54, Governmental Land Uses
4. Legal opinion pursuant to Section 1000.3.B.2 of the Zoning Ordinance from C. Christine Johnston, Esq., dated March 21, 2024
5. Excerpt of draft Planning Board meeting minutes from April 22, 2024
6. Excerpt of draft Zoning Board of Adjustment meeting minutes from May 6, 2024
7. Excerpt of draft Conservation Commission meeting minutes from May 9, 2024

**PROPOSED 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.~~

BACKGROUND

On March 20, 2024, the City Council voted to move a proposed amendment to Section 214 (“Governmental Uses”) of the Zoning Ordinance through the amendment process outlined in Section 1000 of the Zoning Ordinance. Since then, the amendment has been reviewed by the City’s legal counsel, the Planning Board, the Zoning Board of Adjustment, and the Conservation Commission. The City attorney’s legal opinion and excerpts of the Planning Board, Zoning Board of Adjustment, and Conservation Commission draft meeting minutes are attached.

As set forth in the attached excerpt of the draft meeting minutes from April 22, 2024, the Planning Board adopted the following motion with respect to the proposed amendment:

[T]he Planning Board authorizes the Planning Board’s City Council Representative to convey that, in the Planning Board’s discussion of the proposed Zoning Amendment [to Section 214 (Governmental Uses)], the Members expressed concerns over the potential impact of removing a step in the regulatory review process, and suggested that, if the City Council were to pass the proposed amendment, it should revisit the language of Section 214 in no more than two years’ time, taking into account any new data that arises.

As reflected in the attached excerpt of the draft meeting minutes from May 6, 2024, the Zoning Board of Adjustment “was unanimous in recommending the change[,]” and as set forth in the attached excerpt of the

1 draft meeting minutes from May 9, 2024, the Conservation Commission approved an extensive motion
2 expressing opposition.

3 4 **Discussion**

5
6 “Governmental use” is defined in NH RSA 674:54, I, as meaning: “a use, construction, or development of
7 land owned or occupied, or proposed to be owned or occupied, by the state, university system, the
8 community college system of New Hampshire, or by a county, town, city, school district, or village district,
9 or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.”
10 Pursuant to the statute, governmental uses are not subject to local land use regulations, including zoning
11 regulations and site plan review regulations. Projects that meet the statutory definition of “governmental
12 use” must be submitted to the governing body and the Planning Board, which may conduct a public hearing
13 on the project, but any comments issued pursuant to such reviews are non-binding and advisory only.

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

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

30 The conditions for granting a variance or special exception, as the case may be, are listed in the Zoning
31 Ordinance and the Zoning Board is tasked with approving or denying the request on the merits of the
32 application. Even if approved, any aggrieved abutter could appeal the ZBA decision. Any appeal could
33 adversely affect a project’s construction schedule and potentially lead to an undesirable result that is
34 contrary to public interest.

35 As explained further in the memorandum from Attorney Christine Johnston, the statutory exemption of
36 governmental uses from local zoning regulations reflects the nature of governmental uses, which have
37 fundamentally different issues than private development. It is City staff’s position that modifying Section
38 214 to exempt all governmental uses from the requirements of the Zoning Ordinance will ensure that
39 municipal improvement projects, such as building roads, replacing bridges, constructing public facilities,
40 and other governmental needs, are optimally designed to serve the public interest and aren’t jeopardized
41 by having to obtain approval from the Zoning Board of Adjustment.

42 However, it is understood and acknowledged that projects undertaken by the City, or on City land or
43 property, which do not meet the statutory definition of a Governmental Use, would continue to be fully
44 subject to the provisions of the local zoning ordinance and all applicable land use regulations.

1
2 **Staff Presentation:**

3 Mayor McNamara noted he understands this (topic) is very controversial and in the comments he read,
4 there seems to be a fairly significant amount of misunderstanding. As a result, he asked staff to give a very
5 detailed presentation, so everyone has a really clear understanding of what is being requested here, and
6 what the potential ramifications are.
7

8 Mr. Nathan Reichert (Director of Planning & Development) and Mr. Tim Corwin (Deputy Director
9 Planning & Development) were present to give their presentations on the proposed draft test amendment as
10 listed above.
11

12 Mr. Tim Corwin noted that amendments to the Zoning Ordinance are regulated by Section 1000 of the
13 Zoning Ordinance, which sets forth a detailed process as to how those amendments can originate and how
14 they are to be reviewed. He reviewed the history of meetings that have taken place regarding this topic.
15 The Land Use Boards play an advisory role for the Council and their comments are included in the set of
16 meeting minutes in the agenda packet. On June 19, 2024, the Council held a discussion on the proposed
17 amendment again, and scheduled tonight's Public Hearing. Mr. Corwin's presentation included the
18 following screenshots, which he explained.

RSA 674:54

***STATE STATUTE EXEMPTS "GOVERNMENTAL
USES" OF PROPERTY FROM LOCAL LAND USE
REGULATION***

- Governmental uses in NH are not subject to local zoning regulations
- Statute allows permits the Planning Board to conduct an advisory review of governmental use projects

19
20
21 **Note:** This statute does allow the Planning Board (PB) to require a Public Hearing on a proposed
22 governmental use project, but the PB's comments are advisory only.
23

RSA 674:54 – What are Governmental Uses?

Governmental Use: "a use, construction, or
development of land owned or occupied [...] by a
county, town, city, school district [...] for any
public purpose which is **statutorily or
traditionally governmental in nature**"

24
25 Examples would be roads, sewer/water, government buildings, offices, etc. Up until 2009, the City of
26 Lebanon adhered to the provisions of RSA 674:54, but on October 21, 2009 the Council adopted an
27 amendment to limit the authority of City Council over Government Use projects.
28

Zoning Ordinance, Section 214 CURRENT LANGUAGE

"Governmental Uses are defined 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."

Adopted by the City Council on October 21, 2009

Zoning Ordinance, Section 214 PROPOSED LANGUAGE

"**Governmental uses** 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 to expressly exempt any non-governmental use by the City of Lebanon from compliance with the Ordinance."

The Critical language is bolded in the screenshot above. As the Mayor stated, there has been some confusion over what is exactly being proposed, so to put a finer point on it, the proposed amendment to Section 214 is listed below:

Proposed Section 214 – What It Does

- Will exempt "governmental uses" from regulation under the Zoning Ordinance
 - *consistent with RSA 674:54 and nearly every other NH community*
- Restores RSA 674:54 as the governing regulations for governmental uses
- Allows City Council to retain authority over public improvement projects and not delegate that responsibility to the Zoning Administrator and the Zoning Board of Adjustment (as the administrator and arbiters of the Zoning Ordinance)

Proposed Section 214 – What It Doesn't Do

- **DOES NOT** exempt non-governmental projects, even by the City (e.g. city-sponsored housing)
- **DOES NOT** exempt private development on private land (which constitutes vast majority of development in City)
- **DOES NOT** exempt private improvements on public land (e.g. Opera House)
- **DOES NOT** accelerate the process of approving new housing or any other private development project
- **DOES NOT** have ANY impact on private development
- **DOES NOT** alter the power of Conservation Commission which is advisory only relative to local land use regulations
- **DOES NOT** alter the Planning Board's advisory review authority under 674:54

Assistant Mayor Below noted the source of confusion (seems to be the first bullet point on the screenshot above). While initially it does not exempt non-governmental projects, even by the City, which is what the law says, it does propose for the first time by saying the City Council may vote to expressly exempt any non-government use by the City of Lebanon from compliance with the ordinance. This does not exist today. Just to be clear, he questioned if it does create a path to exempt non-governmental uses by the City from the Ordinance. Mr. Cowin concurred.

Mr. Reichert reviewed and explained the following screenshots, noting there are couple of very nuanced pieces of the Zoning Board's procedures that are vastly different than the procedure that comes through the City Council.

§ Zoning Board Scope of Authority

- ☐ Zoning Administrator and Zoning Board of Adjustment are quasi-judicial bodies. All determinations and decisions are appealable.
- ☐ The Zoning Board's scope of consideration is limited to the Zoning Ordinance.
- ☐ Variance criteria set by statute – not designed with consideration of public facilities and infrastructure in mind. What is the “Unnecessary Hardship” of a public good?
- ☐ Special Exceptions only allowed when authorized by ZO - also not designed for public facilities and infrastructure projects

Mr. Reichert noted the Zoning Ordinance(s) are under the control of the City Council, and all of the authority to write or not write regulations within the Zoning Ordinance(s) rests with City Council. This is a distinction that needs to be made clear: All the power of regulation rests with the City Council and they can choose to delegate or retain that power based on State Statute.

Mr. Reichert also spoke about the concept of variances noting that there are very clear, prescribed State requirements specifically for a variance to be granted by the Zoning Board. In order for an applicant to be given permission to not follow those regulations, there is a very prescribed legalistically interpreted set of criteria used for that purpose. This is a very distinct difference. The Zoning Board is limited to only what is written in the Zoning Ordinance; it takes a quasi-judicial process to function; it is a pathway to what could be a quick/time-consuming and expensive appeal process. One of the distinctions that needs to be made is: The Zoning Board is subject to appeal (in Superior Court). This is a higher bar to overturn the City Council's decision and may be more difficult to clear if someone wishes to intervene in the Zoning Board's determination.

Appropriate Venue

- City Council is the Legislative Body with elected officials closest to the people.
 - Decisions are not limited in scope except by State Law and may balance the various interests of the public.
 - Legislative: belonging to the branch of government that is charged with such powers as making laws, levying and collecting taxes, and making financial appropriations.
 - The City Council, in conjunction with public referendums, writes the Zoning Ordinance.
- Zoning Board is a Quasi-Judicial body with limited powers to enforcing the Zoning Ordinance. Is appealable to Superior Court.
- The Conservation Commission is an “interested party” and provides evidence to the Zoning Board during its proceedings.
- The City Council, through their deliberations is the most appropriate Venue for balancing interests and determining what is the Public Good.

1 What we are trying to do is move the powers of the Zoning Board back to City Council to avoid a
2 potentially lengthy/expensive appeals process and giving the Council the right to include whatever criteria
3 the City Council wishes to include. By eliminating the requirements of Section 214 we are returning and
4 restoring that power to City Council and at the same time are preventing the City from going down a path
5 that could not only be difficult to proceed with the public good, but could also be expensive, and delay
6 activity on a project if it were left to the Zoning Board of Appeal.
7

8 Mr. Reichert emphasized the Council can ask the Conservation Commission for their opinion; can ask the
9 Planning Board for their opinion; can ask the Heritage Commission or any of the other boards what their
10 thoughts are.
11

12 City Attorney Christine Johnston came forth to review and explain her Memos to the Council, City
13 Manager Mulholland, and Nathan Reichert (dated March 10, 2024 and March 21, 2024). She also
14 summarized Title LXIV, Planning and Zoning, Chapter 674:54 describing its history and the reasons
15 behind the State's legislative intent to Exempt Governmental Uses of property from local land use
16 regulations. As a final note, she said that regardless of what happens for this (proposed text amendment),
17 it will still be the case that every other governmental entity that wants to do a Governmental Land Use, or
18 a form of governmental function, in the City will still be exempt from the Zoning Ordinance (i.e., the
19 School District, the County, and the State). **(Note: All detailed supportive documents can be found on**
20 **pages 43-54, in the July 3, 2024 Council agenda packet.)**
21

22 Deputy City Manager Brooks spoke about the Wetland Regulations and how the City of Lebanon applies
23 its Wetland Regulations over and above, in some cases, what the State requires. The State actually has a
24 program that applies buffers to prime wetlands. The City has chosen not to designate its wetlands as
25 prime but use its natural resources inventory document from 2012 as the basis for designating high, and
26 very high value wetlands and then applying a 100 feet buffer to these wetlands. (The screenshot below
27 depicts, in purple, where the high value wetlands in Lebanon are located as adopted in 2013.)
28



29 Deputy City Manager Brooks noted these areas are generally not likely to receive local development,
30 certainly not governmental land uses by the City of Lebanon because the City does not own much of this
31 land. The other areas where prime wetlands are located are in the stream corridors that follow along
32 existing roads. In some cases, those roads have been in existence for centuries (i.e., Trues Brook Road;
33
34

1 Slayton Hill Road; Meriden Road; Hardy Hill, Rudsboro, Poverty Lane, etc.). The Zoning Regulations
2 that apply to the wetland buffers already allow for a variety of permitted uses as outlined in Section 401.4
3 and Special Exception Uses are outlined in Section 401.5. There is little likelihood of Governmental
4 Land Uses in those backland areas, and we are not likely to extend roads and start building structures in
5 the middle of landmark lands. Impact to high/very high value lands are likely, and maybe unavoidable, in
6 the course of the City's work to maintain its roads that run along these corridors. (Replacement is already
7 provided for in the Zoning Ordinance.) He did not feel the City could avoid fixing or replacing its roads
8 and bridges when necessary and should not avoid fixing and upsizing culverts when appropriate. The
9 wetland buffers were applied after the roads existed and we cannot reasonably locate those roads out of
10 those buffered areas to avoid impacts to those wetlands when we fix our bridges, culverts, etc.

11
12 Deputy City Manager Brooks emphasized the opportunities for input/comments from Boards,
13 Committees, and the public. The RSA 674:54 Statute requires that the proponent of a project (the City)
14 submit an application to either the Planning Board or the City Council. The Planning Board may choose
15 to hold a public hearing, but it must ultimately review that project and discuss it at a public meeting, even
16 if no public hearing is held. The CIP process is a public process that culminates in a public hearing; the
17 annual budget itself has many public meetings that culminate in a public hearing. The Conservation
18 Commission has its advisory role to the State and that would not change. The City Council and Planning
19 Board can always request advice, comments and input. The exemption request process that is built into
20 the current language of Section 214 does not specifically call for a public hearing and does not
21 specifically require the Council to take input. Finally, with respect to that exemption process, there is no
22 clear guidance in the Zoning Ordinance about whether, or when, the City or City's Administration should
23 seek an exemption request. There is no clear guidance or standards for the Council on how, or whether,
24 to review those exemption requests and on what basis to grant or deny them. The Council has, so far,
25 been willing to grant exemptions on numerous occasions, which has helped to avoid significant delays
26 and added costs to projects. If the Council ever did decline to grant an exemption, that would certainly
27 add time to most governmental land use projects and most certainly would add costs to those projects.

28
29 **Mayor McNamara opened the Public Hearing.**

30
31 **Ms. Sarah Riley (Ward-2)-** She spoke about her concerns regarding protections for the City's natural
32 resources and reasons why she felt it was premature to adopt this proposed amendment.

33
34 **Sherry Boschert (Ward-2):** She questioned the reasons why, in 2009, there was a compelling reason to
35 make that change in governmental uses. Deputy City Manager Brooks noted his recollection was that the
36 City Planner at that time had the feeling that the King was not above the Law, and this was his thinking
37 about adding this change at the time. Councilor Liot Hill noted this was a particular initiative of Nicole
38 Cormen, who was on the Planning Board at the time, and she and a number of other residents had a
39 particular concern which was part of a big environmental movement in Lebanon, at the time, and wanted
40 to add extra protections into the City's process.

41
42 **Mr. Jonathan Chaffee (Ward-1):** He spoke about his reasons for opposing this proposed zoning
43 amendment.

44
45 **Ms. Barbara Hirai (Ward-1):** She spoke about her reasons why this proposal bothered her, which she
46 had submitted to the Council in advance of this meeting.

47
48 **Ms. Christina Haidari (Ward-3):** She served on the Lebanon School Board in the past and spoke about
49 her concerns regarding the quality of life in Lebanon. She questioned who should be making the decision
50 on what is the public good and the impacts this proposed amendment might have on the City. She
51 thought more time is needed before this amendment is voted on.

1
2 **Kathy Beckett (Ward-2):** She spoke about her concerns regarding safeguarding Lebanon’s wetland
3 buffers and her reasons why she opposed this amendment.
4

5 Mayor McNamara wanted to clarify, once again, that the City is still subject to all State and Federal
6 Wetlands Regulations. This amendment does not, nor can it, pertain to State and Federal Regulations.
7

8 **Hearing no further comments from the public, the Public Hearing was closed.**
9

10 **Council/Staff Summarized Comments:**

11 **Mayor McNamara** noted that as he read through the public comments, he was concerned because he felt
12 like the public was thinking of this in a much broader way than it really is and gave examples. This
13 (amendment) would be used in a very limited number/types of projects that are located in limited areas.
14 He was also concerned that some of the comments had undercurrents that the City wanted to bypass
15 regulations. That is not the case. He wanted to make it very clear that this is not just the Conservation
16 Commission who takes conservation into account in the City. It’s the staff, the Zoning Board, the
17 Planning Board, and the City Council. We all recognize the importance of Lebanon’s natural resources.
18

19 **Councilor Wilkie** spoke about his reasons why he felt uncomfortable with the proposed amendment and
20 was not sure this amendment was necessary.
21

22 **Councilor Heistad** spoke about the loss of some of Lebanon’s wetland and his reasons/concerns why he
23 felt he could not support this proposed amendment. We should keep the regulations we have had in place
24 since 2009.
25

26 **Councilor Sykes** spoke about his reasons why he felt conflicted about this proposed amendment and his
27 reasons why the Council should not take any action on this proposal.
28

29 **Assistant Mayor Below** spoke about the rationale for not putting the language about non-governmental
30 uses and giving the Council the option to exempt those. He also spoke about his reasons why he was
31 against this proposed amendment in its current form, and his reasons for partially changing this
32 amendment and proposed where the text amendment could be modified.
33

34 **Councilor Zook** spoke about her reasons why she felt this proposed amendment may not be needed and
35 felt the Council should codify what we are already doing.
36

37 **Councilor Simon** spoke about his reasons why he felt this amendment change is not warranted and spoke
38 out against making (policy) decisions on the fly.
39

40 **Councilor Wilkie** spoke about his reasons why he felt content to have exemptions brought before the
41 Council.
42

43 After Mayor McNamara called for a Motion, no Council member came forth to make a Motion to Amend
44 Section 214 (“Governmental Uses”) of the Lebanon Zoning Ordinance.
45

46 **ACTION: No action taken. Amendment to Section 214 of the Lebanon Zoning Ordinance**
47 **(“Governmental Uses”) failed by default.**

1
2 **9. OLD BUSINESS: NONE**
3

4 **10. NEW BUSINESS:**

- 5 **A.** Discussion and Set Public Hearing for July 17, 2024: Ordinance #2024-07 to Amend City Code
6 Chapter 136, Sewer Service
7

8 Included in the agenda packet: **(All supportive documents and information can be found on pages 56-**
9 **65, Council agenda packet)**

- 10 1. Proposed Ordinance #2024-07
11 2. Legal opinion from Attorney Christine Johnston, dated June 12,

12 2024 Available, but not included in this Section:

13 [City Code Chapter 136, Sewer Service](#)
14

15 Mr. Jay Cairelli (Public Works Director) and Mr. Brian Vincent (City Engineer) reviewed the background
16 and explained the proposed changes to Ordinance #2024-07, Chapter 136.
17

18 **BACKGROUND**

19 Over a three-day period in February this year, City staff met in a LEAN event to review the current process
20 associated with applying for and obtaining a sewer use permit. The problem statement being addressed was
21 “how do we simplify the permitting process and align expectations for applicants while still gathering the
22 necessary information to make informed decisions that protect the integrity of our sewer system?” The
23 overall goals of the event were to understand the current capacity in our sewer system; to improve the
24 customer experience by simplifying the application form and providing more education via the website; and
25 to reform and simplify the internal review and tracking process.
26

27 The results of the event produced new internal processes and created a more user-friendly application form,
28 both of which can be implemented once Ordinance #2024-07 is adopted, and Chapter 136 is updated. In
29 summary, Chapter 136 is being updated to include the following:

- 30 – Separate and clarify processes for both sewer use and sewer connection permits. At the present time
31 we do not have a formal process in our code and would like to add it.
32 – Reformat paragraphs to improve flow of information provided.
33 – Incorporate references to the City’s Sewer Construction Standards.
34 – Remove the requirement for a two-part payment for Sewer Development Charges.
35 – Exempt Sewer Development Charges for municipalities and school districts that are developing or
36 improving their municipally/school-owned facilities (governmental land uses).
37 – Authorize the City Manager to accept rights-of-way or other property interests on behalf of the City
38 for sewer purposes and to release such rights-of-way or other property interests held by the City
39 when no longer needed for sewer purposes.
40 – Remove the requirement for a 5-year historical look-back for those parcels without a current sewer
41 unit allotment.
42

43 **PLEASE NOTE:** The complete proposed Ordinance #2024-07 can be found on **pages 58-64, in the July**
44 **3, 2024, Council agenda packet.**
45
46

1 **Council/Staff Comments:**

2 The Council, Mr. Cairelli, Mr. Vincent and City Manager Mullholland discussed the reasons and
3 justifications for exempting other municipalities and school districts from the sewer development charges;
4 and, the need for clarification on page 58, Item D in proposed Ordinance #2024-07 to include ADU's.

5
6 **ACTION:**

7 *Assistant Mayor Below MOVED, that the Lebanon City Council hereby schedules a public hearing for*
8 *Wednesday, July 17, 2024, beginning at 6:00 p.m. in Council Chambers, City Hall, and Remote via the*
9 *City's Virtual Platform, for the purpose of receiving public input and taking action on proposed*
10 *Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service.*

11 *Seconded by Councilor Wilkie.*

12
13 **Roll Call Vote:**

14 *Voting Yea: Assistant Mayor Below, and Councilors Heistad, Simon, Sykes, Whittlesey, Wilkie, Zook*
15 *and Mayor McNamara.*

16 *None voted Nay.*

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

18
19 **B. Discussion and Set Public Hearing for July 17, 2024: Ordinance #2024-09 to Amend City Code**
20 **Chapter 124, Public Stormwater System, Use of**

21
22 Included in the agenda packet: **(All supportive documents and information can be found on pages 66-**
23 **77, Council agenda packet)**

- 24 1. Proposed Ordinance #2024-09
25 2. City Code Chapter 124, Public Stormwater System, Use of
26 3. Legal opinion from Attorney Christine Johnston, dated June 18, 2024

27
28 Deputy City Manager Brooks reviewed the background for amending City Code, Chapter 124 as listed
29 above.

30
31 **BACKGROUND**

32 The legal authority to acquire and dispose of real property interests on behalf of the City rests with the City
33 Council. On April 3, 2024, the City Council was requested and took action to authorize the City Manager
34 to execute a Release of Sewer Easement over 207 Mechanic Street in Lebanon, which had become obsolete
35 when a previous sewer line was abandoned in place as part of a CSO project in the area.

36
37 During the April 3rd meeting, there was some discussion about delegating to the City Manager the authority
38 to accept and release easements and rights-of-way for public infrastructure systems under certain
39 circumstances. The City's attorney has helped prepare potential amendments to Chapter 124 (Public
40 Stormwater System, Use of), as well as Chapter 136 (Sewer Service) and Chapter 182 (Water Service),
41 which are being considered separately.

42 As proposed for Chapter 124, the City Manager would have the authority to accept rights-of-way or other
43 property interests associated with connections to or extensions of the public stormwater system, and to
44 dispose of such rights-of-way or property interests when no longer needed, and when not reasonably
45 anticipated to be needed in the foreseeable future, for stormwater purposes.

46
47 **Council/Staff Comments:**

City Manager Mulholland noted the purpose behind amending Ordinance #2024-09 is to streamline easements and gave examples.

ACTION:

Councilor Wilkie MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 17, 2024, beginning at 6:00 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 #2024-09 to amend City Code Chapter 124, Public Stormwater System, Use of. Seconded by Councilor Heistad.

Roll Call Vote:

Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara.

None voted Nay.

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

C. Discussion and Set Public Hearing for July 17, 2024: Ordinance #2024-10 to Amend City Code Chapter 182, Water Service

Included in the agenda packet: [\(All supportive documents and information can be found on pages 78-80, Council agenda packet\)](#)

1. Proposed Ordinance #2024-10
2. Legal opinion from Attorney Christine Johnston, dated Jun18, 2024

Available, but not included in this Section:

3. [City Code Chapter 182, Water Service](#)

Deputy City Manager Brooks reviewed the background and the reasons for amending Ordinance #2024-10, as listed above.

BACKGROUND

The legal authority to acquire and dispose of real property interests on behalf of the City rests with the City Council. On April 3, 2024, the City Council was requested and took action to authorize the City Manager to execute a Release of Sewer Easement over 207 Mechanic Street in Lebanon, which had become obsolete when a previous sewer line was abandoned in place as part of a CSO project in the area.

During the April 3rd meeting, there was some discussion about delegating to the City Manager the authority to accept and release easements and rights-of-way for public infrastructure systems under certain circumstances. The City's attorney has helped prepare potential amendments to Chapter 182 (Water Service); as well as Chapter 136 (Sewer Service) and Chapter 124 (Public Stormwater System, Use of), which are being considered separately.

As proposed for Chapter 182, the City Manager would have the authority to accept rights-of-way or other property interests associated with connections to or extensions of the public water system, and to dispose of such rights-of-way or property interests when no longer needed, and when not reasonably anticipated to be needed in the foreseeable future, for water purposes

1 Council/Staff Comments: None.

2
3 **ACTION:**

4 *Councilor Whittlesey MOVED, that the Lebanon City Council hereby schedules a public hearing for*
5 *Wednesday, July 17, 2024, beginning at 6:00 p.m. in Council Chambers, City Hall, and Remote via the*
6 *City's Virtual Platform, for the purpose of receiving public input and taking action on proposed*
7 *Ordinance #2024-10 to amend City Code Chapter 182, Water Service*
8 *Seconded by Councilor Wilkie.*
9

10 **Roll Call Vote:**

11 *Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and*
12 *Mayor McNamara.*
13 *None voted Nay.*
14 **The Vote on the MOTION was unanimously approved (9-0).*
15

- 16 **D.** Discussion and Set Public Hearing for July 17, 2024: Request to Rescind Prior Authorizations
17 to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds
18

19 Included in the agenda packet: **(All supportive documents and information can be found on page 81,**
20 **Council agenda packet)**
21

22 City Manager Mulholland reviewed the background and reasons for rescinding prior Authorizations to
23 Transfer Funds to Capital Projects as listed above.
24

25 **BACKGROUND**

26 On December 13, 2023, the City Council voted to increase the General Fund, Interfund Transfers budget
27 by \$165,860 and to authorize a transfer of the same amount to the Capital Improvements Fund for a new
28 Electric Street Sweepers and Charging Stations project. The appropriation and transfer was intended to
29 provide the City's portion of the funds required to accept funding from the NH Department of
30 Environmental Services Granite State Clean Fleets Grant Program. As proposed, the capital project
31 included the procurement of two 100% electric street sweeper units to replace two existing diesel sweeper
32 units; and the procurement and installation of two electrical vehicle charging stations (one Level 2 and
33 one Level 3).

34 Subsequently, on May 15, 2024, the City Council approved a Supplemental Appropriation in the amount
35 of \$53,200 to be raised and appropriated for expenditure in the Capital Improvements Fund to supplement
36 the funding for the Electric Street Sweepers and Charging Stations Capital Project to cover the City's
37 portion of the additional funds required to accept funding from the NHDES Granite State Clean Fleets
38 Grant Program.
39

40 However, in early June, the Governor & Executive Council declined to approve the Granite State Clean
41 Fleets grant award to the City of Lebanon for the Electric Street Sweepers and Charging Stations project.
42 As a result, the previously appropriated and transferred funds are no longer needed for the project.
43 Therefore, the City Manager recommends that the Council rescind the prior appropriations and
44 authorizations to transfer the funds to the Capital Improvement Fund, and authorize that the appropriated,
45 but unspent funds be transferred back to the City's General Fund.
46

47 **ACTION:**

Councilor Whittlesey MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 17, 2024, beginning at 6:00 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 rescind prior authorizations to transfer funds to the Capital Improvements Fund, and to transfer appropriated, but unspent funds back to the City's General Fund.

Seconded by Councilor Sykes.

Roll Call Vote:

Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara.

None voted Nay.

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

E. Discussion and Set Public Hearing for August 7, 2024: Re-Allocation of Previously Appropriated Funds for the Kimball Street Infrastructure Improvements Capital Project

Included in the agenda packet: [\(All supportive documents and information can be found on pages 82-83, Council agenda packet\)](#)

City Manager Mulholland reviewed the background and reasons for the re-allocation of previously appropriated Funds for the Kimball Street Infrastructure Improvements as listed above.

BACKGROUND

On December 15, 2021, the City Council acted to approve the City budget for Fiscal Year 2022, including the capital improvements budget and authorization to issue bonds or notes for capital improvements. Among the capital projects funded was the Kimball Street Infrastructure Improvements project, which included \$3,405,000 of funding allocated among the General Fund (35%), Water Fund (30%), and Sewer Fund (35%) as follows:

<u>Capital Project</u>	<u>General Fund</u>	<u>Water Fund</u>	<u>Sewer Fund</u>
Kimball Street Infrastructure Improvements	1,191,750	1,021,500	1,191,750

Subsequently, the City elected to allocate available ARPA funds toward the Kimball Street project to cover a portion of the Sewer Fund-supported improvements in the project. In addition, as the project has commenced, it has been determined that less Sewer Fund-supported work is required than anticipated, and that more General Fund-supported work is necessary as part of the project.

At this time, it is recommended that the previously appropriated project funding be re-allocated among the General Fund, Water Fund, and Sewer Fund as follows:

<u>Capital Project</u>	<u>General Fund</u>	<u>Water Fund</u>	<u>Sewer Fund</u>
Kimball Street Infrastructure Improvements	1,941,750	1,021,500	441,750

Based on the language of the Resolutions approved in December 2021, the City Manager is not authorized to modify the borrowing authorization with regard to the relative proportions and allocation of the project financing from the various funds. As a result, the City Council is asked to schedule a public hearing to

1 consider the re-allocation of funds previously appropriated for the Kimball Street project.

2 Because additional funds are now being appropriated from the General Fund rather than the Sewer Fund,
3 this re-allocation request is being processed as a Supplemental Appropriation, even though the total project
4 cost is not changing.

5
6 **ACTION:**

7 *Councilor Wilkie MOVED, that the Lebanon City Council hereby schedules a public hearing for*
8 *Wednesday, August 7, 2024, beginning at 7:00pm in Council Chambers, City Hall, and Remote via the*
9 *City's Virtual Platform, for the purpose of receiving public input and taking action to consider the re-*
10 *allocation among the General Fund, Water Fund, and Sewer Fund of previously approved borrowing*
11 *authorization for the 2022 Kimball Street Infrastructure Improvements Capital Project.*

12 *Seconded by Councilor Whittlesey.*

13
14 **The Vote on the MOTION was unanimously approved (9-0).*

- 15
16 **F.** Request for Exemption of Zoning Requirements per Section 214 of the Zoning Ordinance for
17 City of Lebanon to Construct Public Infrastructure Improvements for Riverdale Neighborhood
18 Odor Control Facility

19
20 Included in the agenda packet: **(All supportive documents and information can be found on pages 84-**
21 **91, Council agenda packet)**

- 22 1. Plan entitled "Site Plan for Odor Control Facility, Lebanon, New Hampshire",
23 prepared by Rod Finley, dated May 1, 2024, including Plan View and Profile View
24 drawings of Odor Control Facility, prepared by Rod Finley, dated February 1, 2024.
25 2. Accepted Shoreland Permit by Notification (RSA 483-B), NHDES File Number: 2024-
26 01361, dated May 16, 2024, including Shoreland Permit by Notification (PBN)
27 Notification Form, dated May 1, 2024.

28
29 City Manager Mulholland reviewed the background behind the request as listed above.

30
31 **BACKGROUND**

32 The pressure sewer is controlled by a cone valve, which opens when the pressure sewer reaches a preset
33 pressure and closes after discharging for approximately 30 minutes. The pressure sewer discharges at a rate
34 of approximately 900 gallons per minute (gpm). As flow enters Lebanon's gravity sewer, odiferous air is
35 displaced and escapes through the covers of the sewer structures throughout the Riverdale neighborhood.
36 The purpose of the Riverdale Neighborhood Odor Control Facility project is to construct an odor control
37 facility adjacent to the Riverdale Neighborhood.

38 The Odor Control Facility consists of a utility trailer with an in-line explosion-proof exhaust fan and duct
39 work attached to a sewer structure located along the sewer interceptor just downstream of the Riverdale
40 neighborhood within the "Bagley Field" property, 0 Spencer Street, Tax Map 78, Lot 23. The exhaust fan is
41 designed to extract air from the sewer main and discharge it into a wood chip bunker (see attached Odor
42 Control Facility design plan). The wood chips, moist with rain, provide a large surface area that absorbs
43 and neutralizes odors by providing a habitat for microorganisms that break down odor-causing compounds.

44 To energize the exhaust fan, we proposed to extend an electrical service to the Odor Control Facility. The
45 electrical service consists of three 35' utility poles and an overhead conductor. The service will extend from
46 Spencer Street, near the existing bridge abutment (for the former bridge to "Bagley Field" which does not
47 exist anymore), across the Mascoma River, to two poles along the utility corridor to the Odor Control

Facility (see Site Plan in agenda packet).

The installation of the first utility pole, near the bridge abutment along Spencer Street is within the Riverbank Protection District. The second and third poles are not within the Riverbank Protection District. To install the first utility pole, a Special Exception is required from Section 410.6 of the Zoning Ordinance. The conditions for granting a Special Exception are listed in the Ordinance, and the Zoning Board of Adjustment (ZBA) 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 the construction schedule and potentially lead to delaying the construction of the Odor Control Facility, which would not be in the public's interest. A Shoreland Permit by Notification was granted in May 2024 by the New Hampshire Department of Environmental Services (NHDES) for direct shoreland impacts (NHDES Shoreland Permit attached).

The Riverdale Neighborhood Odor Control Facility project is a public infrastructure improvement project that does not seek any kind of revenue or profit generation. The project is not a "land use" project such as a development of a building lot. Rather, it constitutes an expansion of an existing use in response to public need.

The project will be constructed as soon as local permitting has been resolved.

ACTION:

Councilor Whittlesey MOVED, that in accordance with Section 214 of the Lebanon Zoning Ordinance, the City Council hereby exempts the Riverdale Neighborhood Odor Control Facility project from all zoning requirements.

Seconded by Councilor Simon.

Roll Call Vote:

Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara.

None voted Nay.

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

G. Discussion of Electric Vehicle (EV) Charging Stations in the Downtown Lebanon Tax Increment Financing (TIF) District

Included in the agenda packet: [\(All supportive documents and detailed information can be found on pages 92-94 Council agenda packet\)](#)

Not included in agenda packet:

PowerPoint presentation from Tad Montgomery and Sherry Boschert.

BACKGROUND

Transportation accounts for roughly 46% of New Hampshire's greenhouse gas emissions. One easy way for residents, businesses, and the City to reduce greenhouse gases is by switching to electric vehicles (EVs). EVs increase the effective MPG for a car from 25-35 MPG to the equivalent of 100-125 MPG, and much higher if the electricity used to charge the EV is renewable. Public EV charging infrastructure is critical to the adoption of EVs. Nearly half of Lebanon households are rentals, where it can be difficult or impossible for the occupants to gain access to EV charging.

1 The City now has three fast (Level 3) EV charging stations on Route 12A in West Lebanon, which is
2 noteworthy for a city of our size, but we have no public charging stations in our downtown area. [A study](#)
3 presented recently at Dartmouth's Irving Institute for Energy and Society showed that installing EV
4 charging stations increased sales at businesses within 100 meters of the chargers by an average of 13%.
5 LEAC and City staff are working to develop EV chargers of different charging speeds in our downtown.
6 This proposal represents the easiest, fastest option to start that process and will have the added benefit that
7 the electricity used to charge the EVs will be renewable.

8
9 The City has tried to incorporate solar EV charging into grant applications for public EV charging, but none
10 of the grants have been funded to date. The Department of Transportation recently allowed resubmission
11 of Charging and Fueling Infrastructure (CFI) grants and anticipates announcing awardees by late
12 September 2024. Recently, City Manager Mulholland recommended that TIF funds might be used to install
13 EV chargers in the downtown area, and this memo to the Council represents a proposal for the first phase
14 of that, plus an overview of all of the City's efforts to add EV charging.

15 The Taylor Street parking lot is an ideal location for EV charging for many reasons, but there are plans for
16 its redevelopment that preclude installing permanent infrastructure there. In order to meet the need for EV
17 charging while respecting the City's development vision, staff and LEAC are proposing solar EV charging
18 stations that are designed to be easily moved when the need arises. These EV chargers have the additional
19 benefit that they require no infrastructure – no trenching, wires, conduit, or interconnection to the electric
20 grid.

21
22 Solaflect is a solar company based in Norwich, VT that specializes in the manufacture and installation of
23 solar arrays that track the sun. Solaflect gave a presentation to LEAC in 2023 on a new technology that they
24 have developed that is the stand-alone solar tracker pictured below. It can charge up to four EVs
25 simultaneously at a relatively low level. The unit has a 10-kW battery incorporated into it but is mostly
26 designed to provide a charge when the sun is shining.



27
28 A SolaflectEV charger is not a replacement for a fast Level 3 charger or even a Level 2 charger. Rather it
29 is a slower charge for EV owners who live or work near downtown, or are spending hours downtown for a
30 special function, and want to top off their EV's battery. One of these units could provide enough charge
31 for four commuters who drive from Claremont or Thetford. EV drivers are accustomed to "topping off"
32 their batteries rather than "filling up." The cost of these EV chargers to the TIF district would be made up
33 through user fees and any improved property valuations from adding EV charging. When redevelopment
34 of the Taylor Street parking lot begins, the solar charger can be moved to another location for use solely
35 by Lebanon employees and the City's fleet or by the general public as well.

36 Solaflect is a local company, which would facilitate maintenance. Dartmouth College has installed a
37 SolaflectEV charger in its Maynard parking lot and others are planned at Middlebury College, Marble
38 Works, Dartmouth Health, Williams College, and Hypertherm, according to the company.

39
40 City staff have researched other similar solar EV chargers and found only one comparable model. It is
41 produced by Beam Global in San Diego, allows for the collection of a fee for EV charging, but has a base
42 cost of \$97,489 and higher annual maintenance costs than the Solaflect model.

SolalectEV Charger - Cost and Terms

Purchase: \$52,000

-\$15,600 (anticipated 30% federal “direct pay” rebate)

\$36,400 Net cost

Annual fee: \$300 annual service/maintenance fee

Estimates of expected revenue from the SolalectEV charger will be presented by LEAC EV Subcommittee Chair Sherry Boschert at the Council meeting, along with an overview of other City efforts and LEAC’s vision for EV charging throughout Lebanon. In addition to the SolalectEV, the City is investigating using TIF funds to install more EV charging stations downtown. The City also has resubmitted a federal Charging and Fueling Infrastructure grant for EV charger installations in multiple parts of Lebanon.

Below is a satellite image of Taylor Street parking lot and downtown with the red circle representing a 100-meter radius from the approximate proposed location of a solar EV charger.

Economic benefits of EVCS

- See lebanonnh.gov/ev for synopsis and link to one study
- 4-year study of 273 stores, retail businesses, restaurants, etc.
- Within 100 meters of EVCS, sales increased 13% on average



Above: Red circle shows 100-meter radius of economic influence from proposed solar EVCS location in lower lot

Mr. Tad Montgomery (Energy & Facilities Manager) and Ms. Sherry Boschert (Chair, LEAC EV Subcommittee) reviewed the background and gave a PowerPoint presentation regarding why Electric Vehicle Charging Stations should be considered for Lebanon.

Next steps

- Solar EV charging station in lower lot
- Federal grant application results (CFI)
- RFP for other EV charging stations (TIF funds)
- Most EVCS to be owned by vendors or third parties (possibly Lebanon Community Power)
- Revenue-sharing agreements will recoup most City expenses over time
- Consult with Fire Chief about station retrofit



1 **Council/Staff Comments:**

2
3 The Council discussed: building EV charging stations infrastructure; the pros/cons of installing single
4 free standing EV charging stations; the reliance value of this project and the land-to-gas project to provide
5 a power source in case the City undergoes a complete power failure for several days; how the payment
6 system is integration into these projects.
7

8 **ACTION:**

9 *Councilor Sykes MOVED, that the City Council hereby supports the proposal from LEAC for the City*
10 *to purchase a solar EV charging station using Downtown Lebanon TIF funds for temporary*
11 *installation in the Taylor Street parking lot in a manner that does not interfere with future development*
12 *possibilities of that space.*

13 *Seconded by Councilor Wilkie.*
14

15 **Roll Call Vote:**

16 *Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and*
17 *Mayor McNamara.*

18 *None voted Nay.*
19

20 **The Vote on the MOTION was unanimously approved (9-0).*
21

22 City Manager Mulholland noted this will need to go before the TIF Advisory Board.
23

24 *Assistant Mayor Below MOVED to extend the meeting to 10:05 PM*

25 *Seconded by Councilor Wilkie.*
26

27 **Roll Call Vote:**

28 *Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and*
29 *Mayor McNamara.*

30 *None voted Nay.*
31

32 **The Vote on the MOTION was unanimously approved (9-0).*
33

34 **11. CITY MANAGER REPORT:**

35 City Manager Mulholland updated the Council on the following:

- 36 • New voting machine purchases
 - 37 • Ask a Councilor Session with Councilors Whittlesey, Simon and Heistad: Went well
 - 38 • Westboro Yard
 - 39 • New Well: Drilling will begin in fall
 - 40 • Fire Station's Administrative temporary move to SAU Building
 - 41 • New microphone purchases for Council Chambers
 - 42 • DPW: New pedestrian crossing signals
- 43

44 **12. COUNCIL REPRESENTATIVES TO OTHER BODIES:**
45

46 **13. FUTURE AGENDA ITEMS:**
47

1 **14. NON-PUBLIC SESSION:**

2
3 **15. ADJOURNMENT:**

4 *Councilor Whittlesey MOVED for adjournment.*

5 *Seconded by Councilor Wilkie.*

6
7 **Roll Call Vote:**

8 *Voting Yea: Assistant Mayor Below, and Councilors Simon, Sykes, Whittlesey, Wilkie, Zook and*
9 *Mayor McNamara.*

10 *None voted Nay.*

11
12 **The Vote on the MOTION was unanimously approved (9-0).*

13
14 **The meeting was adjourned at 9:59 PM.**

15
16 Respectfully submitted,

17 Dona E. Gibson

18 Recording Secretary

Agenda

Lebanon City Council

July 17, 2024

9. Public Hearing Items:

9.A – Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service

A public hearing for the purpose of receiving public input and taking action to amend City Code Chapter 136, Sewer Service.

The City Council scheduled this public hearing at its July 3, 2024 regular meeting. The public hearing was properly noticed in the *Valley News* on July 6, 2024 in accordance with City Code and State Law.

Background

Over a three-day period in February this year, City staff met in a LEAN event to review the current process associated with applying for and obtaining a sewer use permit. The problem statement being addressed was “how do we simplify the permitting process and align expectations for applicants while still gathering the necessary information to make informed decisions that protect the integrity of our sewer system?” The overall goals of the event were to understand the current capacity in our sewer system; to improve the customer experience by simplifying the application form and providing more education via the website; and to reform and simplify the internal review and tracking process.

The results of the event produced new internal processes and created a more user-friendly application form, both of which can be implemented once Ordinance #2024-07 is adopted, and Chapter 136 is updated. In summary, Chapter 136 is being updated to:

- Separate and clarify processes for both sewer use and sewer connection permits.
- Reformat paragraphs to improve the flow of information provided.
- Incorporate references to the City’s Sewer Construction Standards.
- Remove the requirement for a two-part payment for Sewer Development Charges.
- Exempt Sewer Development Charges for municipalities and school districts that are developing or improving their municipally/school-owned facilities (governmental land uses).
- Authorize the City Manager to accept rights-of-way or other property interests on behalf of the City for sewer purposes and to release such rights-of-way or other property interests held by the City when no longer needed for sewer purposes.
- Remove the requirement for a 5-year historical lookback for those parcels without a current sewer unit allotment.

Staff from the Department of Public Works will be present to review the proposed Ordinance and to answer any questions the Council may have.

Action:

If the Council decides to move forward, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby adopts Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service, as presented in the July 17, 2024 City Council agenda packet.

Included in this Section:

1. Proposed Ordinance #2024-07
2. Legal opinion from Attorney Christine Johnston, dated June 12, 2024
3. Notice of Public Hearing as published in the July 6, 2024 Edition of the *Valley News*

Available, but not included in this Section:

1. [City Code Chapter 136, Sewer Service](#)

**CITY OF LEBANON
ORDINANCE #2024-07**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 136, Sewer Service, Article II, Sewer Use Requirements and Article XIV, Sewer Connections, Extensions and Expanded Sewer Use Allocations.

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

Section 1

The Code of the City of Lebanon is hereby amended to revise Chapter 136, Sewer Service, Article II, Sewer Use Requirements, Section 136-9, Building Sewers and Connections to City Sewer as follows:

§ 136-9 Building sewers and connections to city sewer.

A. No person(s) shall uncover, use, alter or disturb any public sewer or appurtenance thereof without first obtaining written permission from the Director of Public Works.

B. No person(s) shall make any connections with or opening into any public sewer or appurtenance thereof without first obtaining a sewer connection permit from the Director of Public Works.

C. There shall be two classes of sewer connection permits:

- (1) For residential and commercial services, the owner(s) or their agent shall make application for a sewer connection permit at least 30 days prior to planned sewer connection and in accordance with the provisions of Article XIV of this chapter.
- (2) For an establishment discharging industrial wastes, the owner(s) or their agent shall make application for a sewer connection permit at least 60 days prior to planned sewer connection and in accordance with the provisions of Article IV of this chapter.

A permit and inspection fee in accordance with the provisions of Code of the City of Lebanon, Chapter 68, Fees, shall be paid to the City at the time the application is filed.

D. A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot where no private sewer is available or where the rear building cannot be connected to the public sewer system through an adjoining alley, court, yard, or driveway. In such cases, the front building sewer may be extended to the rear building and the whole considered as one building sewer however, the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

E. Existing building sewers may be used in connection with new buildings only when they are found by the Director of Public Works or their designee to meet all requirements of this chapter. Any required examinations or tests of the existing building sewer to determine its adequacy shall be at the expense of the owner/applicant.

F. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the City of Lebanon Sewer Construction Standards. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Environmental Federation (WEF) Manual of Practice No. FD-5 shall apply.

G. During installation of a new sanitary sewer main, the City may construct the service connections for existing buildings from the main to the curb or the property line or the edge of a right-of-way. Construction of the building sewer, including connection to the sewer main through the provided service connection, shall be the responsibility of the owner of the improved property to be connected. Such owner shall indemnify and save harmless the City, its officers and agents from all loss or damage that may result, directly or indirectly, due to the construction of a building sewer on owner's premises or its connection to the service connection. The owner shall thereafter be obligated to pay all costs and expenses of operation, repair, and maintenance, and of reconstruction, if needed, of the building sewer and service connection. When it is deemed in the City's best interest, the City Manager may authorize the construction of service connections to the foundations of existing buildings at City expense. The owner shall thereafter be obligated to pay all costs and expenses of operation, repair, and maintenance, and of reconstruction, if needed, of the building sewer and service connection. The owner shall obtain an excavation permit (see subsection P below) and comply with all imposed conditions prior to any excavation of the City highway to achieve the aforementioned sewer connection.

H. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sewage conveyed by such building drain shall be lifted by an approved means and discharged to the public sewer at the owner's expense.

I. No person(s) shall connect roof downspouts, interior or exterior foundation drains, sump pumps, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

J. No person shall obstruct the free flow of air through any building sewer connection.

K. The connection of the building sewer into the public sewer shall conform to the requirements of the City of Lebanon Sewer Construction Standards and other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications

of the ASTM and the WEF Manual of Practice No. FD-5. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Director of Public Works or their designee before installation.

L. The applicant for the sewer connection permit shall notify the Director of Public Works when the building sewer is ready for inspection and connection to the public sewer. Such notice shall be provided not less than 48 hours in advance of the time any connection is to be made to any public sewer. The connection and testing shall be made under the supervision of the Director of Public Works or their designee. This requirement shall also apply to repairs or alterations to building connections, drains or pipes thereto.

M. Suitable provisions shall be made at the point of connection for testing, for which responsibility shall rest with the holder of the sewer connection permit.

N. No building sewer shall be covered until it has been inspected and approved by the Director of Public Works or their designee. If any part of the building sewer is covered before being inspected and approved, it shall be uncovered for inspection at the cost and expense of the owner of the improved property to be connected to the public sewer. No connection to the public sewer shall be operational until the building sewer has been found to be in compliance with all applicable rules and regulations and all applicable permits are approved and in place.

O. The Department of Public Works shall maintain a record of all connections made to public sewers under this chapter and all repairs and alterations made to those building connections. All staff involved with the sewer connection process shall assist the Director of Public Works in securing data needed to create and maintain such records.

P. All excavations in the city right-of-way, if any, for building sewer installation shall require a permit in accordance with City Code Chapter 152, Article II, Excavations. All open excavated areas shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city at the expense of the owner, and in full accordance with applicable provisions of City Code Chapter 152.

Q. Proposed new discharges from residential or commercial sources involving loadings exceeding 50 population equivalents (5,000 gallons per day), or any new industrial discharge or alteration in either flow or waste characteristics of greater than 20% of existing industrial wastes that are being discharged into the Lebanon Treatment Works must be approved by the NHDES. Such approvals shall be obtained in accordance with § 136-39, Reports of changed conditions, of this chapter.

Section 2

The Code of the City of Lebanon is hereby amended to revise Chapter 136, Sewer Service, Table of Contents, and Article IX, Sewerage Treatment Plant Connection Fee; Discontinuance of Service and User Charges to rename Article as follows:

Article IX Sewer Use Permit Application Fee; Discontinuance of Service and User Charges

Section 3

The Code of the City of Lebanon is hereby amended to revise Chapter 136, Sewer Service, Article XIV, Sewer Connections, Extensions and Expanded Sewer Use Allocations, Section 136-105, Sewer Use Permit and Notice of Allocation as follows:

§ 136-105 Sewer use permit and notice of allocation.

A. The procedural mechanism for assuring compliance with § 136-102 and § 136-103 above shall be an application for, and issuance of, a sewer use permit, which shall be separate from, and in addition to, any other land use approval required by law or ordinance for the underlying development. No person shall develop or change the use of land within the City, or take any other action, which results in increased use of the City's sewer system without a sewer use permit.

B. Application and fee. The fee for a sewer use permit application shall be in an amount set forth in Code of the City of Lebanon, Chapter 68, Fees, and shall be payable at the time the application is filed. Applications shall be made through the Department of Public Works on a form as approved by the City Manager or their designee and shall include information about the development proposal which is detailed enough to enable an accurate capacity analysis, as set forth below. Failure to provide required information shall be considered sufficient cause to refuse to grant a permit. Only after all information necessary to issue a notice of allocation has been submitted and the application is deemed complete for that purpose by the Department of Public Works shall a capacity analysis be completed.

C. Capacity analysis. In determining whether there is adequate capacity within the City's sewer system to accept flows from a proposed development as set forth in an application, the City or City's consultant shall utilize the sewer system model developed and provided by Weston and Sampson Engineers as a result of the City's Capacity, Management, Operations, and Maintenance (CMOM) initiative along with any revisions thereto. The determination of the remaining unallocated capacity for any element of the sewer collection system shall be based upon the estimated capacity as it exists at the time of the sewer use permit application, reduced by any outstanding unutilized allocations, as described in Subsection E, below. The applicant shall provide the necessary funds, as determined by the Department of Public Works, to pay for the cost of the capacity

analysis. The funds provided shall be kept by the City in escrow and drawn upon by the City to pay for the analysis. Any funds remaining after all of the costs of the analysis are completed shall be returned to the applicant.

D. Notice of permitted allocation. Once a capacity analysis has been completed and a determination has been made that adequate sewer capacity is available to serve a proposed development in accordance with the standards of this article, the City Manager shall issue a notice of allocation to the applicant. The effect of the notice of allocation shall be to allow the applicant to reserve the permitted capacity for the applicant's use while other land use permits required for the particular development are applied for and reviewed. Sewer allocation will be reserved for a period not to exceed 2 years from the date of notice of allocation in order to allow time for the applicant to apply for and receive other required land use approvals.

E. Effect of notice of allocation on later applications. Once a notice of permitted allocation has been issued, the amount of sewer capacity reserved under that notice shall be subtracted from the total remaining unallocated capacity of each element of the sewer system impacted by that application, for purposes of applying the 95% limitation in § 136-102 and the 50% limitation in § 136-103 to subsequent applications. If the notice of allocation or the corresponding sewer use permit expires under the terms of this article, the capacities affected will be added again to the unallocated remaining capacity calculation; provided, however, that no such readjustment shall be made after the underlying development permit (subdivision, site plan, or other type of approval) becomes final and vested; from that point forward, the sewer impacts of that permit will instead be accounted for through the City's ongoing monitoring of its sewer collection system.

F. If Planning Board or other approval is obtained within two years of the date of notice of allocation, and if the applicant has received approval from the Director of Public Works for any sewer construction plans required for the project, the Director of Public Works shall notify the applicant that their permit is pending upon payment of all outstanding applicable fees. All applicable fees must be paid in full within 90 days of receipt of notice of pending permit or permit application and all associated capacity reservations will be null and void. If applicable fees are paid within the 90 days of receipt of notice of pending permit, a formal sewer use permit will be issued. The sewer use permit shall run concurrently and congruently with its associated Planning Board or other approval. Should the Planning Board or other approval lapse or be revoked for any reason, the sewer use permit will become null and void.

G. If Planning Board approval, or, if none is required for the development, then a building permit or other required approval, is not obtained within two years, or if any such approval is denied, and such denial becomes final, then the notice of allocation shall expire, and the associated sewer capacity will be returned to the system for use by others.

H. In the case of conflicting requests for unallocated remaining capacity, allocation shall be on a first-come, first-serve basis, based on the date of the City's receipt of a complete sewer use permit application with all required information. The City Manager is authorized

to maintain, upon some fair basis, a waiting list of persons whose applications are denied due to lack of capacity, to enable such applicants, at their option, to retain higher priority for allocation of additional capacity, should it become available at a later time.

I. The issuance of a notice of allocation or sewer use permit shall not be deemed to create any kind of vested or property right in the City-owned sewer system. The privileges conferred by such permits may not be assigned, traded, exchanged among properties, or applied to a materially different development without the approval of the City Manager acting on a revised application submitted under this section.

Section 4

The Code of the City of Lebanon is hereby amended to revise Chapter 136, Sewer Service, Article XIV, Sewer Connections, Extensions and Expanded Sewer Use Allocations, Section 136-106, Connections as follows:

§ 136-106 Connections.

All new connections to the existing City sewer system shall require the approval of the Director of Public Works or their designee, by way of the issuance of a sewer connection permit in accordance with §136-9.

Section 5

The Code of the City of Lebanon is hereby amended to revise Chapter 136, Sewer Service, Article XIV, Sewer Connections, Extensions and Expanded Sewer Use Allocations, Section 136-108 Extension of Sewer Mains as follows:

Add a new Subsection C to the end of Section 136-108:

C. In connection with any approved expansion or modification of sewer infrastructure under this §136-108, the City Manager shall have authority to accept on behalf of the City rights-of-way and other interests in property as described in Subsections (B)(1)(d) and (B)(4) above. All such interests shall comply with the requirements of those Subsections. To the extent a sewer project authorized under this §136-108 renders obsolete any existing rights-of-way or other property interests held by the City for sewer purposes, the City Manager shall have the authority on behalf of the City to release such interests upon written certification from the City Engineer, or such other person as designated by the Public Works Director, that the property interest is no longer needed by the City for sewer purposes and is not reasonably anticipated to be needed by the City for that purpose in the foreseeable future.

Section 6

The Code of the City of Lebanon is hereby amended to revise Chapter 136, Sewer Service, Article XV, Sewer Development Charge, Section 136-121 Imposition of Sewer Development Charges as follows:

§ 136-121 Imposition of Sewer Development Charges.

A. An SDC is hereby imposed on all future customers of the City sewer system and on all existing customers who seek to enlarge existing sewer services. This requirement shall apply to customers both within the city and outside the boundaries of the City. (Notwithstanding the foregoing, this article shall not apply to the City, itself, in its role as a developer, nor shall it apply to other governmental entities who seek to establish or enlarge sewer services for governmental use as that term is defined in RSA 674:54.) No person or organization shall be legally entitled to connect to the City sewer system or to enlarge an existing sewer service until the sewer development charge imposed by this section is paid. This section is not in derogation of, but is in addition to, all other fees which may be required by the City of Lebanon under any other applicable codes or ordinances.

B. All SDCs imposed by this article shall be determined by the estimated gallons per day of sewer use of a sewer user. The SDC is based on one sewer unit. See the Code of the City of Lebanon, Chapter 68, Fees, regarding the calculation of amounts.

C. With respect to persons or organizations seeking to enlarge an existing sewer service or increase existing sewer flows, the sewer development charge imposed shall be the difference between the current permitted sewer units for the same connection, or if none, the sewer units that would have been generated if projected flows had been assessed for the prior use. The Director of Public Works may take other factors into account when determining the valuation of the sewer system.

Section 7. Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 8. Effective Date

This Ordinance shall become effective upon passage.

June 12, 2024

Shaun Mulholland
City Manager
City of Lebanon, NH
51 N. Park St.
Lebanon, NH 03766

RELEASED TO THE PUBLIC
Lebanon City Manager's Office

Date: Jun 26, 2024



RE: Ordinance 2024-07 Chapter 136, Sewer Service

Mr. Mulholland,

This is a legal opinion as required by § 115-3 of the Lebanon City Code concerning the proposed Ordinance 2024-07, Chapter 136, Sewer Service, which your office forwarded to me on May 14, 2024 and in revised form on May 22, May 30 and June 5. The goals of the proposed ordinance as I understand them are to amend the existing Chapter 136 of the City Code to streamline and improve the sewer permitting process, clarify the requirements, exempt government entities from the Sewer Development Charge, align the sewer permitting process with the City's electronic system (EB2gov), and set forth standards and circumstances in which the City Council can permit the City Manager to accept on the City's behalf ownership of new sewer infrastructure and easements and release obsolete easements.

I have reviewed the proposed ordinance in detail. In my opinion, other than as noted below, the ordinance is consistent with New Hampshire law and I discern no legal problems.

One of the amendments this Ordinance would make is to § 136-121, to exempt governmental entities from assessment of the Sewer Development Charges (SDCs). Municipalities are authorized by RSA 149-I:7 and :8 to charge sewer users and customers for the costs of acquiring, expanding, maintaining, improving, and operating the system. The law is not specific about exactly how these charges may be apportioned among the various properties and entities benefitted by the system; it says only that these charges should represent a customer's "just share of the expense" and be "equitable." While there is no specific authorization to exempt governmental entities from a particular fee, the exemption may be justified and equitable if the governmental use or entity is providing a benefit to the City that offsets the burden of that use upon the system.

Please do not hesitate to contact me with additional questions or comments.

Sincerely,



C. Christine Johnston



**LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARINGS
Wednesday, July 17, 2024 - 6:00pm
Council Chambers, City Hall or
REMOTE VIA VIRTUAL PLATFORM
LebanonNH.gov/LIVE**

The Lebanon City Council will hold public hearings on July 17, 2024, beginning at 6:00pm for the following:

- A. Ordinance 2024-07: Chapter 136, Sewer Service** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service.
- B. Ordinance 2024-09: Chapter 124, Public Stormwater System, Use of** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-09 to amend City Code Chapter 124, Public Stormwater System, Use of.
- C. Ordinance 2024-10: Chapter 182, Water Service** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-10 to amend City Code Chapter 182, Water Service.
- D. Request to Rescind Prior Authorizations to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds** – A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations to transfer funds to capital projects, and to transfer appropriated, but unspent funds back to the General Fund.

The July 17, 2024 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning July 12, 2024: LebanonNH.gov/Agendas

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 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.

The foregoing notice was published in the *Valley News*, a newspaper of general circulation in the City of Lebanon, in accordance with the Code of the City of Lebanon on Saturday, July 06, 2024.

Jaseya Ewing

Jaseya Ewing, City Clerk

Agenda

Lebanon City Council

July 17, 2024

9. Public Hearing Items:

9.B – Ordinance #2024-09 to amend City Code Chapter 124, Public Stormwater System, Use of

A public hearing for the purpose of receiving public input and taking action to amend City Code Chapter 124, Public Stormwater System, Use of.

The City Council scheduled this public hearing at its July 3, 2024 regular meeting. The public hearing was properly noticed in the *Valley News* on July 6, 2024 in accordance with City Code and State Law.

Background

The legal authority to acquire and dispose of real property interests on behalf of the City rests with the City Council. On April 3, 2024, the City Council was requested and took action to authorize the City Manager to execute a Release of Sewer Easement over 207 Mechanic Street in Lebanon, which had become obsolete when a previous sewer line was abandoned in place as part of a CSO project in the area.

During the April 3rd meeting, there was some discussion about delegating to the City Manager the authority to accept and release easements and rights-of-way for public infrastructure systems under certain circumstances. The City's attorney has helped prepare potential amendments to Chapter 124 (Public Stormwater System, Use of), as well as Chapter 136 (Sewer Service) and Chapter 182 (Water Service), which are being considered separately.

As proposed for Chapter 124, the City Manager would have the authority to accept rights-of-way or other property interests associated with connections to or extensions of the public stormwater system, and to dispose of such rights-of-way or property interests when no longer needed, and when not reasonably anticipated to be needed in the foreseeable future, for stormwater purposes.

Action:

If the Council decides to move forward, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby adopts Ordinance #2024-09 to amend City Code Chapter 124, Public Stormwater System, Use of, as presented in the July 17, 2024 City Council agenda packet.

Included in this Section:

1. Proposed Ordinance #2024-09
2. City Code Chapter 124, Public Stormwater System, Use of
3. Legal opinion from Attorney Christine Johnston, dated June 18, 2024
4. Notice of Public Hearing as published in the July 6, 2024 Edition of the *Valley News*

**CITY OF LEBANON
ORDINANCE #2024-09**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 124, Public Stormwater System, Use of, Section §124-4, Stormwater connections and extensions.

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

Section 1

The Code of the City of Lebanon is hereby amended to revise Chapter 124, Public Stormwater System, Use of, as follows:

Add a new Subsection C to the end of Section §124-4, Stormwater connections and extensions:

C. In connection with any approved connection or extension of public stormwater infrastructure under this §124-4, the City Manager shall have authority to accept on behalf of the City rights-of-way and other interests in property as described in Subsections (B)(4) and (B)(9) above. All such interests shall comply with the requirements of those Subsections. To the extent a stormwater project authorized under this §124-4 renders obsolete any existing rights-of-way or other property interests held by the City for public stormwater purposes, the City Manager shall have the authority on behalf of the City to release such interests upon written certification from the City Engineer, or such other person as designated by the Public Works Director, that the property interest is no longer needed by the City for public stormwater purposes and is not reasonably anticipated to be needed by the City for that purpose in the foreseeable future.

Section 2. Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 3. Effective Date

This Ordinance shall become effective upon passage.

Chapter 124

PUBLIC STORMWATER SYSTEM, USE OF

§ 124-1.	Purpose; statutory authority.	§ 124-4.	Stormwater connections and extensions.
§ 124-2.	Interpretation; definitions.	§ 124-5.	Authority to investigate.
§ 124-3.	Discharges and connections prohibited.	§ 124-6.	Enforcement powers.
		§ 124-7.	Penalties.

[HISTORY: Adopted by the City Council of the City of Lebanon 7-15-2020 by Ord. No. 2020-07 ; effective 7-15-2020 .¹ Amendments noted where applicable.]

§ 124-1. Purpose; statutory authority.

- A. The purpose of this chapter is to provide for the health, safety and general welfare of the citizens of the City through the regulation of discharges into the City's stormwater drainage system to the maximum extent practicable as required by federal and state law. This chapter controls connections and discharges into the City's separate storm drainage system in order to comply with the requirement of the National Pollutant Discharge Elimination System permit process, in conformity with the City's "Illicit Discharge Detection and Elimination Plan" (November 2011).
- B. This chapter is adopted pursuant to RSA 149-I:6, RSA Ch. 147, and RSA 47:17; 40 CFR Part 122; and 33 U.S.C. § 1251.

§ 124-2. Interpretation; definitions.

- A. This chapter and terms used herein shall, to the greatest possible extent, be interpreted in a manner consistent with the Clean Water Act, 33 U.S.C. § 1251 et seq., and with state and federal regulations adopted thereunder, as well as with the City's other ordinances, including but not limited to Chapter 136, Sewer Service. The requirements of this chapter are in addition to those of other federal, state or local laws, and are not a substitute therefor.

- B. In addition, the following terms and phrases shall have the following meanings.

DIRECTOR OF PUBLIC WORKS — The Director of Public Works of the Department of Public Works of the City of Lebanon, New Hampshire, who is charged with certain duties and responsibilities by this chapter, or a duly authorized representative.

DISCHARGE — Dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, including any direct or indirect entry, any solid or liquid matter into the storm drainage system, or in a location where it can reasonably be anticipated to flow into or enter the storm drainage system; or alternatively, the solid or liquid matter which is so disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed into the storm drainage system.

FOUNDATION DRAIN — An exterior drainage system installed on the outer face of the foundation

1. Editor's Note: This ordinance also repealed former Ch. 124, Use of Public Stormwater System, adopted 4-2-2014 by Ord. No. 2014-1, effective 4-17-2014.

wall and near the wall footing, typically covered with a layer of gravel, serving the purpose of draining out excess water from seeping into the foundation. Interior building sump pumps are not covered under this definition.

ILLCIT CONNECTION — Any drain or means of conveyance, whether on the surface or subsurface, which causes or allows an illegal discharge to enter the storm drainage system, including but not limited to any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been allowed, permitted or approved prior to the effective date of the permit system in § 124-4; or any drain or conveyance from a commercial or industrial land use to the storm drainage system which has not been approved by an authorized enforcement agency, and documented in plans, maps, or equivalent records.

INDOOR DRAIN — Any inlet, floor drain, catch basin, dry well, stone reservoir, sump pump, groundwater collection, stormwater collection or discharge system, and/or French drain that is physically located, in whole or in part, within a building structure.

PERSON — Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity; or their legal representatives, agents or assigns. This definition includes all federal, state and local governmental entities.

POLLUTANT — Anything which causes or contributes to pollution, including but not limited to paints, varnishes, solvents, oil and other automotive fluids, nonhazardous liquid and solid wastes, yard wastes; refuse, rubbish, garbage, litter or other abandoned or discarded objects and accumulations, floatables, pesticides, herbicides, fertilizers, hazardous substances and wastes, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, construction wastes and residues, and noxious or offensive matter of any kind.

PREMISES — Any building, lot, parcel of land, parking areas or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the City from which discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

STORMWATER — Surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

STORMWATER CONNECTION — Any activity on property - including but not limited to alterations of terrain, alterations of surface permeability via construction or otherwise, or installation of any pipe, culvert, ditch, channel and other drainage structure or means of conveyance, whether surface or subsurface - which causes, or has the potential to cause, any new stormwater discharge, or any increase or alteration in stormwater discharge, into any portion of the City of Lebanon Stormwater Drainage System.

STORMWATER CONNECTION PERMIT — Permit issued by the City Manager for connection to the City's stormwater drainage system for the purposes of discharging stormwater.

STORMWATER DRAINAGE SYSTEM or SEPARATE STORM SEWER SYSTEM — Publicly owned facilities, or any portion thereof, by which stormwater is meant to be collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, culverts, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered ditches, channels, reservoirs, and other drainage structures. The privately owned and maintained service pipe extending from the Premises to the municipally maintained main pipe, culvert, manhole or other device in the public right of way shall not be considered part of the Storm Drainage System.

STORMWATER EXTENSION — Any stormwater connection (as defined above) which includes or

involves any new or altered length, width, location or capacity of any publicly-owned or publicly-controlled element of the City's stormwater drainage system, or the conveyance or dedication to the City of any easement or other interest pertaining thereto.

§ 124-3. Discharges and connections prohibited.

- A. No person shall discharge, as defined in § 124-2 above, or cause to be discharged into any portion of the City's stormwater drainage system, also as defined below, any solid or liquid material of any kind, including but not limited to pollutants or waters containing any pollutants, other than water that consists entirely of stormwater, except when a stormwater connection permit is issued; provided, however, that discharges of water from the following sources or under the following conditions are permitted:
- (1) Discharges resulting from landscape irrigation or lawn watering;
 - (2) Natural riparian habitat or wetland flows, or infiltration to storm drains from groundwater or springs;
 - (3) Diversion of nonpolluted natural stream flows or rising groundwater;
 - (4) Unpolluted groundwater including unpolluted water from foundation drains;
 - (5) The flushing of drinking waterlines or other potable water sources;
 - (6) Air-conditioning condensation;
 - (7) Noncommercial washing of vehicles;
 - (8) Discharge from swimming pools, but only if non-chlorinated (defined as less than one PPM chlorine);
 - (9) Hydrant flushing and firefighting activities;
 - (10) Discharges which are permitted, in advance and in writing, by the Director of Public Works as being necessary to protect public health and safety as detailed in Subsection C below;
 - (11) Dye testing, if permitted in advance, either verbally or in writing, by the Director of Public Works; and
 - (12) Discharges permitted under a National Pollutant Discharge and Elimination System ("NPDES") permit, waiver, or waste discharge order, issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, order, or other applicable laws and regulations, and has obtained written advance permission from the Lebanon Director of Public Works.
- B. The construction, use, maintenance or continued existence of any illicit connection, as defined in § 124-2 above, to the storm drainage system is prohibited. This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of § 124-2, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- C. Residential stormwater connections which discharge from indoor drains into the City's stormwater drainage system or sanitary sewer system, and which existed prior to the effective date of the permit

system in § 124-4, may be permitted at the discretion of the City Manager if the following standards are met, and if the permit is otherwise consistent with the purposes of this chapter. Applicants seeking authorization for approval of existing presently unpermitted stormwater connections or those removing indoor drains from the sanitary sewer system with the intent of connecting into the stormwater drainage system will not be required to satisfy the capacity analysis provisions of § 124-4A(5), as long as all of the following standards are met:

- (1) The amount of impermeable surface will not be increased on the property resulting in increased stormwater flow.
- (2) The applicant will be required to construct adequate berms, sumps or other measures in such a way as to reduce the risks of contaminants in or on the structure from entering the stormwater drainage system.
- (3) The applicant shall be required to demonstrate that all facilities such as oil tanks or other structures are adequately secured such that they do not become buoyant and present a risk of spill and resultant discharge of contaminants into the indoor drain which is connected to the stormwater drainage system.
- (4) Connections to the stormwater drainage system shall be equipped with backflow prevention devices such as in-line check valves to protect the property from backflow from the stormwater drainage system.

§ 124-4. Stormwater connections and extensions.

- A. Stormwater permit. There is, as established by the Code of the City of Lebanon, Chapter 68, a stormwater connection permit application fee for all users of the City of Lebanon stormwater drainage system. The fee shall be waived for all stormwater connections which are disconnecting an existing stormwater connection, including all indoor drains, from the sanitary sewer system. This application fee herein shall apply to all persons whose premises stormwater enters the public stormwater drainage system of the City of Lebanon, subject to the exceptions detailed in § 124-3A above.
- (1) Each connection shall be separately assessed to the owner(s) of land being benefited thereby regardless of whether that land has more than one connection to the City's public stormwater drainage system. The application fee set forth herein is a one-time charge to offset the administrative costs of the application process.
 - (2) Application fees shall be paid upon submission of application for a stormwater connection permit. This fee is non-refundable regardless of whether a stormwater connection permit is issued or not.
 - (3) No person shall connect to the stormwater drainage system unless the City has issued a permit for such connection.
 - (4) Any person seeking such a permit to connect to the stormwater drainage system (the applicant) shall make application on a form furnished by the City. The permit application shall be supplemented by any plans, specifications, engineering studies or other information considered pertinent in the judgment of the Director of Public Works. Such supplemental information will be supplied at the applicant's cost.
 - (5) The Director of Public Works shall review the service data to determine whether it has sufficient capacity to provide stormwater drainage service to the applicant.

- (a) The applicant shall have the burden of presenting sufficient information, based on such engineering data as deemed necessary by the Director of Public Works, to demonstrate the following: **[Amended 9-7-2022 by Ord. No. 2022-03]**
- [1] Sufficient measures will be implemented to control the post-development peak rate runoff so that it does not exceed pre-development runoff. The drainage analysis should be practical for the site, fiscally responsible, and shall include calculations comparing pre- and post-development stormwater runoff rates (cubic feet/second) and volumes (cubic feet) for the two-, twenty-five-, fifty-year and one-hundred year twenty-four-hour storm events.
 - [2] To the extent that on-site control measures are insufficient at keeping the postdevelopment peak flow rate at or below the existing peak flow rate, a stormwater study will be required to show that, at a minimum, all affected elements of the City's Stormwater system have sufficient capacity for such discharges. In such cases, the applicant shall be permitted to discharge a peak flowrate for the twenty-five-year storm frequency amount not to exceed 50% of the remaining capacity of the receiving stormwater system. Culverts and storm sewers shall be able to pass the one-hundred-year twenty-four-hour storm event without overtopping and roadway ditches shall be required to pass the twenty-five year twenty four hour storm event without overtopping. In either case the applicant shall be responsible for all costs incurred by the City in making a determination of sufficient capacity except as outlined above in § 124-3C.
 - [3] Every applicant shall provide for stormwater management as required by these Regulations, unless a waiver is granted pursuant to this section. Waiver requests shall be submitted in writing to the Director of Public Works, who may waive the minimum requirements for stormwater management in whole or in part, provided that the following conditions apply:
 - [a] The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property;
 - [b] The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property;
 - [c] Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to implement a particular BMP (Best Management Practice) to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out;
 - [d] The granting of the waiver will not be contrary to the spirit and intent of the regulations; and,
 - [e] The waiver will not, in any manner, vary the provisions of the Zoning Ordinance² or Master Plan.
- (b) If the Director of Public Works determines that the City's stormwater drainage system does

2. Editor's Note: The Zoning Ordinance is on file in the office of the City Clerk.

not or will not have sufficient capacity to serve, he/she shall not be obligated to provide the service. The City Manager may, at his/her option and discretion, enter into such agreements with applicant to make readiness to serve improvements at the applicant's expense.

- (c) If the City Manager determines, based on input from the Director of Public Works that there is sufficient capacity to provide adequate service, the City Manager may approve the service. **[Amended 9-7-2022 by Ord. No. 2022-03]**
- (d) Service shall not be provided until all required deposits or payments have been made by the applicant.
- (6) All costs and expenses incident to the installation and connection to the stormwater drainage system shall be borne by the applicant. The applicant shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the connection to the stormwater drainage system.
- (7) The method of connection to the stormwater drainage system shall be acceptable to the Director of Public Works and shall conform to the requirements of all applicable building and plumbing codes, Public Works Department specifications or to other applicable rules and regulations.
- (8) The applicant shall notify the Director of Public Works when the connection to the stormwater drainage system is ready for inspection and connection to the stormwater drainage system. The connection shall be made under the supervision of the Director of Public Works or his/her designee. No back-filling shall occur prior to inspection.
- (9) All excavations for connections to the stormwater drainage system shall be adequately guarded with barricades and lights and so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City. Prior to any excavating on any public property, an excavation permit must be obtained from the Department of Public Works. This provision does not relieve any person from any applicable state or federal laws or regulations relating to excavation.
- (10) Connection to the stormwater drainage system is at the person's own risk.
- (11) Any person connected to the stormwater drainage system shall be responsible for the ownership and maintenance of the stormwater conveyance extending from the premises to the stormwater drainage system and all equipment and devices as approved by the permit.
- B. Stormwater extensions. Extensions of the stormwater drainage system within the City of Lebanon shall require the approval of the City Manager. All extensions of the stormwater drainage system shall, in addition, require the issuance of a stormwater connection permit in accordance with this chapter.
 - (1) Upon a request by a property owner or a developer(s) for the extension of the stormwater drainage system the City Manager shall make a determination upon the request and shall base his/her decision upon:
 - (a) Technical feasibility to include the system's capacity.
 - (b) Fiscal consequences.
 - (c) Environmental consequences.

- (d) Whether or not the requestor shall pay for all costs relating to the extension.
- (2) All requests for extensions of the stormwater drainage system as proposed by a developer shall require an extension agreement between the City and the developer containing the following:
 - (a) The developer shall pay the full cost of design and construction of the extension in accordance with City standards and requirements. All plans for the design of the extension shall be submitted to the City Engineer or such other person as designated by the Public Works Director, for written approval. Any cost incurred by the City in reviewing the design shall be paid for by the developer.
 - (b) The developer shall pay to the City, prior to any construction, an amount estimated by the City to pay for independent engineering inspection services hired by the City. The applicant shall keep a minimum \$2,500 balance in escrow. If the City spends less than the amount paid by the developer, the balance shall be refunded to the developer. If the City spends more than the payment made by the developer, the developer shall reimburse the City. The City's review of the construction documents and inspection during the period of construction and inspection prior to acceptance shall not bar or preclude, in any way, the rights of the City to assert claims against the developer for defects in construction.
- (3) The developer shall provide indemnification to the City for any costs, damages or other expenses arising from review or construction of the extension.
- (4) If any portion of the proposed extension is not within a City highway, the developer shall acquire and convey to the City, as a condition of acceptance of the extension, adequate rights-of-way in compliance with the City's requirements and in conformity with the requirements of the City as to the form of the deed, a title opinion, monuments and a recordable plan.
- (5) After the extension has been substantially completed, as certified by the City Engineer or other such person as designated by the Director of Public Works, the developer shall be responsible to repair and maintain the extension for a period of one year or until such time as the City's acceptance of the extension improvements is complete.
- (6) After the expiration of the one-year period for maintenance, the City Manager shall determine whether or not to issue a certification that the extension has been constructed and installed in accordance with the plans, specifications and standards of the City. The City Manager may require a report of a professional engineer, hired by the City and paid for by the developer.
- (7) It shall be a condition of the extension agreement and any City acceptance that the developer shall be responsible for any latent defects discovered within eight years from the date of substantial completion, as set forth in RSA 508:4-b, including all defects in design, materials or workmanship, and shall be liable to the City, upon written notice by the City, for the cost of repairs or replacements of all defective improvements. In the event that the developer conveys and transfers the project for which the extension was granted, the subsequent owner shall be responsible for the obligations of the developer for the remainder of the eight-year period regardless of whether or not such obligation is expressly assumed.
- (8) No additional connections to the extension will be allowed for any other property owners requesting service for a period of 10 years from the date of acceptance of the extension by the City unless such property owner(s) agree to pay to the developer a pro rata share of the cost relating to the extension as determined by the City Manager. The developer shall provide a copy of the contract documents for the construction of the extension to the City prior to undertaking

any construction for review and approval by the City to ensure that the requirements of the extension agreement have been met. The developer shall include in any construction documents that the proposed extension is intended to be transferred to the City for ownership and maintenance. The City Manager shall determine the pro rata share of cost to new applicants seeking connection to the extension based on the following criteria:

- (a) The depreciated value of the extension infrastructure paid for by the developer at the time the new applicant utilizes the extension.
 - (b) The percentage of the extension at the point at which the new connector accesses the connection; in essence, how much of the new extension is the connecting applicant utilizing. In addition, any security or bond obtained by the contractor constructing and installing the extension for the benefit of the developer shall remain in effect until the expiration of a two-year period from the date the project is accepted by the City and shall be for the benefit of the City.
- (9) Upon compliance with all the conditions set forth herein, the developer may request and the City Manager shall accept the transfer of the extension, including the stormwater drainage conveyances and rights-of-way to the City to become part of the City stormwater drainage system and the responsibility of the City thereafter.

§ 124-5. Authority to investigate.

- A. Right of entry on all property. The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the stormwater drainage system in accordance with the provisions of this chapter, and shall have authority to investigate potential violations of this chapter. Before entering any property for such purpose, the Director of Public Works or his/her agent shall first seek the consent of the owner of the property, or other party with a legal right to control access. In the event such consent is withheld or cannot be obtained within a reasonable period of time, the Director of Public Works shall have the authority to seek an administrative inspection warrant pursuant to RSA Ch. 595-B; provided, however, that an application for a connection or extension permit under this chapter shall be presumed to grant permission to City personnel to enter the property for all purposes pertaining to that permit application.
- B. Liability. While performing the necessary work on private properties referred to in Subsection A, Rights of entry on all property, above, the Director of Public Works or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the user, and the user shall be held harmless by the City for injury or death to the City employees, and the City shall indemnify the user against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the user to maintain safe conditions, right of entry for inspection and sampling, of this chapter.
- C. Right of entry on private property; easements. The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the stormwater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement.

§ 124-6. Enforcement powers.

- A. In the event the Director of Public Works determines that a property is in violation of this chapter, the Director may issue a written notice of violation by certified mail to the property owner; provided, however, that nothing herein shall prevent the City, in emergency circumstances where the delay entailed by the notice process could result in a danger to health, safety or the environment, from commencing an enforcement action without such a notice of violation. Any such notice of violation shall:
- (1) Specify the actions or conditions that constitute the violation;
 - (2) Identify any action required to be taken in order to correct the violation(s);
 - (3) Establish a reasonable time frame for remedying the violation;
 - (4) Notify the owner of record of the City's right to commence an enforcement action, which may include a request for fines, civil penalties, and/or injunctive relief.
- B. As an alternative to a notice of violation under Subsection A above, the Director of Public Works may, in cases involving a potential danger to public health, request the City's Health Officer to issue an order under RSA Ch. 147, which may include provision for the abatement of the violation by the City, and collection of the City's abatement and other costs, using the procedures set forth in RSA 147:7-a and RSA 147:7-b.

§ 124-7. Penalties.

- A. The City may enforce the provisions of this Chapter by means of legal action, seeking any or all remedies and penalties consistent with state law, including but not limited to fines of up to \$1,000 pursuant to RSA 47:17, civil penalties of up to \$10,000 per day of violation pursuant to RSA 149-I:6, and/or injunctive relief. In any legal action brought by the City to enforce this chapter, the City shall be entitled to recover its costs and reasonable attorney fees expended in connection with any such enforcement action if found to be a prevailing party.
- B. Assessment of repair charges. Any person who causes a discharge which obstructs, damages or otherwise impairs the stormwater drainage system may be assessed a charge by the City for the work required to repair or clean the affected facilities.
- C. False statements and inaccurate information. Any person who knowingly makes any false statements, representation, record, reports, plan or other document filed with the City or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter shall be punished by a civil penalty of not more than \$10,000.
- D. Malicious injury; penalty. In accordance with RSA 149-I:23, any person(s) who shall wantonly or maliciously (purposely or knowingly) injure any part of any stormwater drainage system, conveyance, and discharge system, or sewage disposal plant shall be liable for pay treble damages to the owner thereof, and shall be guilty of a misdemeanor if a natural person, or a felony if any other person.

June 18, 2024

Shaun Mulholland
City Manager
City of Lebanon, NH
51 N. Park St.
Lebanon, NH 03766

RELEASED TO THE PUBLIC
Lebanon City Manager's Office

Date: Jun 26, 2024



**RE: Ordinance 2024-09
Chapter 124, Public Stormwater System**

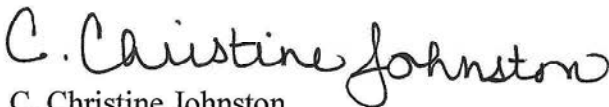
Mr. Mulholland,

This is a legal opinion as required by § 115-3 of the Lebanon City Code concerning the proposed Ordinance 2024-09, Chapter 124, Public Stormwater System, which your office forwarded to me on June 17, 2024. The goals of the proposed ordinance as I understand them are to amend the existing Chapter 124 of the City Code to set forth standards and circumstances in which the City Council can permit the City Manager to accept on the City's behalf ownership of new stormwater infrastructure and easements, and to release obsolete easements.

I have reviewed the proposed ordinance in detail. In my opinion, the ordinance is consistent with New Hampshire law and I discern no legal problems.

Please do not hesitate to contact me with additional questions or comments.

Sincerely,


C. Christine Johnston



**LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARINGS
Wednesday, July 17, 2024 - 6:00pm
Council Chambers, City Hall or
REMOTE VIA VIRTUAL PLATFORM
LebanonNH.gov/LIVE**

The Lebanon City Council will hold public hearings on July 17, 2024, beginning at 6:00pm for the following:

- A. Ordinance 2024-07: Chapter 136, Sewer Service** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service.
- B. Ordinance 2024-09: Chapter 124, Public Stormwater System, Use of** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-09 to amend City Code Chapter 124, Public Stormwater System, Use of.
- C. Ordinance 2024-10: Chapter 182, Water Service** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-10 to amend City Code Chapter 182, Water Service.
- D. Request to Rescind Prior Authorizations to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds** – A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations to transfer funds to capital projects, and to transfer appropriated, but unspent funds back to the General Fund.

The July 17, 2024 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning July 12, 2024: LebanonNH.gov/Agendas

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 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.

The foregoing notice was published in the *Valley News*, a newspaper of general circulation in the City of Lebanon, in accordance with the Code of the City of Lebanon on Saturday, July 06, 2024.

Jaseya Ewing

Jaseya Ewing, City Clerk

Agenda

Lebanon City Council

July 17, 2024

9. Public Hearing Items:

9.C – Ordinance #2024-10 to amend City Code Chapter 182, Water Service

A public hearing for the purpose of receiving public input and taking action to amend City Code Chapter 182, Water Service.

The City Council scheduled this public hearing at its July 3, 2024 regular meeting. The public hearing was properly noticed in the *Valley News* on July 6, 2024 in accordance with City Code and State Law.

Background

The legal authority to acquire and dispose of real property interests on behalf of the City rests with the City Council. On April 3, 2024, the City Council was requested and took action to authorize the City Manager to execute a Release of Sewer Easement over 207 Mechanic Street in Lebanon, which had become obsolete when a previous sewer line was abandoned in place as part of a CSO project in the area.

During the April 3rd meeting, there was some discussion about delegating to the City Manager the authority to accept and release easements and rights-of-way for public infrastructure systems under certain circumstances. The City's attorney has helped prepare potential amendments to Chapter 182 (Water Service); as well as Chapter 136 (Sewer Service) and Chapter 124 (Public Stormwater System, Use of), which are being considered separately.

As proposed for Chapter 182, the City Manager would have the authority to accept rights-of-way or other property interests associated with connections to or extensions of the public water system, and to dispose of such rights-of-way or property interests when no longer needed, and when not reasonably anticipated to be needed in the foreseeable future, for water purposes.

Action:

If the Council decides to move forward, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby adopts Ordinance #2024-10 to amend City Code Chapter 182, Water Service, as presented in the July 17, 2024 City Council agenda packet.

Included in this Section:

1. Proposed Ordinance #2024-10
2. Legal opinion from Attorney Christine Johnston, dated June 18, 2024
3. Notice of Public Hearing as published in the July 6, 2024 Edition of the *Valley News*

Available, but not included in this Section:

1. [City Code Chapter 182, Water Service](#)

**CITY OF LEBANON
ORDINANCE #2024-10**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 182, Water Service, Article VI, Water Connections, Extensions and Expanded Use Allocations, Section §182-40, Extensions.

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

Section 1.

The Code of the City of Lebanon is hereby amended to revise Chapter 182, Water Service, Article VI, Water Connections, Extensions and Expanded Use Allocations, Section §182-40, Extensions, as follows:

Add a new Subsection C to the end of Section §182-40, Extensions:

C. In connection with any approved expansion or modification of water infrastructure under this §182-40, the City Manager shall have authority to accept on behalf of the City rights-of-way and other interests in property as described in Subsections (B)(1)(d) and (B)(4) above. All such interests shall comply with the requirements of those Subsections. To the extent a water project authorized under this §182-40 renders obsolete any existing rights-of-way or other property interests held by the City for water purposes, the City Manager shall have the authority on behalf of the City to release such interests upon written certification from the City Engineer, or such other person as designated by the Public Works Director, that the property interest is no longer needed by the City for water purposes and is not reasonably anticipated to be needed by the City for that purpose in the foreseeable future.

Section 2. Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 3. Effective Date

This Ordinance shall become effective upon passage.

June 18, 2024

Shaun Mulholland
City Manager
City of Lebanon, NH
51 N. Park St.
Lebanon, NH 03766

RELEASED TO THE PUBLIC
Lebanon City Manager's Office

Date: Jun 26, 2024



RE: Ordinance 2024-10 Chapter 182, Water Service

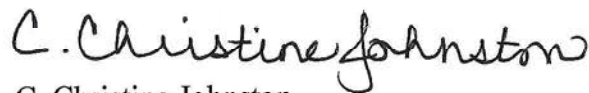
Mr. Mulholland,

This is a legal opinion as required by § 115-3 of the Lebanon City Code concerning the proposed Ordinance 2024-10, Chapter 182, Water Service, which your office forwarded to me on June 17, 2024. The goals of the proposed ordinance as I understand them are to amend the existing Chapter 182 of the City Code to set forth standards and circumstances in which the City Council can permit the City Manager to accept on the City's behalf ownership of new water infrastructure and easements, and to release obsolete easements.

I have reviewed the proposed ordinance in detail. In my opinion, the ordinance is consistent with New Hampshire law and I discern no legal problems.

Please do not hesitate to contact me with additional questions or comments.

Sincerely,


C. Christine Johnston

Signature: 

Email: David.Brooks@lebanonnh.gov



**LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARINGS
Wednesday, July 17, 2024 - 6:00pm
Council Chambers, City Hall or
REMOTE VIA VIRTUAL PLATFORM
LebanonNH.gov/LIVE**

The Lebanon City Council will hold public hearings on July 17, 2024, beginning at 6:00pm for the following:

- A. Ordinance 2024-07: Chapter 136, Sewer Service** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-07 to amend City Code Chapter 136, Sewer Service.
- B. Ordinance 2024-09: Chapter 124, Public Stormwater System, Use of** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-09 to amend City Code Chapter 124, Public Stormwater System, Use of.
- C. Ordinance 2024-10: Chapter 182, Water Service** – A public hearing for the purpose of receiving public input and taking action on proposed Ordinance #2024-10 to amend City Code Chapter 182, Water Service.
- D. Request to Rescind Prior Authorizations to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds** – A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations to transfer funds to capital projects, and to transfer appropriated, but unspent funds back to the General Fund.

The July 17, 2024 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning July 12, 2024: LebanonNH.gov/Agendas

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 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.

The foregoing notice was published in the *Valley News*, a newspaper of general circulation in the City of Lebanon, in accordance with the Code of the City of Lebanon on Saturday, July 06, 2024.

Jaseya Ewing

Jaseya Ewing, City Clerk

**Agenda
Lebanon City Council
July 17, 2024**

9. Public Hearing Items:

9.D – Request to Rescind Prior Authorizations to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds

A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations to transfer funds to capital projects, and to transfer appropriated but unspent funds.

The City Council scheduled this public hearing at its July 3, 2024 regular meeting. The public hearing was properly noticed in the *Valley News* on July 6, 2024 in accordance with City Code and State Law.

Background

On December 13, 2023, the City Council voted to increase the FY2024 General Fund, Interfund Transfers budget by \$165,860 and to authorize a transfer of the same amount to the Capital Improvements Fund for a new Electric Street Sweepers and Charging Stations capital project. The appropriation and transfer were intended to provide the City's portion of the funds required to accept funding from the NH Department of Environmental Services Granite State Clean Fleets Grant Program. As proposed, the capital project included the procurement of two 100% electric street sweeper units to replace two existing diesel sweeper units; and the procurement and installation of two electrical vehicle charging stations (one Level 2 and one Level 3).

Subsequently, on May 15, 2024, the City Council approved a Supplemental Appropriation in the amount of \$53,200 to be raised and appropriated for expenditure in the Capital Improvements Fund to supplement the funding for the Electric Street Sweepers and Charging Stations capital project to cover the City's portion of the additional funds required to accept funding from the NHDES Granite State Clean Fleets Grant Program.

However, in early June, the Governor & Executive Council declined to consider the Granite State Clean Fleets grant award to the City of Lebanon for the Electric Street Sweepers and Charging Stations project. As a result, the previously appropriated and transferred funds are no longer needed for the capital project.

Therefore, the City Manager recommends that the Council rescind the prior appropriations and authorizations to transfer the funds to the Capital Improvement Fund, and authorize that the appropriated, but unspent funds be transferred back to the City's General Fund.

Action:

If the Council decides to move forward, the following two resolutions are offered for consideration:

- 1. WHEREAS, the Lebanon City Council, on December 13, 2023, authorized \$165,860 to be transferred from the General Fund to the Electric Street Sweepers and Charging Stations Capital Project Fund to provide the City's portion of the funds required to**

accept funding from the NH Department of Environmental Services (NHDES) Granite State Clean Fleets Grant Program; and

WHEREAS, as the NHDES Granite State Clean Fleets Grant was not awarded to the City, the funds are no longer needed for the project.

NOW THEREFORE BE IT RESOLVED, by the City of Lebanon, that the appropriations in the General Fund and Capital Improvement Fund authorized on December 13, 2023, in the amount of \$165,860, in connection with the Electric Street Sweepers and Charging Stations Capital Project, be rescinded; and

BE IT FURTHER RESOLVED, by the City of Lebanon, that unspent funds in the amount of \$165,860 be transferred from the Electric Street Sweepers and Charging Stations Capital Project back to the City's General Fund.

- 2. WHEREAS, the Lebanon City Council, on May 15, 2024, authorized \$53,200 to be raised and appropriated for expenditure in the Electric Street Sweepers and Charging Stations Capital Project Fund to supplement the City's portion of the additional funds required to accept funding from the NHDES Granite State Clean Fleets Grant Program; and***

WHEREAS, the NHDES Granite State Clean Fleets Grant was not awarded to the City, the funds are no longer needed for the project.

NOW THEREFORE BE IT RESOLVED, by the City of Lebanon, that the appropriations in the General Fund and Capital Improvement Fund authorized on May 15, 2024, in the amount of \$53,200 in connection with the Electric Street Sweepers and Charging Stations Capital Project, be rescinded; and

BE IT FURTHER RESOLVED, by the City of Lebanon, that unspent funds in the amount of \$53,200 be transferred from the Electric Street Sweepers and Charging Stations Capital Project back to the City's General Fund.



**LEBANON CITY COUNCIL
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- D. Request to Rescind Prior Authorizations to Transfer Funds to Capital Projects, and to Transfer Appropriated but Unspent Funds** – A public hearing for the purpose of receiving public input and taking action to rescind prior authorizations to transfer funds to capital projects, and to transfer appropriated, but unspent funds back to the General Fund.

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Jaseya Ewing

Jaseya Ewing, City Clerk

Agenda

Lebanon City Council

July 17, 2024

11. New Business:

11.A – Joint Request from Planning Board and Diversity, Equity & Inclusion (DEI) Commission for Creation of a Housing Task Force

Background

The 2025-2028 Strategic Plan includes numerous references to planning for housing, including Strategic Objective 2.1: “Facilitate the healthy continuum of Development / Redevelopment of Housing” and Strategic Objective 2.4: “Development of a comprehensive citywide housing strategy.” Proposed actions within both of these Strategic Objectives refer to updating the Housing chapter of the 2012 Master Plan.

In recent months, the Diversity, Equity & Inclusion (DEI) Commission and the Planning Board have begun a discussion around working collaboratively to address community housing goals outlined in the City’s Strategic Plan and Master Plan. The DEI Commission and Planning Board have prepared a joint statement requesting that the City Council establish a Lebanon Housing Task Force, with the stated goals of producing an in-depth report on housing and corresponding recommendations for changes to the Housing chapter of the Master Plan and to the Neighborhood and Housing functional area of the Strategic Plan.

Members of the Planning Board and DEI Commission will be present to discuss the joint statement and recommendations with the City Council.

Action

If the City Council decides to move forward, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby establishes a Lebanon Housing Task Force with the stated goal of producing a report on housing and, based on the findings of said report, recommending changes to (i) the Housing chapter of the City’s 2012 Master Plan, and (ii) the Neighborhood and Housing functional area of the City of Lebanon Strategic Plan; and

BE IT FURTHER MOVED, that the areas of study, the contents of the final report, and the composition of the Lebanon Housing Task Force shall be as described in the Joint Statement by the City of Lebanon Planning Board and the City of Lebanon Diversity, Equity and Inclusion Commission on Community Housing Solutions, as presented in the July 17, 2024 City Council agenda packet; and

BE IT FURTHER MOVED that the final report and recommended Master Plan and Strategic Plan changes shall be completed no later than July 1, 2026, at which time the Lebanon Housing Task Force will be dissolved unless other action is taken by the City Council.

Included In This Section:

1. Joint Statement by the Lebanon Planning Board and the Lebanon Diversity, Equity and Inclusion Commission on Community Housing Solutions, dated July 8, 2024.

A Joint Statement by the City of Lebanon Planning Board and the City of Lebanon Diversity, Equity, and Inclusion Commission on Community Housing Solutions

WHEREAS the City of Lebanon, as elsewhere in the country, is facing a severe shortage of affordable housing, especially but not limited to workforce housing; and

WHEREAS the shortage of housing has powerful equity implications for the present and future residents of the City; and

WHEREAS rapid expansion of housing stock has and will have implications for the sustainability, longevity, and resilience of the City; and

WHEREAS informed decisionmaking and transparency are integral to the democratic process of charting a course for the future of the City; and

WHEREAS the Lebanon City Council has demonstrated a laudable willingness to address the housing crisis to the fullest extent possible, in considering and taking actions to create the needed changes in a timely manner; now, therefore

BE IT RESOLVED that the City of Lebanon Planning Board and DEI Commission, having jointly drafted this resolution and having agreed upon its language and the priorities it sets out, recommend that the Lebanon City Council work with representatives from the DEI Commission and Planning Board to **create a task force on community housing solutions, with the stated goals of producing a report and, based upon the findings of that report, recommending drafted changes to (i) the Housing chapter of the City of Lebanon Master Plan and (ii) the Neighborhood and Housing functional area of the City of Lebanon Strategic Plan no later than 1 July 2026 at which time it will be dissolved unless other action is taken. The task force shall be named the Lebanon Housing Task Force.**

BE IT FURTHER RESOLVED that the City of Lebanon Planning Board and DEI Commission recommend that **said report should include, but not be limited to:** the identification and quantification of the drivers affecting Lebanon's current housing shortage; the gathering and interpretation of housing and population data for the City, including housing ownership rates, housing type (including owned and rental), demographics, and quality of life considerations like accessibility to transit, communal resources, and green spaces; the forecasting of future housing and related needs of the City according to the same; an analysis of current and potential equity issues in Lebanon's housing supply; an analysis of the implications for the City and its current residents on other changes created by rapid population growth; the potential for regional partnerships (on items including but not limited to water and sewer infrastructure, transit infrastructure, and more) as a part of the solution to what is a regional issue; and potential solutions for City Council implementation, including estimated costs. Also included in the

conclusion of the report should be a judgement on whether, if feasible, the City of Lebanon would be best served by the creation of a standing Housing Commission, pursuant to NH RSA 674:44-I.

BE IT FURTHER RESOLVED that the City of Lebanon Planning Board and DEI Commission recommend that the City Council, in the formation of this task force, should work with representatives of the Planning Board and DEI Commission to **invite various community stakeholders to join or take part in the work**. The task force should consist of 13 members, the majority of which should be residents of Lebanon. These should ideally include: the City Manager or the City's Manager's designee; a sitting member of the City Council; a member or representative of the Upper Valley/Lake Sunapee Regional Planning Commission; a representative of Advance Transit; a representative designated by the Lebanon School Board; a representative of Dartmouth Health; a member of the Lebanon Planning Board; a member of the Lebanon DEI Commission; a member of the Lebanon Conservation Commission; a representative of the Lebanon Housing Authority; a representative of Dartmouth College; a member representing a business in the City; and a resident of the City who shall be appointed by the City Council. If members from these bodies cannot be found, others representing similar perspectives may be considered. The Lebanon Housing Task Force (LHTF) would be a public body and would need to comply with the provisions of RSA 91-A, related state statutes, City Charter, City Code, and applicable policies. Members of the LHTF would serve until the task force is dissolved and without compensation other than reimbursement for allowable expenses.

BE IT FURTHER RESOLVED that the Task Force should **meaningfully engage the public** through such means deemed feasible and appropriate by the Task Force, such as public hearings, listening sessions, surveys, and/or other means.

Signed this 8 Day of July, at Lebanon, New Hampshire,

Andrew Faunce, Chair, Lebanon Planning Board

Alisha Robinson, Chair, Lebanon Diversity, Equity and Inclusion Commission

**Agenda
Lebanon City Council
July 17, 2024**

11. New Business:

**11.B – Discussion and Set Public Hearing for August 7, 2024:
Supplemental Appropriation of \$250,000 for South Main Street Bridge
Replacement Capital Project**

Background

This project location is along Route 12A, South Main Street in West Lebanon at the existing bridge crossing over the New England Central Railroad (NECR) rail corridor. The City is working with the New Hampshire Department of Transportation (NHDOT) on final design and permitting for the new bridge crossing in addition to a new access road into the rail yard, utility improvements and intersection improvements at Seminary Hill. The project construction was originally planned to be over an active railroad, which adds substantial complexity to the bridge and road construction activities, planning, and schedule coordination. The NECR offered to close the track during construction with the condition that a transloading facility be built within the railyard, and with the new access road construction occurring in the first phases of the project. This request for a supplemental appropriation is to fund the design, permitting, and construction of the proposed transloading facility associated with the above-referenced project. The City will be reimbursed 80 percent of these costs by NHDOT from State-Aid Bridge funds.

Action

The following motion is offered for City Council consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, August 7, 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 \$250,000 to supplement current funding for the South Main Street Bridge Replacement capital project, and to authorize the issuance of bonds/notes in accordance with the Municipal Finance Act (NH RSA 33).

Included in this Section:

1. Memo from DPW Director Jay Cairelli, dated July 8, 2024



CITY OF LEBANON
DEPARTMENT OF PUBLIC WORKS
193 Dartmouth College Highway
Lebanon, NH 03766

MEMO

TO: Honorable Mayor and City Council

CC: Shaun Mulholland, City Manager

FROM: Jay Cairelli, DPW Director

DATE: July 8, 2024

RE: **Supplemental Appropriation Request – South Main Street Bridge Replacement Project**

Introduction:

Request for Supplemental Appropriation in the amount of \$250,000 for South Main Street Bridge Replacement Project.

Background

This project location is along Route 12A, South Main Street in West Lebanon at the existing bridge crossing over the New England Central Railroad (NECR) rail corridor. The City is working with the New Hampshire Department of Transportation (NHDOT) on final design and permitting for the new bridge crossing in addition to a new access road into the rail yard, utility improvements and intersection improvements at Seminary Hill. The project construction was originally planned to be over an active railroad, which adds substantial complexity to the bridge and road construction activities, planning, and schedule coordination. The NECR offered to close the track during construction with the condition that a transloading facility be built within the railyard and with the new access road construction occurring in the first phases of the project. Railroad closure during construction will significantly reduce coordination efforts with NECR and is predicted to save substantial time and money with respect to schedule and contractor coordination requirements.

Recommendation / Rationale:

This request for a supplemental appropriation is to fund the design, permitting, and construction of a proposed transloading facility associated with the above-referenced project, allowing the rail corridor to be closed during construction and thereby saving substantial construction time, effort, and costs. The alternative approach of leaving the rail corridor open during construction of the bridge would require extensive railroad coordination that is anticipated to significantly impede construction progress and scheduling, and result in much higher bid/construction costs given the coordination and schedule burdens. The City will be reimbursed 80 percent of these costs by NHDOT from State-Aid Bridge funds.

**Agenda
Lebanon City Council
July 17, 2024**

11. New Business:

11.C – Creation of Food Truck Task Force

Background

City Code Chapter 179 regulates sales by vendors within the general area of Colburn Park and the Mall in the City of Lebanon. This code was established on August 22, 1990. The current language of the code presents practical conflicts regarding the space and area needed for food trucks to operate along South Park Street. The current scope of the code also presents practical concerns, as the West Lebanon Revitalization Advisory Committee has recently discussed the feasibility of having food trucks in West Lebanon as a means of enhancing local business opportunities, increasing foot traffic, and fostering a vibrant community atmosphere.

Food trucks have been a great addition to our community thus far. There has been positive feedback from the general public, as well as considerable use of the food trucks, which have attracted more people into our downtown business district. However, there have also been concerns from the public about traffic safety and the use of parking spaces by vendors that would otherwise be available to the general public.

There is a desire to mitigate safety concerns while maintaining the opportunities for economic growth and vitality that food trucks bring to our community. Temporary measures have been put in place for 2024, but more permanent solutions and resulting zoning and code changes may be necessary to allow for the safe use of food trucks next year. Our mission is to maintain their presence in the community while upholding public safety.

Action

The following motion is offered for City Council consideration:

MOVED, that the Lebanon City Council hereby establishes a task force to address the issues related to food trucks. The Food Truck Task Force shall report back to the City Council no later than February 15, 2025.

Included In This Section:

1. City Code Chapter 179
2. Lebanon Food Truck Task Force Charter

Chapter 179

VENDORS

§ 179-1.	Declaration of purpose.	§ 179-7.	Restrictions applicable to all vendors.
§ 179-2.	Definitions.	§ 179-8.	Suspension or revocation of permit.
§ 179-3.	Permit required.	§ 179-9.	Appeals.
§ 179-4.	Permits and fees.	§ 179-10.	Penalties for offenses.
§ 179-5.	Application.		
§ 179-6.	Limitation of number and location of vending operations; nonprofit permits.		

[HISTORY: Adopted by the City Council of the City of Lebanon 8-22-1990 by Ord. No. 62. Amendments noted where applicable.]

GENERAL REFERENCES

Consumption of alcoholic beverages in Colburn Park and the Mall — See Ch. 14, Art. I.	Noise from sound amplification systems — See Ch. 110.
Removal of dog feces from Colburn Park and the Mall — See Ch. 18.	Driving and parking on the Mall — See Ch. 168, § 168-3.
Bicycles and skateboards on the Mall — See Ch. 27.	Vendor parking — See Ch. 168, § 168-7A.
	Vending machines — See Ch. 176.

§ 179-1. Declaration of purpose.

The purpose of this chapter is to provide for the regulation of sales by vendors within the general area of Colburn Park and the Mall in the City of Lebanon. This is necessary to ensure the free flow of motor vehicle and pedestrian traffic and to promote the public health, safety and welfare in that area.

§ 179-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ABUTTING BUSINESS — Any legitimate business located within, whether by lease, rental or ownership, a property in the central business district abutting North or West Park Streets or the Mall area.

PUBLIC STREET OR SIDEWALK — Include all areas legally open to public use as public streets, sidewalks, roadways, highways, parkways, alleys and any other public way.

STAND — Any newsstand, table, bench, booth, rack, handcart, pushcart or any other fixture or device which is not required to be licensed and registered by the Department of Motor Vehicles, used for the display, storage or transportation of articles offered for sale by a vendor.

VENDOR — Any person, including an employee or agent of another, who sells or offers to sell food, beverages, goods or merchandise on any public street or sidewalk from a stand, motor vehicle or from his or her person.

§ 179-3. Permit required. [Amended 8-4-2010 by Ord. No. 2010-02 ; 8-19-2015 by Ord. No. 2015-01]

Vending activity is limited to the areas described below. It shall be unlawful for any vendor or abutting business to sell, display or offer for sale any food, beverage, goods or merchandise without first obtaining a permit from the City Manager. Vending activity on private property is regulated by the Zoning Ordinance.¹

- A. South Park Street: up to five parking spaces on the north side of the street between the crosswalk entrance and the easterly corner of Colburn Park.
- B. Colburn Park, which is described as the entire area bordered by North Park Street on the north, West Park Street on the west, South Park Street on the South and East Park Street on the east, excluding the sidewalks along those streets: A maximum of four "stand" vendors will be permitted to utilize Colburn Park at any given time. Permits will be issued for daily/weekly vending only.
- C. Lebanon Mall, extending from the westerly sideline of West Park Street west and south to Hanover Street, meaning and intending to include the entire area of the Mall.
- D. Vending activity shall be unlawful on all streets, sidewalks and other public property in Lebanon, other than those listed above. However, this prohibition shall not apply to mobile vendors whose vehicle, stand or cart does not remain in any single site longer than 30 minutes, including but not limited to mobile ice cream trucks.
- E. Vending which occurs as an inherent part of an event properly licensed or permitted by the Licensing Board or the City Manager, including but not limited to a farmers' market, street fair, or alumni day, shall be exempt from the provisions of this chapter.

§ 179-4. Permits and fees. [Amended 2-20-1991 ; 10-2-1991 ; 8-4-2010 by Ord. No. 2010-02 ; 8-19-2015 by Ord. No. 2015-01]

- A. Daily permits: The fee for a daily vendor permit is \$10. Applicants wishing to obtain daily permits shall apply to the City Manager prior to the desired event at a time designated by the City Manager. All applications shall include the following conditions: **[Amended 4-5-2023 by Ord. No. 2023-02]**
 - (1) Applicants must meet the requirements of the City Manager for size of vehicle/operation, noise, state permit(s), hours of operation and other conditions as may be set by the City Manager.
 - (2) When more applications are received for spaces than are available, the City Manager shall determine the allocation by lottery.
 - (3) Permits and assigned locations are nontransferable, and the fee is nonrefundable.
 - (4) The daily fee for use of electricity from a City-owned power supply is \$3.
- B. Weekly permits: The fee for a weekly vendor permit is \$50. Weekly permits shall be issued for the week beginning Monday and ending Sunday, and may run consecutively. All applications shall include the following conditions: **[Amended 4-5-2023 by Ord. No. 2023-02]**
 - (1) Applicants must apply to the City Manager for a space at least two weeks prior to the date that is needed and must meet the requirements of the City Manager for size of vehicle/operation, noise, state permit, hours of operation and other conditions as may be set by the City Manager.

1. Editor's Note: The Zoning Ordinance is on file in the office of the City Clerk.

- (2) When more applications are received for spaces than are available, the City Manager shall determine the allocation by lottery.
 - (3) Permits and assigned locations are nontransferable, and the fee is nonrefundable.
 - (4) The weekly fee for use of electricity from a City-owned power supply is \$15.
- C. Seasonal permits: The fee for a seasonal vendor permit is \$100. Seasonal permits shall be issued for four three-month periods of the calendar year as follows: January/February/March; April/May/June; July/August/September; and October/November/December. All applications shall include the following conditions: **[Amended 4-5-2023 by Ord. No. 2023-02]**
- (1) Applicants must apply to the City Manager for a space before the end of the preceding quarter (December 15 for first quarter; March 15 for second quarter; June 15 for third quarter; and September 15 for fourth quarter) and meet the requirements of the City Manager for size of vehicle/operation, noise, state permit, hours of operation and other conditions as may be set by the City Manager.
 - (2) When more applications are received for spaces than are available, the City Manager shall determine the allocation by lottery.
 - (3) Permits and assigned locations are nontransferable, and the fee is nonrefundable.
 - (4) Seasonal vendors must utilize their assigned space at least 15 days of each month.
 - (5) A vendor may, upon written permission from the City Manager, utilize the assigned space on less than 15 days in any month due to vacation, illness or other extenuating circumstance. However, during the entire period of time the space is vacated by the vendor due to the approved absence, the City reserves the right to rent the space on a daily permit basis.
 - (6) Noncompliance will result in the assigned vendor losing the space and disqualifying the vendor from applying for any space for the period of one year.
 - (7) The seasonal fee for use of electricity from a City-owned power supply is \$40.
- D. Abutting business permit: The annual fee for an abutting business permit shall be \$125. Abutting businesses shall be entitled to a permit for the use of an area in the vicinity of their established place of business. All applications shall include the following conditions:
- (1) Applicants must apply to the City Manager for a space at least two weeks prior to the date that is needed and must meet the requirements of the City Manager for size of vehicle/operation, noise, state permit, hours of operation and other conditions as may be set by the City Manager.
 - (2) Permits shall be for the period of time designated by the applicant in the application for a permit. Permits must be renewed annually and are subject to all other applicable state and City regulations.
 - (3) Permitted areas shall not exceed 625 square feet in area, unless specifically approved by the City Manager, and may be prescribed, mapped and modified from time to time by the City Manager, depending on the needs of the City.
 - (4) The City Manager, in his/her reasonable discretion, may waive or modify the provisions of § 179-7A, and B as they may apply to permits for abutting businesses granted under this section.

(5) Permits and assigned locations are nontransferable, and the fee is nonrefundable.

- E. As an alternative to the annual abutting business permit under Subsection D above, abutting businesses may also apply for daily or weekly vendor permits under Subsection A or B above. Such permits shall be subject to the same conditions as any other daily or weekly permit, except that the numerical permit limitations of this section shall not apply to abutting businesses. **[Amended 4-5-2023 by Ord. No. 2023-02]**

§ 179-5. Application.

The application for a vendor's permit shall contain all information relevant and necessary to determine whether a particular permit may be issued, including but not limited to:

- A. Proof of identity and business address of the applicant.
- B. A brief description of the nature, character and quality of the food, beverages, goods or merchandise to be sold.
- C. If employed by another, the name and business address of the person, firm, association, organization, company or corporation.
- D. If a motor vehicle is to be used in the vending business, a description of the vehicle, together with the motor vehicle registration number.
- E. A description of the proposed location of the vending business and the length of time during which it is proposed that the business shall be conducted.
- F. No permit shall be issued to an applicant unless the applicant assumes liability for damages, property loss, injury or death or other related liability resulting from the activities of the vending operation. **[Amended 9-20-2000 by Ord. No. 70]**

§ 179-6. Limitation of number and location of vending operations; nonprofit permits. [Amended 10-18-1995 ; 8-4-2010 by Ord. No. 2010-02 ; 8-19-2015 by Ord. No. 2015-01]

- A. As noted in § 179-4 above, the City Manager may limit the number and location of vending operations. Absent any other limiting factor, the City Manager shall not permit more than five vending locations on South Park Street adjacent to Colburn Park. Two of these locations shall be seasonal, one shall be weekly, and two shall be daily.
- B. Nonprofit permits. The City Manager may designate additional locations within the restricted areas for the peddling of wares, provided that the proceeds from all sales at the location are used exclusively for the benefit of civic, school, charitable, philanthropic, religious, or other not-for-profit organizations. These spaces shall be available on a daily basis for a consecutive period of time and shall be assigned without charge, at the discretion of the City Manager, and according to the above procedure for permits.

§ 179-7. Restrictions applicable to all vendors. [Amended 10-19-2005 by Ord. No. 2005-9 ; 8-4-2010 by Ord. No. 2010-02 ; 8-19-2015 by Ord. No. 2015-01]

The City Manager may set a limit on the number and location of permits given under the categories below:

- A. Stands/carts/vehicles stands shall not:

- (1) Exceed nine feet in width and 18 feet in length. Height should not exceed 10 feet.
 - (2) Impede access to the entrance of any adjacent building or driveway.
 - (3) Occupy more than half of the available sidewalk width.
 - (4) Locate within 25 feet of a fire hydrant, fire escape, bus stop, loading zone or driveway of a fire station, police station or hospital.
- B. Hours of operation. Vendors shall be allowed to engage in the business of vending only between 7:00 a.m. and 9:00 p.m., except for abutting businesses operating under § 179-4D, which shall be allowed to operate in their permitted area during their normal business hours or as otherwise provided pursuant to § 179-4D. All vending stands must be removed from public property during nonvending hours, except for good reason and by special waiver of the City Manager.
- C. Handicapped areas. No vendor shall block access to any handicapped parking space or access ramp.
- D. Removal of trash. All trash or debris originating from the operation of the vending stand shall be collected by the vendor and removed from public property daily.
- E. The area occupied by a vendor shall be limited to that area so designated by the City Manager.
- F. No vendor shall utilize an open fire in connection with the sale or display of the vendor's wares without a permit from the Lebanon Fire Department.
- G. No vendor shall shout, make an outcry, blow a horn, ring a bell, or use any other sound device for the purpose of attracting attention to any goods which the vendor proposes to sell. Vending operations must be reasonably quiet, i.e., no vending stand or vehicle shall emit excessive mechanical or compressor noise to the detriment of the environment around Colburn Park or Mall.
- H. No vending activity shall unreasonably impede the flow of vehicular or pedestrian traffic. The City Manager may impose restrictions in addition to those listed in this section, when warranted, in order to assure at all times the public's use of streets and sidewalks for purposes of travel.
- I. It is the intent of this chapter that goods or merchandise to be offered for sale shall consist solely of items which can easily be carried away from the sales location by pedestrians, and which entail no special needs or problems pertaining to loading, handling, installation or delivery, such as might interfere with vehicular traffic or with other users of the park and mall. Heavy or bulky items such as tires, large appliances, large furniture items, motorized equipment or the like are generally not permitted. All goods or merchandise displayed shall be for immediate sale and delivery. Displays or advertising whose primary purpose is to promote future or off-site transactions are not permitted. The City Manager may deny a permit to any vendor whose stand/vehicle/cart does not meet the intent of this subsection.

§ 179-8. Suspension or revocation of permit.

- A. Any permit issued under this chapter may be suspended or revoked for any of the following reasons:
- (1) Fraud or misrepresentation in the application for the permit.
 - (2) Conducting the business of vending contrary to the conditions of the permit.
 - (3) Conducting the business of vending in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare.

(4) Failure to pay fee.

- B. Upon suspension or revocation, the city shall deliver written notice to the permit holder stating the action taken and the reasons supporting such action. The written notice shall be delivered to the permit holder's place of business or mailed to the permit holder's last known address.

§ 179-9. Appeals.

Persons who are denied permits or whose permits have been suspended or revoked may appeal by filing a written notice of appeal with the Licensing Board. The appeal must be filed within three working days after receipt of the notice of denial, suspension or revocation, with the City Clerk. The Licensing Board shall hear such appeal at its next or regular meeting and shall render its decision in writing within 15 days thereafter.

§ 179-10. Penalties for offenses.

Any person who violates any provision of this chapter shall be punished as provided in Chapter 1, General Provisions, by suspension of the permit for a period to be determined by the Licensing Board, or both.

Lebanon Food Truck Task Force Charter

Purpose/Charge

The Food Truck Task Force shall evaluate and address the practical and regulatory challenges associated with the operation of food trucks within the City of Lebanon. This task force is created by the City Council, and, aiming to foster economic growth and community vibrancy while ensuring public safety and accessibility, shall:

1. Review current City Code Chapter 179 and relevant zoning regulations to identify conflicts and limitations impacting food truck operations. Provide recommendations for changes to facilitate the safe and efficient operation of food trucks city-wide.
2. Develop a comprehensive, sustainable strategy for permitting and managing food trucks on public property in downtown Lebanon and West Lebanon. This strategy should consider various aspects such as traffic and pedestrian safety, public health, parking, and fire safety.
3. Conduct public outreach to gather feedback from residents, local businesses, and other stakeholders to ensure community needs and concerns are addressed.
4. Submit a detailed report of findings, recommendations, and proposed code and zoning changes to the City Council by February 15, 2025.

Membership:

Task Force members shall be appointed by the Mayor and shall consist of one City Council representative and four residents of the City of Lebanon, selected by the Mayor to represent a diverse range of perspectives and interests within the community. The City Manager's office will provide technical assistance and support as needed to help the task force achieve its objectives. Task Force members must comply with the provisions of RSA 91- A regarding public meetings. The members shall serve on this task force without compensation.

**Agenda
Lebanon City Council
July 17, 2024**

11. New Business:

**11.D – New Hampshire Municipal Association
Policy Positions and Principles**

Background

The City of Lebanon is a member of the New Hampshire Municipal Association (NHMA). Every two years the NHMA conducts a process to update its legislative policy positions and principles which are used by advocacy staff to support or oppose legislation before the NH Legislature.

The process began just after the first of the year. Municipalities were requested to propose new policy positions or principles to be considered as well as proposing changes to existing policy positions or principles. The existing policy positions and principles as well as proposals for new positions/principles and proposed changes are reviewed by three committees. The three committees are the following.

1. General Administration and Governance
2. Finance and Revenue
3. Infrastructure, Development, and Land Use

Municipal officials from across the state volunteer to work on the three committees from April until the end of June. The three committees are assigned policies that are relevant to their scope of work which they review and make any proposed changes. The draft proposed policies and principles are then sent back to the governing body of each town and city for review and consideration.

Action

The City Manager recommends that the City Council take the following actions:

- ***Review proposed 2024-2025 Legislative Policies and Principles***
- ***Vote on policies and principles, and develop any proposed amendments***
- ***Select a delegate to represent the City at the September 27 Legislative Policy Conference***
- ***Develop any floor proposals, if desired, by August 9, 2024***

It is anticipated that the City Council will begin review of the policies at the July 17th meeting and will continue the review process during the next several City Council meetings as needed to complete the review process.

Included In This Section:

1. 2024-2025 Proposed NHMA Policy Positions and Principles



NH Municipal Association

Proposed Policies

2025-2026

General Administration and Governance

Local Authority and Efficiency

NHMA supports maintaining local government authority without infringement by the state, and supports measures that enable municipalities to exercise existing authority more efficiently and with greater discretion. NHMA also supports state-local partnership and coordination in addressing common issues.

NHMA supports:

- Legislation granting towns the same authority to adopt ordinances that cities have under RSA 47:17;
- The authority of municipalities to regulate or limit the use of firearms on municipal property, and to regulate the carrying of firearms by municipal employees while on duty;
- Legislation allowing a town, by vote of its legislative body, to authorize appointment of the town clerk or town clerk/tax collector by the governing body, or by the chief executive officer based on a town charter, with appropriate employment protections to preserve the statutory independence of the office;
- Legislation allowing municipalities to satisfy notice publication requirements through the use of electronic notification rather than newspaper publication, in addition to posting notice in public places;
- Legislation that is supportive of state collaboration with municipalities in addressing homelessness; and,
- Legislation that helps ensure the availability of an adequate public sector workforce.

NHMA opposes:

- Repealing or further limiting existing governmental immunity protections or liability caps, or otherwise expanding potential liability for cities and towns; and
- Legislation that detracts from existing local authority.

Right-to-Know Law

NHMA supports the purposes of the Right-to-Know Law: to ensure the greatest possible public access to the actions, discussions, and records of all public bodies, and to ensure government's accountability to the people. NHMA also supports measures to make the law clearer and make compliance with public access requirements easier and less burdensome for public officials and employees and less costly for taxpayers.

NHMA supports:

- The ability to recover reasonable labor costs and other costs for responding to voluminous or excessive or commercial record requests, protecting taxpayer dollars and potential privacy concerns of citizens;
- Exemptions from disclosure that are easy to administer and that provide appropriate protection for confidential and other sensitive information;
- The ability of municipalities to directly petition to the Right-to-Know Law Ombudsman;
- Legislation and funding that provide support for education about the Right-to-Know Law; and,
- Authority of municipalities to set the meeting locations, conditions, and modalities (including in-person, remote, or combined in-person/remote) for meetings of councils, boards, committees, and commissions.

Elections

NHMA believes that voting in state and local elections should be simple and convenient without risking election integrity or security, and that election processes should be efficient without imposing undue burdens on local officials.

NHMA supports:

- Establishment of an independent redistricting commission to draw election districts fairly and without regard to partisan advantage;
- Local autonomy over town and city elections;
- More frequent state review and approval of electronic ballot-counting devices;
- Registration and voting processes that are not unnecessarily complex or burdensome, either to election officials or to voters;
- The use of secure technology such as electronic poll books to make election processes more efficient;
- Greater flexibility in the processing and counting of absentee ballots; and,
- State assistance for the cost of accommodations for disabled voters in local elections.

Labor and Employment

NHMA recognizes the importance of municipal employees, the need for good working conditions, and the right of employees to organize if they choose. NHMA also believes municipal employers should be free to set reasonable terms and conditions of employment or negotiate the same with their employees or employee representatives, without undue state interference.

NHMA **supports** existing laws governing all public employment and public employee labor relations. NHMA **opposes** changes to legislation that would mandate greater burdens or liabilities on employers.

NHMA **opposes**:

- Legislation creating a mandatory “evergreen clause” for public employee collective bargaining agreements;
- Mandatory binding arbitration as a mechanism to resolve impasses in municipal employee collective bargaining;
- A right to strike for public employees;
- New mandated employee benefits, including any proposal to enhance retirement system benefits that may increase employer costs in future years;
- Unnecessary limits on municipalities’ discretion in making hiring decisions; and,
- Restrictions on municipalities’ ability to privatize or use contracted services.

Substance Use, Prevention & Response

NHMA **supports**:

- State funding and other legislation to address substance use disorders for the following efforts:
 - Prevention
 - Treatment
 - Recovery
 - Emergency response
 - Enforcement

NHMA **opposes**:

- Reductions in state funding for substance use disorder or recovery support programs;
- Legislation that makes it more difficult to address the substance use disorder problem in our communities.
- Legislation that authorizes the sale of cannabis unless the following requirements or conditions are included:
 - The processing, manufacture, refinement or sale of cannabis products in any municipality shall only be permitted after the legislative body of that municipality has adopted the provisions of enabling state legislation permitting such activities--“opt-in,” not “opt out.”
 - Legislation that legalizes the sale of cannabis must include provisions for adequate and sustained funding to municipalities to address the costs associated with legalization because municipalities will be the governmental entities that will have to directly deal with the impacts of legalization.
 - Any legislation allowing for establishments engaged in selling, distributing, growing, or storing cannabis or cannabis products shall include a requirement for a host community agreement with the municipality in which such an establishment is located, which may include provisions such as a community impact fee; a limit on the percentage of sales of total gross receipts that are related to cannabis sales; security

measures for premises; agreements to fund police details when necessary; for crowd or traffic control; and termination of business provisions.

Finance and Revenue

Property Taxes and Related Revenues

NHMA supports legislation that allows municipalities to manage property tax levies in a manner that stabilizes tax rates and ensures equity, fairness, and efficiency in the assessment and collection of property taxes.

NHMA supports:

- The continuing right of municipalities to use any recognized method of appraisal upheld by the New Hampshire judicial system;
- Legislation to ensure that:
 - o property taxes are assessed to the proper owner by requiring that all owner name changes be separately filed at the registry of deeds when such an owner change is not created by a transfer of the property, and
 - o all liens, whether of a private or institutional nature, be filed at the registry of deeds, and that all changes to the name of a recorded lienholder be similarly filed;
- A legislative commission to study assessment and collection of property taxes and/or municipal utility fees on manufactured housing on land of another and on transient-type properties;
- Legislation ensuring fairness and accuracy in property tax exemptions including ensuring that all household income and assets are taken into account;
- Legislation that prohibits the use of the income approach by a taxpayer in any appeal of assessed value if the taxpayer refuses to provide such information as requested by the municipality;
- A legislative commission to study reimbursement through payments in lieu of taxes (PILOTs) for municipal services provided to exempt charitable properties, including charitable non-profit housing projects;
- A study commission of local enabling legislation to allow for a uniform homestead exemption for resident owners on the principal place of residence.

NHMA opposes:

- Legislation that directly or indirectly increases property taxes, including but not limited to new or expanded mandatory exemptions or credits, or changes in the process for valuing, assessing, or taxing specific classes of properties;
- Legislation that undermines the basic goals of the current use program or reduces the 10-acre minimum size requirement for qualification for current use beyond those exceptions now allowed by the rules of the Current Use Board;
- Legislation that expands the definition of “charitable” in RSA 72:23-l unless the state reimburses municipalities for the commensurate loss of property tax base;
- An assessment methodology for big box stores that employs comparisons to “dark store” properties abandoned or encumbered with deed restrictions on subsequent use.

State Aid and Non-Property Tax Revenues

NHMA supports funding of state aid to municipalities, supports legislation authorizing local control over non-property tax revenue streams, and opposes legislation that reduces, suspends, or eliminates existing local taxes, fees, or state aid.

NHMA supports:

- Full restoration of revenue sharing under RSA 31-A;
- A state transportation policy that provides adequate and sustainable funding for state and municipal infrastructure and transportation systems and maintains at least the 12 percent share of state highway funds distributed to municipalities;
- Legislation authorizing the establishment of local option fees and providing for periodic adjustments to statutory fees to compensate for factors including, but not limited to, the effects of inflation, such as an increase in the maximum optional fee for transportation improvements;
- Legislation to ensure the collection of unpaid bills for ambulance and other emergency services;
- Reimbursement from the state for the cost of municipal services provided to state-owned properties;
- Legislation amending motor vehicle registration enforcement laws to ensure collection of all state and local registration fees owed by New Hampshire residents;
- Legislation amending RSA 36-A:5 II to allow trustees of trust funds to invest conservation funds instead of only the town treasurer, if voted by the legislative body;

NHMA opposes:

- Legislation that would repeal the dedicated fund created to share 30% of state meals and rooms tax revenue with municipalities along with any further reduction to the percentage shared, or any further reduction to the state meals and rooms tax.
- Diversion of state highway funds for state non-transportation network purposes.

New Hampshire Retirement System (NHRS)

NHMA supports the continuing existence of a retirement system for state, municipal, school, and county government employees that is secure, solvent, fiscally healthy, and financially sustainable, and that both employees and employers can rely on to provide retirement benefits for the foreseeable future.

NHMA supports:

- Restoration of up to 35% of the state's share of employer costs for police, teachers, and firefighters in the current defined benefit plan and any successor plan, with the goal being a 35% re-instatement of the state contribution;
- Inclusion of participation by municipal officials designated by NHMA on any legislative study committee or commission formed to research alternative retirement system benefits plans or designs; and,

- Performance of an actuarial analysis of any legislation proposing benefits changes or other plan changes that may affect employer contribution rates.

NHMA opposes:

- Legislation expanding benefits that increase current or future employer contribution costs;
- Legislation that assesses additional charges on employers beyond NHRS board-approved rate changes;
- Legislation that expands the eligibility of NHRS membership to positions not currently covered by the plan; and,
- Legislation further restricting a municipality's ability to employ NHRS retirees in part-time positions or the imposition of any fees or penalties associated with such employment.

Education Funding

NHMA supports a revenue structure for funding an adequate education to meet the state's responsibilities as defined by the constitution, statutes, and the common law with revenue sources that are predictable, stable, and sustainable.

NHMA supports:

- A revenue structure that is not disruptive to the long-term economic health of the state;
- A revenue structure that is efficient in its administration; and,
- A revenue structure that is fair to citizens.

NHMA opposes:

- Retroactive changes to the adequate education funding distribution formula after the notice of grant amounts has been provided to local governments;
- Education funding changes that would directly result in a reduction of the amount of municipal state aid and revenue sharing;
- Education funding changes that create a conflict in statute with any other taxing authority, tax statute, existing exemption or credit or create technical issues within the tax collection process.

Infrastructure, Development, and Land Use

Energy, Environment, and Sustainability

NHMA supports preservation and enhancement of municipal energy, climate, and sustainability planning for communities, protection of the natural environment, and implementation of clean and renewable energy, while recognizing the need for municipalities to manage their resources and the natural environment without undue cost.

NHMA supports:

- Legislation that broadens municipalities' ability to install and use renewable energy sources, including higher caps or elimination of caps on net energy metering;
- Legislation that provides financial and other assistance to municipalities for conservation techniques and installation and maintenance of renewable energy sources;
- Legislation that allows municipalities to adopt local environmental regulations that are no less stringent than those implemented by the state;
- Legislation that enables municipalities to enact measures that promote local energy and land use systems that are both economically and environmentally sustainable;
- Legislation that protects and preserves local natural resources and public infrastructure, builds community resilience, and fosters adaptation to climate change and mitigates its risks;
- Policies that support customer and community choice in energy supply and use competitive market-based mechanisms to promote innovation, cost effectiveness, and sustainability; and
- Legislation that provides state or federal assistance to municipalities to promote environmental justice and to mitigate environmental impacts faced by their residents, and to drive early local engagement in decision processes.

NHMA opposes:

- Legislation that overrides local determinations of appropriate energy sources and regulations.

Water Resources Protection, Control, and Management

NHMA supports measures enabling municipalities to protect, control, and efficiently and safely manage water infrastructure and its resources. NHMA believes the State should support its commitments to municipalities for water infrastructure programs and that any new mandates that impose additional costs on municipalities must be funded by the state or federal government.

NHMA supports:

- Legislation that provides state or federal investment in maintaining and improving ~~the state's~~ critical water infrastructure, including, but not limited to, dams, public drinking water systems, wastewater systems, stormwater systems, and surface and groundwater;
- Legislation that encourages regional and innovative solutions to drinking water, wastewater, stormwater, and surface and groundwater issues; and,

- Regulation of emerging contaminants at appropriate and feasibly achievable levels when supported by relevant scientific and technical standards that are broadly accepted by peer review and cost-benefit analyses, when coupled with appropriate state or federal funding.

NHMA opposes:

- Enactment of stricter drinking water, wastewater, stormwater, or surface water and groundwater regulations for municipalities unless any costs of compliance are funded by the state or federal government or responsible party.

Solid Waste Management

NHMA recognizes the need for efficient, economical, and environmentally sensitive mechanisms for solid waste management which allow municipalities to use the most appropriate disposal systems. NHMA believes any new mandates that impose additional costs on municipalities must be funded by the state or federal government.

NHMA supports:

- Programs that support municipal, regional, and state strategies to manage solid waste through reduction, reuse, recycling, resource recovery, composting, and other measures, while maintaining local control;
- State programs that address existing and emerging contaminants at no additional cost to municipalities; and,
- Fees or assessments on solid waste or recycling that are used to provide direct support or enhancement of local or regional solid waste, household hazardous waste, and recycling programs.

Housing

NHMA recognizes the need for diverse, affordable, and workforce housing in New Hampshire and the responsibility of each municipality to afford reasonable opportunities for the development of diverse, ~~and~~ affordable, and workforce housing. NHMA believes municipalities should have discretion in how to satisfy this responsibility and supports legislation that enables municipalities to find innovative ways to ensure an adequate supply of housing.

NHMA supports:

- Legislation that allows municipalities to require the inclusion of affordable and diverse housing opportunities as part of new housing developments;
- Financial and other incentives to municipalities to encourage development of diverse, ~~and~~ affordable, and workforce housing, including but not limited to municipal per unit grants;
- Financial and other incentives that assist homeowners in FEMA designed flood areas such as with the elevation of residential dwellings;
- Legislation that provides state funding to the regional planning commissions that helps municipalities in meeting their housing needs;
- Statewide efforts to provide housing for those experiencing homelessness or at risk of homelessness and for those recovering from substance use disorder, subject to reasonable municipal regulation;

- Policies that encourage documentation and financial traceability of cash and bartered rental transactions;
- Legislation and policies that encourage creative and flexible approaches to meeting housing needs of current and future demographics in different regions; and,
- Legislation which promotes a collaborative approach between the state, municipalities, and other key stakeholders to address the state's housing shortage.

NHMA opposes:

- Legislation and policies that ~~allow for or~~ encourage housing practices that exclude people from ~~and~~ or decrease the availability of quality, affordable housing; and,
- Legislation that erodes local control over land use decisions.

Land Use

NHMA supports the long-standing authority of municipalities to regulate land use matters with minimal interference from the state.

NHMA supports:

- Legislation enabling municipalities at their discretion to adopt more recent editions of national/international building and fire codes than the current state-adopted editions; and,
- Legislation that supports the adoption of more recent editions of the national/international building and fire codes after review and recommendation by the Building Code Review Board and/or the State Fire Control Board.
- Legislation and policies that take into consideration the value of conservation, natural resources, and open space.

NHMA opposes:

- Legislation that limits municipal control in implementing statewide priorities in zoning and land use regulation;
- New state mandates requiring municipalities to allow specific types of housing; and,
- All other statewide land use mandates.

Information Technology, Communications, and Cybersecurity

NHMA supports initiatives to make the most current information and communication technology accessible to New Hampshire communities, so long as local authority over land use regulation and safety issues is not compromised.

NHMA supports:

- Legislation that allows for the responsible, ethical and transparent use of Artificial Intelligence (AI) technologies by New Hampshire municipalities to enhance public services, improve operational efficiency, reduce costs, enhance security, manage risk and engage more effectively with the community.

- Legislation that increases the ability of municipalities, especially those in rural and remote areas, to facilitate and advance access to reliable broadband technology to the premises in their communities;
- Legislation that provides flexibility for municipalities in accessing poles and pole attachments, including legislation that directs the New Hampshire Public Utilities Commission to adopt the FCC rule on access to poles called “One-Touch-Make-Ready” in order to facilitate bringing high-speed fiber optic cable to service all New Hampshire communities, homes, and businesses by internet service providers (ISPs) in an expedient and cost-effective manner;
- Legislation that provides state and federal investment, including grants, for installation of high-speed fiber optic broadband technology to serve all New Hampshire communities, homes, and businesses;
- Legislation that requires or encourages and incentivizes providers to disclose information to local government relative to access and broadband connections provided in the municipality to help municipalities better understand and address the needs of their community; and,
- State investment in cybersecurity assistance to municipalities to protect data and infrastructure.

NHMA opposes:

- Legislation that would promote discrimination in the administration of government, the violation of privacy of the citizens we serve, or create or promote threats to public safety.
- Legislation that limits municipalities’ ability to prevent or regulate deployment of technologies that would interfere with the management of the right of way; and,
- Statewide mandates on cybersecurity practices unless any associated costs are funded by the state or federal government.

Transportation

NHMA supports state policies that ensure access for all users to convenient, efficient, reliable, cost effective, safe, and sustainable multi-modal transportation systems in New Hampshire.

NHMA supports:

- Appropriate funding for state and local modes of transportation, including but not limited aviation, transit, bicycle, and multi-modal facilities;
- Continued state and federal investment in public transportation systems and projects designed to support access to vital services, economic, and recreational opportunities within communities, link communities and regions, and reduce vehicle congestion on New Hampshire’s roads; and,
- Programs and funding sources that would appropriately recover and distribute the impact of vehicles used on local and state transportation infrastructure.

NHMA opposes:

- Any action or inaction by the State that results in the downshifting of maintenance responsibilities for transportation infrastructure (road, bridge, culvert, drainage) to municipalities.

Economic Development, Recovery, and Vitality

NHMA supports allowing municipalities to implement measures to foster economic development which allows for the preservation and creation of jobs and vitality within our communities.

NHMA **supports:**

- Legislation that allows for local adoption of more options and more flexibility to provide incentives for economic recovery and development; and,
- Expansion and more flexibility of state tax credit and exemption programs to foster economic recovery, development, and vitality.

NHMA **opposes:**

- Legislation that makes it more burdensome to implement economic recovery, development, and vitality measures.

NH Municipal Association

Proposed Principles

2025-2026

In addition to the established Legislative Policy positions adopted by the New Hampshire Municipal Association membership, the following principles should guide staff in setting priorities during any legislative biennium:

1. Identify and oppose mandates that violate Part 1, Article 28-a of the New Hampshire Constitution.
2. Work to maintain municipalities' share of state-level revenue sources (revenue sharing, meals and rooms tax, highway block grants, municipal bridge, state water and wastewater capital programs, and other state aid). Oppose proposals that reduce revenue unless there is a sustainable identified replacement source. Support efforts that make more sustainable sources for revenue.
3. Advocate to maintain and enhance existing local authority in all areas of local government.
4. Support legislation that provides greater authority to govern more effectively, efficiently, and flexibly at the local level, including local option legislation. If the legislature is considering adopting a program that is particularly controversial at the local level, support a requirement that a local legislative body vote is necessary before full implementation of the measure.
5. Support bills proposed by individual municipal members, except when they conflict with these principles or NHMA's Legislative Policies.
6. Oppose mandated state exemptions or credits from local property taxes without substantial benefits back to municipalities.
7. Advocate for municipal representation on state boards, commissions, and study committees that affect municipal government and have non-legislative members.
8. Work cooperatively with other groups and associations to support efforts to improve the delivery of services at the local level.
9. Support municipal efforts toward effective regional and state cooperation and delivery of municipal and state services.
10. Advocate for local options for economic development and vitality in partnership, including public-private partnerships, with regional and state economic development goals to encourage the overall economic health and social well-being of New Hampshire.
11. Encourage clarity and the elimination of ambiguity in statutory language, especially in areas of decision-making authority.
12. Support the rights of cities and towns to advocate, individually or collectively, for or against legislation and to join, hire, or establish organizations that do so on their behalf.

The legislative principles are not in order of weight or priority. They each carry their own independent value and should be viewed in that fashion when used to determine NHMA's position on a bill or policy.