



LEBANON FAIR & IMPARTIAL POLICING TASK FORCE
SEPTEMBER 29, 2020 - 7:00 PM
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE

1. Call to Order

- A. The September 29, 2020 Fair & Impartial Policing Task Force Meeting is hereby called to order.

2. Approval of Minutes

- A. August 4, 2020
B. August 18, 2020
C. September 1, 2020
D. September 15, 2020

3. New Business

- A. Provision 4
B. Provision 5, Section B
C. Provision 9 - Implementation and Enforcement
D. Draft recommendation to City Council

4. Open to the Public

5. Other Business

6. Adjournment

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Microsoft Teams. Members of the public are encouraged to attend 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 Microsoft Teams software or by phone. Please visit LebanonNH.gov/Live for full details.

THE AGENDA, IN ITS ENTIRETY IS AVAILABLE ON THE CITY'S WEBSITE AT [LEBANONNH.GOV](https://LebanonNH.gov)



MINUTES
FAIR & IMPARTIAL POLICING TASK FORCE
TUESDAY, AUGUST 18, 2020 – 7:00PM
REMOTE VIA MICROSOFT TEAMS
[LebanonNH.gov/LIVE](https://lebanonnh.gov/LIVE)

1. CALL TO ORDER: The Fair & Impartial Policing Task Force Meeting met on August 18, 2020 remote via Microsoft Teams. The following Task Force members were present: Karen Liot Hill (Co-Chair), Diane Root, Devin Wilkie, Kathleen Beckett, Keiselim Montas, and Barry Schuster. Also present were City Manager Shaun Mulholland and City Attorney Bernie Waugh. Suzanne Prentiss (Co-Chair) arrived at approximately 8pm.

2. ACCEPTANCE OF MINUTES:

- The Task Force reviewed the minutes of June 23, 2020. Kathleen Beckett's name was misspelled. Motion to accept by Schuster, seconded by Wilkie. The minutes passed unanimously by roll call vote.
- The Task Force reviewed the minutes of July 7, 2020. Kathleen Beckett's name and Sarah Wraight's name were misspelled. Motion to accept by Root, seconded by Wilkie. The minutes passed unanimously by roll call vote.
- The Task Force reviewed the minutes of July 21, 2020. The names of Kathleen Beckett, Keiselim Montas, and Diane Root were misspelled. Motion to accept by Wilkie, seconded by Montas. The minutes passed unanimously by roll call vote.

3. DISCUSSION ITEMS:

- Provisions 1, 2, 3, 4, 5
 - Root introduced the work she had done on these provisions. She affirmed that the ordinance is not just about immigration and policing but has a strong non-discrimination intention, especially in Provision 1. She pointed out the clear non-discrimination statement at the beginning of the section. Waugh pointed out that Provision 1 now also includes the phrase "real or perceived" for all categories. Other work done was Incorporating language around economic and housing status and removing reference to just US citizenship. The language about questioning, collecting, and retaining information was moved to the new proposed Provision 2.
 - The new Provision 5 gathers language about exclusions into one place. Paragraph D talks includes a specific exception for economic and housing data, which the City Attorney stated allows for those categories to be included in the non-discrimination categories of Provision 1.
 - There was consensus among members of the Task Force that the proposed Provisions 1-5 reflected the previous discussion of the Task Force and were nearly in final form.
 - The original Provision 1 included "informants," and the group agreed that "informants" should be incorporated into definition of "Agent."

- **Definitions**
 - Wilkie introduced the work that he had done, explaining that he had started with a version of definitions that had been prepared by the City of Chicago for their ordinance, and he modified this for the City of Lebanon.
 - Based on the recommendation from the City Attorney, the group agreed that “T Visa” did not need to be specifically defined in the Definitions of the Lebanon Ordinance.
 - The Task Force addressed the issue of informants and whether they were already covered by the definition for “Agent.” Beckett will follow up with Attorney Kira Kelly and bring back thoughts for the group to consider.
- **Provision 6 (now Provision 8)**
 - The group agreed that this topic would be the focus of the next meeting. Schuster previewed the discussion saying that a general warning statement about some activity expected to take place in the city that could impede traffic be less problematic from a legal perspective. Waugh stated that he does not believe that he will be able to provide a favorable legal opinion for any version of Provision 6. Prentiss pointed out that Waugh’s recent memo on this topic had indicated he had a 50/50 comfort level and that while Waugh might not be able to provide a favorable opinion, the Task Force could still make improvements so that Waugh’s confidence level could be closer to 70/30 or 75/25 before making a recommendation to the City Council.

4. PUBLIC TESTIMONY:

- There was no public testimony.

5. OTHER BUSINESS:

- Beckett will work on a draft of Enforcement provision.
- City Manager raised a question about Paragraph 6 of the new Provision 5, which could implicate a current police department practice of running names through a federal database, which may result in passive sharing of information. The Task Force will take up this issue at a future meeting.
- Schuster will create a working draft of the ordinance that includes all provisions and work done to date.

6. ADJOURNMENT. Motion made by Root, Seconded by Schuster. Passed Unanimously by Roll Call vote.

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Microsoft Teams. Members of the public are encouraged to attend 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 Microsoft Teams software or by phone. Please visit LebanonNH.gov/Live for full details.

THE AGENDA, IN ITS ENTIRETY IS AVAILABLE ON THE CITY’S WEBSITE AT [LEBANONNH.GOV](https://LebanonNH.gov)

Original Provision 3, Revised Provision 5 Section B, and Suggested Revision

Original Provision 3

3. No Agent or Agency shall disclose information regarding the Citizenship or Immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individuals's parent or guardian. This section shall not apply when such information sharing is necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.

Proposed Revised Welcoming Lebanon Ordinance

Provision 4

No agent or agency of the City shall disclose information regarding the U.S. citizenship or immigration status of any person, unless such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individual's parent or guardian.

Provision 5 (Exceptions)

B. Where collection, retention, utilization or disclosure of the specific information is required or procedurally necessary as part of an ongoing investigation of a violation of law including but not limited to a violation of this ordinance itself, or as part of litigation or a quasi-judicial administrative proceeding unrelated to the enforcement of federal immigration law, or by statute or court order.

The following exception wording from the original Provision 3 is not included in the revision of the ordinance. B above states "violation of law" rather than "felony".

"This section shall not apply when such information sharing is necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law. "

Excerpt from the revised Welcoming Hartford Ordinance

Disclosing Information Prohibited

No Agent or Agency shall disclose information regarding the Citizenship or Immigration status of any person unless required to do so by statute or court order or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or guardian.

This section shall not apply when such information sharing is necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.

Suggested Provision 5 Section B

Provision 5 (Exceptions)

B. Where collection, retention, utilization or disclosure of the specific information is required by statute or court order or when information sharing is necessary to an ongoing investigation of a violation of this Ordinance or a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.

RELEASED TO THE PUBLIC**Lebanon City Manager's Office****Date: 9/28/2020**DS
Sm

* * * * *

Section 9 - Implementation and Enforcement.

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be deemed a violation offense, as set forth in RSA 625:9, V-a.

B. Any person who believes that they have been subjected to a violation of this Ordinance by a City employee, or who otherwise has personal knowledge of such a violation, may submit a complaint in whatever form or manner the complainant chooses, to the employee or department involved, or to the City Manager, or may submit such a complaint anonymously. Reasonable efforts shall be made to accommodate any language barriers. Such complaints shall be handled in accord with applicable City complaints and investigations policies; provided, however, that at the discretion of the Manager the complaint may be referred to the appropriate law enforcement agency having jurisdiction, and any internal investigation may be delayed pending the outcome of the law enforcement agency's involvement.

C. Complaints alleging violations of this Ordinance by non-employee agents of the City, including appointed or elected officials, shall be filed with or forwarded to the City Manager, who may take such action as is appropriate in light of the nature of the complaint, including referral to the law enforcement agency having jurisdiction, and/or referral to the Council for such action as it deems justified.

D. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of liability on the part of the City or its agents.

* * * * *

WELCOMING LEBANON ORDINANCE

working draft - as of 9/16/20
suggested revisions are in italic
comments by Attorney Waugh in red

Definitions

As used in this ordinance, the following words and phrases shall mean and include:

Administrative warrant. "Administrative warrant" means an immigration warrant issued by a federal agency charged with the enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

Agency. "Agency" means every department, agency, division, commission, council, committee, board, or other body of the City of Lebanon established by authority of state law, the Lebanon City Charter, or an ordinance, executive order, or order of the Lebanon City Council.

Agent. "Agent" means any person employed by or acting on behalf of an Agency, whenever any such person is acting within the scope of that person's employment or agency capacity, or when utilizing or disclosing any information that may be learned in the course of that person's employment or agency capacity. The term includes any volunteer acting on behalf of an Agency, as well any person with access to Agency information which is not available to the general public.

Citizenship or immigration status. "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country or of the authority to reside in or otherwise be present in the United States.

Federal immigration authorities. "Federal immigration authorities" means federal agencies, departments, or employees tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

Immigration detainer. "Immigration detainer" means an official request issued by ICE, or another federal agency charged with the enforcement of civil immigration laws ~~concerning the custody or detention of any individual, to another federal, state, or local law enforcement agency to detain an individual~~ based on a violation of a civil immigration law ~~or notify ICE or other federal immigration agency of a person's release from custody.~~

~~"Physical or mental ability." The term "physical or mental ability" includes, but is not limited to, "disability" as defined in RSA 354-A:2, IV.~~

[The following Provisions 1 - 5 are proposed to replace Provisions 1-3 of the proposed ordinance]

Provision 1

No law enforcement agent or other agent or agency of the City of Lebanon, ~~or any volunteer assisting the efforts of such agent or agency~~, shall profile, target, detain, or otherwise discriminate against any person because of any of the following, whether actual or perceived: age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental ~~disability~~, national origin, sexual orientation, ethnicity or culture, language or religion, economic or housing status, or citizenship or immigration status.

Provision 2

No person shall be questioned in a manner which is biased or discriminatory, as described in Provision 1, and no personal information may be collected, retained, utilized, or disclosed in any discriminatory manner or to any discriminatory purpose or effect by any agent or agency of the City.

Provision 3

No agent or agency of the City of Lebanon shall request, collect, or retain information about, or otherwise investigate or assist in the investigation of the United States citizenship or immigration status of any person in the City of Lebanon.

Provision 4

No agent or agency of the City shall disclose information regarding the U.S. citizenship or immigration status of any person, unless such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individual's parent or guardian.

Provision 5

Notwithstanding Provisions 1-4 above, agents of the City may question about, collect, retain, utilize, and disclose information concerning the criteria listed in Provisions 1-4 in the following circumstances, as long as that is done on an impartial basis and in a non-discriminatory manner:

A. Where collection, retention, utilization, or disclosure of the specific information is mandated in order to implement a municipal program, process, or function ~~which is performed by the City~~ unrelated to the enforcement of federal immigration law, ~~which is performed by the City~~, but whose rules and parameters are imposed by state or federal law or authority, including but not limited to federal and state laws governing employment and elections.

B. Where collection, retention, utilization, or disclosure of the specific information is required or procedurally necessary as part of an ongoing investigation of a violation of law including but not limited to a violation of this ordinance itself, or as part of litigation or a quasi-judicial administrative proceeding unrelated to the enforcement of federal immigration law, or by statute or court order.

C. Where the information is being collected or retained solely for purposes of evaluating and improving the performance of the Police Department or other City agency with respect to its compliance with the impartiality and non-discrimination requirements of Provision 1 and 2 above.

D. Where relevant economic information is being collected, retained, or utilized in the course of administering a program of benefits based on financial need, including but not limited to general assistance under RSA Ch. 165.

6 [formerly paragraph 4]. No Agent or Agency shall condition the provision of City of Lebanon benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision. Where presentation of a New Hampshire driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a New Hampshire driver's license or identification card, except that this subsection shall not apply to the completion of the federally mandated 1-9 forms.

7 [formerly paragraph 5]. No Agent or Agency of the City of Lebanon, including Law Enforcement, shall aid or participate in immigration enforcement actions. An Agent or Agency is authorized to communicate with Federal immigration authorities in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law. No Agent or Agency shall:

A. arrest, detain, or continue to detain a person based solely on suspected or actual civil immigration violation.

B. arrest, detain, or continue to detain a person on an Administrative warrant or upon an Immigration detainer based solely on a violation of immigration law.

C. accept requests by Federal immigration authorities to support or assist in operations that are for civil immigration enforcement.

D. permit Federal immigration authority access to a person being detained by, or in the custody of, the Agent or Agency.

E. permit Federal immigration authorities use of agency facilities for investigative interviews or other investigative purpose.

F. respond to Federal immigration authorities' inquiries or share information about an individual with Federal immigration authorities. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and

familial relations. For the purpose of aiding an individual who may qualify for a U, S, or T Visa, information may be shared if such disclosure has been authorized in writing by the individual to whom such information pertains.

Attorney Waugh's comment - In Provision #7 (former 5), Paragraph 6, there remains the question of whether the use, by the City, of the nationwide law enforcement database which is also accessible to federal authorities violates this section. *Assuming* that the intent is *not* to prohibit the City from participating in such a database, I would suggest adding something like the following at the end of that paragraph: ***“Nothing in this Section shall be construed as prohibiting participation in an inter-agency data bases such as the National Crime Information Center, so long as its utilization by City agents is not biased or discriminatory, and does not violate the prohibitions in Provisions 3 and 4 above.”*** (If, on the other hand, the Task Force believes the Ordinance's intent is to prohibit such database use altogether, I would strongly urge another talk with Chief Mello.)

Suggested Revised Par 6.

In order to maintain public safety and the orderly processes for all citizens traveling in and through the city of Lebanon, the presence of checkpoints along our roads and highways that interfere with the flow of traffic should be reported to the public. If any Agent of the City becomes aware of a Federal immigration authority's presence at said checkpoint in the City for the purposes of questioning, detaining or gathering immigration status information from any person or persons, or other enforcement action, the City shall act to notify the public as soon as they become aware. This should be done by both the City of Lebanon and community organizations once they become aware. Notification can be made through the LebAlert system as well as partner organization communications protocols.

8 [formerly original paragraph 6]. If any Agent or Agency becomes aware of a Federal immigration authority's presence in the City for the purposes of questioning, detaining or gathering immigration status information from any person or persons, or other enforcement action, the Agent or Agency shall immediately act to inform residents of the City of that presence through any reasonable means and channels available to the City, such as LebAlert and other media.

Failure by agents of the City to comply with the Welcoming Lebanon Ordinance, while not a criminal offense, shall be a violation according to NH RSA 625:9.

Severability

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this Ordinance would have been adopted had such invalid provision, clause, section, part or

application not been included herein.

Provision 9: Implementation and Enforcement

A. Failure by agents of the City to comply with this Ordinance shall not constitute a crime, but shall be deemed a violation offense, as set forth in RSA 625:9, V-a.

B. Any person who believes that they have been subjected to a violation of this Ordinance, or who otherwise has personal knowledge pertaining to such a violation, may submit a complaint to the department involved, or to the City Manager or Director of Human Resources. Upon adoption of this Ordinance, the City shall develop a complaint form, which shall be readily available to the public, but whose use shall not be deemed mandatory. Reasonable efforts shall be made to accommodate any language barriers.

C. Any employee of the City who has reason to believe a violation of this Ordinance has occurred shall immediately report it to their supervisor. All supervisors are responsible for continued oversight of employees under their supervision to assure compliance with this Ordinance.

D. Any person accusing a City employee of a violation, or otherwise expressing a wish to file a complaint, shall be given the name of the relevant supervisor and access to a complaint form. The employee involved shall report the accusation or incident to their supervisor as soon as practicable

E. All reports or complaints, formal or informal, against City employees filed with or communicated to the City under this Ordinance shall be investigated in accordance with applicable internal affairs procedures and personnel policies. Violations of this Ordinance, including failure to report violations under C above or accusations under D above, may result in disciplinary action as outlined in such policies and procedures.

F. Complaints alleging violations of this Ordinance by non-employee agents of the City, including appointed or elected officials, shall be filed with or forwarded to the City Manager, who may, depending on the nature of the complaint, either initiate an investigation or refer the matter to the Council for such action as it deems justified.

G. This Ordinance shall not be construed to create any civil cause of action, or to form any basis of civil liability on the part of the City or its agents. However, nothing herein shall be deemed to pre-condition or restrict any person from pursuing a violations complaint in court pursuant to Paragraph A above, or from seeking such alternative remedies as may be available under existing state or federal laws.

Proposed Provisions on Enforcement (paragraphs A through G of Provision #8 or #9 depending on what happens to the original #6), as submitted by Beckett/Waugh with the 9/1 agenda. (I have yet to hear from the City Manager with respect to any potential practical problems with this draft.)

WELCOMING LEBANON ORDINANCE
(*AS PROPOSED BY CITIZENS BINDING INITIATIVE*)

Purpose and Intent

The purpose of this Ordinance is to establish the City's procedures concerning immigration status and enforcement of federal civil immigration laws. This Ordinance builds on the City of Lebanon's "Resolution for Inclusiveness" proclaimed by the City Council on June 20, 2018.

The cooperation of all persons, citizens and non-citizens, regardless of immigration status, is essential to achieve the City of Lebanon's goals of protecting life and property, preventing crime, and resolving problems. Assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents.

Due to the City's limited resources; the complexity of immigration laws; the clear need to foster the trust of and cooperation from the public, including members of the immigrant communities; and to effectuate the City's goals, we find that there is a need to articulate guidelines regarding the communications and enforcement relationship between the City and the federal government.

Provisions:

1. No Law Enforcement Agent, or other Agent or Agency of the City of Lebanon, or any informants or volunteers assisting their efforts shall profile, target, detain, collect or retain information, or question any person on the basis of race, ethnicity, language, religion, citizenship or immigration status.

2. No Agent or Agency of the City of Lebanon shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person in the City of Lebanon. Notwithstanding this provision, the City Council may investigate and inquire about immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

3. No Agent or Agency shall disclose information regarding the Citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by the individual's parent or guardian. This section shall not apply when such information sharing is necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.

4. No Agent or Agency shall condition the provision of City of Lebanon benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision. Where presentation of a New Hampshire driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not

subject the person to a higher level of scrutiny or different treatment than if the person had provided a New Hampshire driver's license or identification card, except that this subsection shall not apply to the completion of the federally mandated 1-9 forms.

5. No Agent or Agency of the City of Lebanon, including Law Enforcement, shall aid or participate in immigration enforcement actions. An Agent or Agency is authorized to communicate with Federal immigration authorities in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law. No Agent or Agency shall

1. arrest, detain, or continue to detain a person based solely on suspected or actual civil immigration violation.

2. arrest, detain, or continue to detain a person on an Administrative warrant or upon an Immigration detainer based solely on a violation of immigration law.

3. accept requests by Federal immigration authorities to support or assist in operations that are for civil immigration enforcement.

4. permit Federal immigration authority access to a person being detained by, or in the custody of, the Agent or Agency.

5. permit Federal immigration authorities use of agency facilities for investigative interviews or other investigative purpose.

6. respond to Federal immigration authorities' inquiries or share information about an individual with Federal immigration authorities. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations. For the purpose of aiding an individual who may qualify for a U, S, or T Visa, information may be shared if such disclosure has been authorized in writing by the individual to whom such information pertains.

6. If any Agent or Agency becomes aware of a Federal immigration authority's presence in the City for the purposes of questioning, detaining or gathering immigration status information from any person or persons, or other enforcement action, the Agent or Agency shall immediately act to inform residents of the City of that presence through any reasonable means and channels available to the City, such as LebAlert and other media.

Failure by agents of the City to comply with the Welcoming Lebanon Ordinance, while not a criminal offense, shall be a violation according to NH RSA 625:9.

Severability

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this Ordinance would have been adopted had such invalid provision, clause, section, part or application not been included herein.