



AGENDA
FAIR & IMPARTIAL POLICING TASK FORCE
TUESDAY, SEPTEMBER 1, 2020 – 7:00PM
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/LIVE

- 1. CALL TO ORDER:** The September 1, 2020 Fair & Impartial Policing Task Force Meeting is hereby called to order.
- 2. ACCEPTANCE OF MINUTES:**
 - August 4, 2020
 - August 18, 2020
- 3. DISCUSSION ITEMS:**
 - Provisions 1,2,3,4,5
 - Definitions
 - Provision 6
 - Purpose Statement
 - Enforcement
- 4. PUBLIC TESTIMONY:**
- 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

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RELEASED TO THE PUBLIC

Lebanon City Manager's Office

Date: 8/31/2020

DS
PM

From: [H. Bernard Waugh, Jr.](#)
To: [Maville, Paula](#); [Mulholland, Shaun](#)
Cc: [Beraldi, Beth](#)
Subject: RE: IMPORTANT - Documents for Tomorrow's FIP Meeting
Date: Monday, August 31, 2020 1:13:55 PM

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Hi Paula:

For the sake of the Task Force getting copies of what's been worked on: The following is a draft enforcement section for the Welcoming Lebanon Ordinance which I have been working on with Kathleen Beckett. As of today (Monday 8/31/20) I do not know whether Kathleen endorses this draft – I think she was still having it reviewed by others. Given that I helped to put it together, I don't believe it has any **inherent, facial** legal problems. But I do want to emphasize the following:

- A. This draft has not been reviewed by the City Manager or other City staff for the possibility of practical problems which could lead to legal problems, and it definitely **should** have that kind of review (for example, the issue of whether the complaint procedures in this draft are consistent with existing personnel policies applicable to the various departments).
- B. As I have emphasized throughout this process, I am only an attorney representing the City, and not a City official, thus I am not necessarily endorsing **any** aspect of this draft **from a policy perspective**. In particular I would note that the sentence labeled "A" – which makes violations of the ordinance a violation offense – while it does appear in the voter-passed Lebanon measure, does not appear in **any** of the three "models" from other communities which were distributed earlier. In fact two of those (the ones from Chicago and Hartford VT) make the internal complaint procedure the **exclusive** way of enforcement. I can certainly imagine policy arguments against including that provision.

The following draft is based – at least conceptually – primarily on the Hanover ordinance, except that it encompasses all City departments, not just the Police Department, and as already stated, the "violation offense" provision in Paragraph A does not appear in the Hanover ordinance.

Sincerely,
Bernie Waugh

* * * * *

[The Following would appear as Provision #8, or whatever number the *final* provision ends up as:]

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 he/she has 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 his/her 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 his/her 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 available under existing state or federal laws.

From: Maville, Paula [mailto:maville@lebanonnh.gov]

Sent: Monday, August 31, 2020 11:08 AM

To: H. Bernard Waugh, Jr. <bwaugh@dwmlaw.com>

Cc: Beraldi, Beth <bberaldi@lebanonnh.gov>

Subject: IMPORTANT - Documents for Tomorrow's FIP Meeting

Importance: High

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WELCOMING LEBANON ORDINANCE

working draft - as of 8/20/20
suggested revisions are in italics

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, 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.

[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, 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 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:

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.

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.

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

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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.

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