

FINAL

LEBANON CITY COUNCIL
MINUTES, SPECIAL SESSION
Wednesday, August 12, 2020, 7:00 p.m.
Remote Via Microsoft Teams: LebanonNH.gov/Live

MEMBERS PRESENT: Mayor Tim McNamara, Assistant Mayor Clifton Below, Bruce Bronner, Erling Heistad, Karen Liot Hill, Suzanne Prentiss, George Sykes, Jim Winny, Karen Zook

MEMBERS ABSENT: None

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager Paula Maville, City Clerk Kristin Kenniston

Mayor McNamara called the meeting to order at 7:00 p.m.

This meeting took place virtually due to the COVID-19 Pandemic and was conducted in accordance with the Emergency Orders issued by the New Hampshire Governor according to NH RSA 91-A "Right-to-Know."

A Roll Call of City Councilors was taken and all who attended the meeting are listed above. For the purpose of this remote meeting, each Councilor said they were alone.

1. PLEDGE OF ALLEGIANCE: Councilor Bronner led the Council in the Pledge.

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

Mr. Paul Barr (Ward 1) came forth via telephone and expressed his concerns and ideas about the Lebanon School District's hybrid re-opening plans. Mayor McNamara explained that in the State of NH, municipalities and school districts are two separate entities, so the Council is not in a position to dictate recommendations to the Lebanon School District. The City only collects taxes for the School District. He appreciated hearing Mr. Barr's comments and suggested he work directly with the School Board to have his concerns addressed.

Mr. Jared Rhoades (Ward 2) came forth via telephone and concurred with Mr. Barr's sentiments about the Lebanon School District's hybrid re-opening plans. He also expressed his concerns about the economy in Lebanon, and was in favor of re-opening Lebanon's schools in person, 5-days a week.

3. PUBLIC HEARING ITEMS:

A. Ordinance #2020-11

A public hearing for the purpose of receiving public input and taking action to adopt Emergency Ordinance #2020-11, requiring that persons wear face masks under certain circumstances

Included in the agenda was the proposed Ordinance #2020-11, Face Masks.

Mayor McNamara opened the Public Hearing.

City Manager Shaun Mulholland came before the Council representing the proposed Ordinance #2020-11. Concerns were received by businesses in the community asking for guidance on how to enforce their

face mask requirements for those entering their businesses. In addition, we can clearly see what is going on throughout the rest of the country, and while the numbers are relatively low in our area, we want to avoid any future fatalities and hospitalizations that might occur, as well as the economic impacts that another shutdown in Lebanon would have.

The COVID-19 Pandemic poses a health risk to the residents, as well as those persons traveling through the City. The proposed emergency ordinance is within the authority of the City Council to enact in accordance with the provisions of RSA 47:17,XV; RSA 147:1; RSA 47:12 and the City Charter. A similar ordinance enacted by the City of Nashua has withstood efforts in the Court regarding an injunction to this point.

There was a significant discussion regarding wearing face masks in outdoor spaces at the August 5, 2020 City Council meeting. As a result of this discussion, Assistant Mayor Below drafted a document, which he shared with the Council and online audience, that contained a few alternative revisions in the language for the proposed ordinance he thought the Council might want to consider before the public gave their comments. See below:

ALTERNATIVES FOR PARAGRAPHS 1, 4, 5 and 6
of the PROPOSED CITY OF LEBANON, NH FACE COVERING ORDINANCE
Main differences of alternatives shown in *bold italics*.
8/12/20

CURRENT ¶1:

Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a coworker or a customer.

AMENDED TO:

Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a *customer or any coworker who is not a member of the same household*. (Assistant Mayor Below noted that there are family members who work together (parent/Child/spouse, et.al.) who do not need to social distance or wear face masks in this instance.

For the outdoor space (Item #5), Assistant Mayor Below suggested two options for the Council to consider, after the Public Hearing is held, which were:

1. Going back to the original proposed language, or
2. Using an alternative that works more closely with what the Council voted on at the August 5, 2020 City Council meeting.

¶5 ALTERNATIVE LANGUAGE:

Members of the public utilizing the Mascoma Greenway, the Northern Rail Trail, sidewalks and other pedestrian public ways, or public recreational lands, shall wear a face covering when social distancing of at least six (6) feet from other persons is not practiced, and the duration of the encounter within six (6) feet of others is 15 minutes or more, except with regards to person who are members of the same household. (This would make the outdoor requirements more consistent with the CDC.)

¶5 CURRENT (LANGUAGE):

Members of the public utilizing the Mascoma Greenway, the Northern Rail Trail, sidewalks and

other pedestrian public ways, or public recreational lands, are required to wear a face covering when social distancing of at least six feet from non-household members is not possible.

AMENDED TO (Original proposed language to ¶5):

Members of the public utilizing the Mascoma Greenway, the Northern Rail Trail, sidewalks and other pedestrian public ways, or public recreational lands, ***are strongly encouraged but not required*** to wear a face covering to the fullest extent practicable and especially when there is a highly likelihood of coming into contact with others and social distancing of at least six feet may not be possible.

¶6 CURRENT (LANGUAGE):

As used herein “face covering” means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made or homemade and improvised from ordinary household material.

AMENDED TO:

As used herein “face covering” means a covering made of cloth, fabric, or other soft or permeable material, ***without holes or exhalation air valves***, that covers **only** the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made or homemade and improvised from ordinary household materials.

¶4 CURRENT (LANGUAGE):

Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces.

AMEND TO:

Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces ***when social distancing of at least six feet from non-household members is not practiced.***

In the WHEREAS section of the ordinance that mention Dartmouth College students:

AMEND TO:

WHEREAS, in September 2020, more than 2,000 college students are expected to return to the Upper Valley to resume classes, traveling to the region from across the United States and countries around the world; and

Mayor McNamara opened up the Public Hearing for comments from the public.

Mr. Jes Scott (Ward 1) came forth by phone and asked if there was a proper risk assessment done taking a look at the actual health impacts (both for/against wearing face masks).

Mr. Mulholland responded by saying the City considered the number of city-wide cases, the CDC guidelines, what has been going on across the country, the students who are returning to Dartmouth College from all over the world, Lebanon’s public transportation systems (Advance Transit/Dartmouth

Coach), and restaurants. Since the City has already seen one shut down and suffered the economic impacts it caused, we do not want to see another one if steps can be taken to mitigate the risk.

Mayor McNamara also noted there is an increased risk of transmission going forward due to our position in the area and the influx of people into the Upper Valley. We have balanced these things against the possible impacts of requiring masks. It is important to recognize that the initial reason for this discussion came to us from small businesses in the area asking for help so they can be more consistent with the big box stores in requiring people to wear face masks when entering their businesses.

Mr. Scott then expressed his concerns about the proposed fines that would be levied on those not wearing a face mask, noting there is no warning language in the ordinance or any language that exempts those who have a medical condition from wearing a face mask.

Mr. Tom Cormen (Ward 3) came forth and spoke about his concerns regarding wearing face masks on the Rail Trail while he is biking.

At the request of the Mayor, City Clerk Kristin Kenniston read the comments received online in the order received from the following (These comments will become part of the public record): Mr. Alan Schnur (his comment was read prior to Mr. Scott speaking; Steve Bayes; Leslie Lukehouser; and Mary Davis (Ward 2).

Mr. Schnur requested to be recognized via online chat, but when Mayor McNamara called on him to speak there was no response.

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

Mayor McNamara suggested the Council address the comments that were received before discussing the indoor/outdoor section of the proposed ordinance, starting with the fine/penalty issue and the concern expressed about not having a warning included in the ordinance.

Assistant Mayor Below notified the Council that Mr. Schnur's microphone was now working, and there was a comment from Ms. Barbara Tucker.

Mayor McNamara re-opened the Public Hearing briefly so Mr. Schnur could speak. After hearing no response from Mr. Schnur, the Public Hearing was closed and the Mayor requested Mr. Schnur send his comments to the City Clerk so it could be read later in the meeting.

The Council discussed the penalties/fines and the pros/cons if they were started at a lower amount; the pros/cons of issuing written/verbal warning before a fine is levied (i.e., the courts would not enforce them and people would ignore them); the intent of the ordinance is to not issue tickets, but to have people put on a face mask and use distancing measures; development of a face mask protocol for the Lebanon Police Department to follow such as what should be done if they encounter a member(s) of the public who refuse to put on a face mask or who are asked to leave a business because of their refusal to wear a face mask; having a strong and meaningful fee structure in place to motivate people into wearing a face mask; and, comparing Lebanon's ordinance with other Upper Valley community ordinances on this issue.

Mr. Mulholland informed the Council that the LPD must give a warning, noting this requirement falls under the administrative policy. If a member of the public blatantly refuses to wear a face mask, they would then be issued a citation to appear in court where a fine would be levied. This is to deter people walking around without a face mask in places where they are required to do so. He spoke about the negative aspects of issuing a verbal warning and reiterated the purpose of the ordinance is to not write tickets. It is expected that the LPD will offer face masks to members of the public who are not wearing one, will be provided with a copy of the City's ordinance, and will provide some education on the importance of wearing a face mask. If a person still willingly refuses to comply, then the LPD will issue a citation to appear in court where a fine would be levied.

The Council also discussed their concerns about: enforcing the ordinance; the City's right to inspect businesses and other entities for compliance; the need for people to carry a note from their physician exempting them from wearing a face mask due to a medical condition; and, complaints coming into the LPD from businesses regarding members of the public who refuse to wear face masks inside their business (in this case they can also be charged with trespassing).

Councilor Liot Hill, making a point of order, noted the Council rules require people to identify themselves when they wish to make a public comment. It is not appropriate for people to skirt Council rules by using the ability to log-in as anonymous and make threats to the City of Lebanon. If someone would like to make a comment they should be instructed to follow Council rules, which requires they identify themselves, the Ward they live in (if they live within the City of Lebanon), and state who they are when they offer public testimony. Public testimony is very valuable, particularly when it is done in an identifiable way and not in an anonymous way.

Mayor McNamara concurred with Councilor Liot Hill and reiterated that the Council's policy is to not take anonymous comments and to require those wanting to make a comment to identify themselves.

The Council had no objections to Assistant Mayor Below's recommendations for items #1, #6, #4 and further discussed:

- The reference to Dartmouth College students coming back to the area and whether or not this language should be struck from the ordinance and replaced with the language that just references Dartmouth College as a higher education institution;
- How identifying one organization could be seen as being discriminatory, especially when there are people traveling in and out of Lebanon every day from outside the area and outside the country;
- Not singling out any one particular institution, but rather referencing the fact that Lebanon is recognized by the Census Bureau as being a micropolitan area;
- Keeping the reference about Dartmouth College students in the ordinance because it points to a fairly major change taking place in the Upper Valley. The City has been the crossroads throughout this pandemic, and we are fortunate to have one of the lowest rates in the whole country at this point. This is important to note because we know there are new hot spots popping up all over the country and the virus is spreading rapidly in many areas that can be associated with schools bringing people back into areas where they have not been for a while;
- Making a compromise by replacing Dartmouth College with the term "major educational institution";

- The need to immediately revisit the ordinance and take stronger actions if the Council sees an increase in COVID-19 cases/hospitalizations/fatalities.

City Clerk Kristin Kenniston read comments received online to the Council from the following people (excluding anonymous comments): Ms. Barbara Tucker, Mr. Alan Schnur, and Mr. Jes Scott.

Mayor McNamara asked for the Council's comments on Item #5 in the proposed ordinance that deals with the indoor/outdoor wearing of face masks on City property. After Councilors Liot-Hill, Bronner, Prentiss, Sykes and Winny expressed their preferences to stick with the original proposed language, the Council took the following action:

ACTION:

Assistant Mayor Below MOVED, that the Lebanon City Council hereby adopts proposed Ordinance #2020-11, an emergency ordinance requiring that persons wear face masks under certain circumstances with the modifications as discussed and amending it as follows:

- **On the WHEREAS that reads: "WHEREAS, Lebanon serves as a regional hub,"** change this to read "**WHEREAS, Lebanon serves as a regional commercial and educational hub, visited by thousands on a daily basis traveling from other areas of the State, Nation and Internationally.**

WHEREAS, in September 2020, more than 2,000 college students are expected to return to the Upper Valley to resume classes, traveling to the region from across the United States and countries around the world; and"

And further amending the following sections of the "NOW, THEREFORE the Lebanon City Council adopts the following Emergency Public Health regulations":

- **Amend #1 to read:** "Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a customer or any coworker who is not a member of the same household.
- **Amend ¶4 to read** as follows: "Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces when social distancing of at least six feet from non-household members is not practiced.
- **Amend ¶5** (to the language that was proposed in the August 5, 2020 agenda packet) **to read:** "Members of the public utilizing the Mascoma Greenway, the Northern Rail Trail, sidewalks and other pedestrian public ways, or public recreational lands, are strongly encouraged but not required to wear a face covering to the fullest extent practicable and especially when there is a high likelihood of coming into contact with others and social distancing of at least six feet may not be possible.
- **Amend ¶6 to read:** "As used herein "face covering" means a covering made of cloth, fabric, or other soft or permeable material, without holes or exhalation air valves, that covers the nose,

mouth, and surrounding areas of the lower face. A face covering may be factory made or homemade and improvised from ordinary household materials.

Seconded by Councilor Bronner.

Councilor Liot Hill questioned if Lebanon's ordinance, specifically as it relates to people who are working in a restaurant kitchen, would be more restrictive than the current Executive Orders of the Governor. Mr. Mulholland said it is less restrictive. The State does not have an exemption for household members, and we do. Further, if you look at section #2, we actually give businesses some latitude, and in some cases the State does not.

Roll Call Vote:

Mayor McNamara, Assistant Mayor Below, and Councilors Bronner, Heistad, Liot Hill, Prentiss, Sykes, Winny and Zook all voting Yea.

None voted Nay.

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

The Ordinance passed and immediately takes effective. It shall continue in effect until rescinded by action of the Council.

What happens after this is:

- **Policy implementation and training for staff.**
- **Get this information out to all media outlets.**
- **Signage.**

4. ADJOURNMENT:

Councilor Bronner MOVED for adjournment.

Seconded by Councilor Prentiss.

Roll Call Vote:

Mayor McNamara, Assistant Mayor Below, and Councilors Bronner, Heistad, Liot Hill, Prentiss, Sykes, Winny and Zook all voting Yea.

None voted Nay.

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

The meeting was adjourned at 8:43 PM.

Respectfully submitted,
Dona E. Gibson
Recording Secretary