

A regular meeting of the Board of Aldermen was held Tuesday, May 9, 2023, at 7:30 p.m. in the aldermanic chamber.

President Lori Wilshire presided; City Clerk Dan Healey recorded.

Prayer was offered by City Clerk Dan Healey; Alderman Richard A. Dowd led in the Pledge to the Flag.

Let's start the meeting by taking a roll call attendance.

The roll call was taken with 13 members of the Board of Aldermen present: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran, Alderman Lopez (arrived late), Alderman Jette, Alderman Clemons, Alderman Comeau, Alderman Dowd, Alderman Gouveia, Alderman Caron, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire.

Alderwoman Kelly was recorded absent.

Mayor James W. Donchess, Corporation Counsel Steve Bolton were also in attendance.

#### RECOGNITION PERIOD

- Gate City Light Award

***President Wilshire recognized Mayor Donchess.***

#### Mayor Donchess

So this is Sara Cesear who's head of the Mayor's Committee. Does the Gate City Light Award recognizing volunteers, and I will introduce her, and hear a little bit about the award, and then we'll give it to the St. Joseph volunteer coordinators.

#### Sara Cesear, United Way

Thank you. I'm Sara Cesear. I work for United Way and I'm also the head of the Mayor's Volunteer Recognition Committee. I have been for a couple years now. The purpose of this Committee is to recognize the organization in Nashua that has the best volunteer management and the best volunteers. So this year our Committee got together. We worked with the community. We sent out some suggestions for the community and the suggestions came back as St. Joseph's Hospital. So we're really happy to present the award to St. Joseph's Hospital. There were a couple of organizations that were runners up that we'd like to acknowledge. Stepping Stones which is a great organization was the second runner up and Revive Recovery was the third runner up. So we'd like to acknowledge them also.

I'd like to thank the members of the Committee who worked on this with me, and the community for voting on this, and of course all of my fellow volunteer directors for making the volunteer programs in Nashua so wonderful. So congratulations St. Joseph's Hospital and I'd like to present this to Michele Canto from the hospital.

#### Michele Canto, Manager of Volunteer Services, St. Joseph Hospital

Thank you so much. It has been a great honor after a wild three years in healthcare with COVID. It literally wrecked our volunteer program and it's such a great feat for us to have this honor within the Mayor and the Mayor's office. We have a robust program that has rebuilt over the last six months and we're excited to see where it takes us and we're very grateful for this award. Thank you so much.

#### Mayor Donchess

I'd just like to congratulate you on behalf of the City and the Board of Aldermen. Before your great work in the community, St. Joseph has been a central part of Nashua for a long, long time sort of countless people and your volunteer organization has been just great for your patients so congratulations.

#### Michele Canto, Manager of Volunteer Services, St. Joseph Hospital

Thank you very much.

#### President Wilshire

So right now we're going to go into a non-public session. Alderman O'Brien.

NONPUBLIC SESSION

**MOTION BY ALDERMAN O'BRIEN THAT THE BOARD OF ALDERMEN GO INTO NON-PUBLIC SESSION BY ROLL CALL PURSUANT TO RSA 91-A:3 II (L) CONSIDERATION OF LEGAL ADVICE PROVIDED BY LEGAL COUNSEL, EITHER IN WRITING OR ORALLY, TO ONE OR MORE MEMBERS OF THE PUBLIC BODY, EVEN WHERE LEGAL COUNSEL IS NOT PRESENT**

**SECONDED BY ALDERMAN MORAN**

*A viva voce roll call was taken, which resulted as follows:*

Yea: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran,  
Alderman Jette, Alderman Clemons, Alderman Comeau, Alderman Dowd,  
Alderman Gouveia, Alderman Caron, Alderman Thibeault,  
Alderwoman Timmons, Alderman Wilshire 13

Nay: 0

**MOTION CARRIED**

*The Board of Aldermen went into non-public session at 7:40 p.m.*

*The Board of Aldermen came out of non-public session at 8:05 p.m.*

**MOTION BY ALDERMAN O'BRIEN THAT THE BOARD OF ALDERMEN SEAL THE MINUTES OF THE NON-PUBLIC SESSION BY ROLL CALL UNTIL SUCH TIME AS THE MAJORITY OF THE COMMITTEE VOTES THAT THE PURPOSE OF THE CONFIDENTIALITY WOULD NO LONGER BE SERVED AND AS THE BOARD DETERMINES THAT THE DIVULGENCE OF THE INFORMATION DISCUSSED WOULD LIKELY RENDER PROPOSED ACTIONS INEFFECTIVE**

*A viva voce roll call was taken, which resulted as follows:*

Yea: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran,  
Alderman Lopez, Alderman Jette, Alderman Clemons, Alderman Comeau,  
Alderman Dowd, Alderman Gouveia, Alderman Caron, Alderman Thibeault,  
Alderwoman Timmons, Alderman Wilshire 14

Nay: 0

**MOTION CARRIED**

President Wilshire

Mayor did you wish to address the Board this evening?

REMARKS BY THE MAYOR

Excuse me. Yes, Madam President. Well first I wanted to just review that we had a non-public session to update the Board of Aldermen regarding the breach and the status of the investigation regarding the breach of security of the cyber security break-in at the School Department. There is a city team working on this really on every day we meet all the time. It includes many people but Jen Deshaies from Risk, various representatives at the Police Department. We've had visits from the federal government. Dr. Andrade from the School Department. Right now we have President Bishop in the audience tonight, Nick Miseirvitch from our IT Department, and we are working with the consultant Charles River to determine the extent of the breach and in the end come up with an approach towards dealing with it. They have at the School Department been able to restore some data, so that's been very helpful. But beyond that I wanted to say that I want to thank everyone who's been working on this from the City side. Everybody's very committed and we have developed a strong working relationship between or among Nick Miseirvitch our IT Director as well as Rakesh Sharma who's the - well Nick is the Chief IT Director, Rakesh Sharma has a similar position in the Police Department, and Greg Rodriguez is in the School Department. The three IT Directors have been working very well together. It's been really an

inspiring to watch the teamwork develop between them and I know that as we go forward, we will gain a lot through their continued cooperation and teamwork that will be an expertise that will be applied to all of the systems.

One thing that I want to mention as I'm about to mention the budget is that all three IT Directors have recommended that we certainly with there's various improvements in security that's needed that can be made and we should do those but that we consider, and we want to talk further with them, but we consider a full time IT Security Director whose only focus is on training employees and providing the other steps that are necessary to make the three networks as secure as possible. So to that end right at the end here, I did add money to the budget and contingency to implement that but it's in contingency because we want to work with the three IT gentleman further to come up with more specific recommendations but that is an addition to the budget at the end.

So again concluding that, I want to thank everyone who's been working on this particularly our three IT Directors who, again, have really contributed a lot by cooperating and sharing their expertise and helping each other out in terms of getting through this situation.

Now on to the budget. You have in front of you the resolution R-23-125 and I think it's the intent to do that as a first reading and refer that to the Budget Committee. I apologize that the printed budget is not before you but as this was going to print today, we discovered that the new software, the new budget software, that we were using for the first time this year - this is kind of a new thing, had created a miscalculation regarding some of the items in the budget, particularly the available budget items throughout the entire budget. Rather than give you something with some fairly significant calculation errors in it, Mr. Griffin and his team wanted to make those corrections and get you the right version. So the correct version will be online tomorrow and will be printed for the Budget Committee and others by tomorrow night. Again, I apologize for that but it's the result of the supposedly going to make things easier and maybe it will in the future but this new software caused a last minute problem.

But as an overview, the budget is up around 4.4%. It would have been a little less but maybe weren't around four or three if it weren't for these security issues which came up at the end. We believe that there are few things that are worth pointing out. First of all, we continue that two police officers, the patrol officers that had been added into the budget through the escrow process last fall. There's also a Sergeant in the Police Department that would be added because the Police Department feels they need that particularly for public information purposes but otherwise the Police and Fire Departments, I did make some cuts to the Fire Department because their request was a 9% increase against a 3% guideline. Now, the School Department met the 3% some other departments did. The safety departments I think had trouble with that but the Fire Department that you'll see is up probably around 5. They wanted to add two positions and we agreed to begin one of the positions during the fiscal year and they wanted some increased overtime like hundreds of thousands and we added a little bit to that. I have talked with Chief Buxton about it. I have the impression he's not too upset but I guess we'll find out. You'll hear from him directly. Anyway, so but still the Fire Department, Police Departments are up significantly.

It is a difficult budget year. We know because the tax wise we saw the revaluation last year. But on the tax rate if the State and County were to hold us even, we would do pretty well with the tax rate lower than the budget but there's are some outstanding issues. Number one, we may see potentially we're hoping this does not happen and I don't think any of it's for sure, but we may lose pension support. Now you remember that the way the City was persuaded along with other cities and towns to join the State Pension System was the legal putting in law that we would always get 35% of costs through the State of New Hampshire. That legal obligation was broken some years ago. Last year through the efforts of, the extraordinary efforts of Representative and Alderman-at-Large Mike O'Brien, we were able to get a small portion of their legal obligation - 7.5 as opposed to 35% or about \$2 million as opposed to about \$10 million. This year that's more doubtful. If we don't get the \$2 million, that means a \$2 million loss in State revenue which translates basically into a tax increase.

The second thing is its possible there may be a reduction in the City's share of the rooms and meals tax that we're hoping won't happen but it's possible.

Number three, there may be a reduction in school aid which also would be unfortunate given the needs of the school system, and given the low level of State aid, you know, relative to other States that the State of New Hampshire does provide. It is particularly difficult to think about that in the context of the massive surpluses at the State level. The State surplus is the billions in federal aid. Why is it necessary to cut school aid at this time with all of that money available? It's also frustrating that more money is being directed towards private schools and homeschooling while the Nashua School Department may suffer a loss in school aid for public schools.

In any event if and finally it appears that if the delegation, the County delegation, or the State Representatives from Hillsborough County were to approve the County budget as it's been given to them, that would raise Nashua's portion of

the county tax by \$2 million. Now we're hoping that that doesn't occur but if you put worst case scenario on all of those items - the pensions, the school aid, the rooms and meals tax, the County. If worst case scenario on all of those items, it will push taxes up about 3% before we even get to the City budget. Now hopefully none of it will happen but I just wanted to and we don't know for sure how much of it will but I wanted to at least clue you in on that.

So you will get the budgets tomorrow. We will have the Budget Committees meeting tomorrow night. We'll be able to go over some of the more of the overview.

Finally on a more upbeat subject, Upbeat New Hampshire which is an organization that provides lessons in stringed instruments to children across Nashua School system from elementary through high school did a recital performance last night at Nashua North. There were many. I mean scores and scores of kids involved. I never realized how big and how many people are and how many kids are being impacted by Upbeat New Hampshire. The talent level is really remarkable. The kids at the top, you know, at the high school level are really very accomplished and the younger kids of course are learning. I had the pleasure of serving as a narrator in a little performance with the elementary string students. Aunt Roadies Appetite it was called but it was really a very fun and just enlightening, very actually inspiring performance to just see all of the kids and the impact that Upbeat New Hampshire is having.

So we're hopeful that our budget will be held, you know, will be held harmless. That the County will kind of leave us as we are and if we do, I think our budget will provide a quality level of services with some improvements. At the same time, keeping the tax rate to well below the rate of inflation.

Finally the budget itself, the 4.3 or 4.4, is way below the rate of inflation and the tax rate would be as well as long as the State will please just keep things as they are or as they are in current year if they just continue into the next year with the same levels of support. That's all I have Madam President.

President Wilshire

Thanks Mayor. Responses to remarks from the Mayor? Alderman Klee?

RESPONSE TO REMARKS OF THE MAYOR

Alderman Klee

Thank you, Madam Chairman. Mr. Mayor I spoke to some people in the County delegation not just from Nashua but from Manchester as well. One of the comments it was from a person from Manchester who said was that Nashua is going to be paying more than Manchester is going to be paying. That was based on the State's evaluation of our property and that our property values have gone up so much more than Manchester. Good or bad, that means that we're actually filtering more money up to the County and the State than even a very large city like Manchester is doing. That was quite disturbing to me to hear that.

Also, I had spoken to one of my State Reps today that said that currently over \$40 million is being pushed to the voucher program and that they're trying to increase it almost \$70 million which, again, will take from our school aid and so on. Once again, very disturbing.

Mayor Donchess

So on the County - now the County tax is allocated upon based upon the total assessed value of each community. Manchester and Nashua have always been relatively the same. Sometimes Manchester is ahead but more commonly Nashua is believe it or not even though we're a smaller city has a total value of more than Manchester and we're again in that situation. That is not the - really I don't think that's the driving force for a \$2 million increase.

Over the weekend another thing I should mention is they had this great sports banquet - the Athletic Hall of Fame. The Nashua Hall of Fame had the banquet on over the weekend. The number of really good people including the 1987 girls were recognized and inducted. But at that event, David Fredette I saw him and he was warning me about this County situation. So I think the County budget is overall the impact around that even though part of it is the fact that our values went up more than Manchester.

President Wilshire

All set?

Alderman Klee

Yes, thank you.

President Wilshire

Anyone else?

READING MINUTES OF PREVIOUS MEETINGS

***There being no objection, President Wilshire declared the minutes of the regular and special Board of Aldermen meetings of April 24 and April 25, 2023 be accepted, placed on file, and the readings suspended.***

COMMUNICATIONS REQUIRING ONLY PROCEDURAL ACTIONS AND WRITTEN REPORTS FROM LIAISONS

From: Doria Brown, Energy Manager  
Deb Chisholm, Sustainability Manager  
Re: Relative to R-23-093 Section #5 (Environment and Energy Committee Recommendations)

From: Sam Durfee, Planning Director  
Re: Referral from the Board of Aldermen on proposed amended Ordinance O-23-051, amending the Land Use Code Regarding the Application of the Sign Article to Government Signage and the Approval of Sign Permits through the Site Plan Review Process

***There being no objection, President Wilshire accepted the communications and placed them on file***

PERIOD FOR PUBLIC COMMENT RELATIVE TO ITEMS EXPECTED TO BE ACTED UPON THIS EVENING - None

COMMUNICATIONS REQUIRING FINAL APPROVAL - None

PETITIONS

L Deerwood Drive – Lot H-103

***There being no objection President Wilshire accept the Petition, referred it to the Committee on Infrastructure, Planning Board, and scheduled a Special Board of Aldermen Public Hearing for Wednesday, June 28, 2023, at 7:00 p.m. in the aldermanic chamber.***

NOMINATIONS, APPOINTMENTS AND ELECTIONS

The following appointments by the Mayor were read into the record.

Conservation Commission

Richard Widhu (alternate to member) Term to Expire: December 31, 2025  
23 Syracuse Road  
Nashua, NH 03064

Hunt Memorial Building Board of Trustees

Rosalie M. McQuaid (re-appointment) Term to Expire: December 31, 2026  
17 Reservoir Street  
Nashua, NH 03064

William J. Dubois, Jr. (re-appointment) Term to Expire: January 31, 2028  
3 Stratham Green  
Nashua, NH 03063

Mine Falls Park Advisory Committee

Matthew Roscoe (new appointment) Term to Expire: May 9, 2026

17 Nova Road  
Nashua, NH 03064

Nashua Arts Commission

Judith Carlson (re-appointment)  
15 Manchester Street  
Nashua, NH 03064

Term to Expire: April 1, 2026

Zoning Board of Adjustment

Steve Lionel (re-appointment)  
19 Cabot Drive  
Nashua, NH 03064

Term to Expire: September 30, 2025

Jonathan ("Jack") M. Currier (re-appointment)  
6 New Searles Road  
Nashua, NH 03062

Term to Expire: September 11, 2025

***There being no objection, President Wilshire accepted the Appointments by the Mayor as read and referred them to the Personnel/Administrative Affairs Committee.***

REPORTS OF COMMITTEE

Personnel/Administrative Affairs Committee..... 04/03/2023

There being no objection, President Wilshire declared the report of the April 3, 2023 Personnel/Administrative Affairs Committee be accepted and placed on file.

Finance Committee ..... 04/05/2023, 04/19/2023

There being no objection, President Wilshire declared the reports of the April 5 and April 19, 2023 Finance Committee be accepted and placed on file.

Budget Review Committee ..... 04/24/2023

There being no objection, President Wilshire declared the report of the April 24, 2023 Budget Review Committee be accepted and placed on file.

CONFIRMATION OF MAYOR'S APPOINTMENTS - None

UNFINISHED BUSINESS – RESOLUTIONS

**MOTION BY ALDERMAN LOPEZ TO REMOVE FROM THE TABLE RESOLUTION R-23-102  
MOTION CARRIED**

**R-23-102, Amended**

- Endorsers: Mayor Jim Donchess
- Alderman Patricia Klee
- Alderman-at-Large Melbourne Moran, Jr.
- Alderman Thomas Lopez
- Alderwoman-at-Large Shoshanna Kelly
- Alderman Richard A. Dowd
- Alderman June M. Caron
- Alderwoman-at-Large Gloria Timmons

**AUTHORIZING THE MAYOR TO APPLY FOR AND EXPEND THE COMMUNITY DEVELOPMENT BLOCK GRANT ("CDBG") AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR FISCAL YEAR 2024**

Given its third reading;

**MOTION BY ALDERMAN LOPEZ TO AMEND R-23-102 BY REPLACING IT WITH THE GOLDEN ROD COPY WITH CHANGES MADE AT THE HUMAN AFFAIRS COMMITTEE MEETING  
MOTION CARRIED**

**MOTION BY ALDERMAN LOPEZ FOR FINAL PASSAGE OF R-23-102 AS AMENDED**

ON THE QUESTION

President Wilshire

Motion is for final passage. Discussion on that Motion? Alderman Sullivan?

Alderman Sullivan

Thank you, Madam President. I had a question item number three on the second page about the Homebuyer Assistance Program taken down to \$0. I do see that they were going to be putting some money into from the Fiscal Year 2023 HOME Funds. Just looking for an explanation on why that's zeroed out please.

President Wilshire

Alderman Lopez?

Alderman Lopez

The simple answer is because there's a number of different programs that we're requesting funding through CDBG. CDBG does not meet the level of need in our community at all. So it was a choice between removing funding for some of those programs versus this one. In discussion with a Community Development office, they were of the opinion they could find alternatives funding sources with less strings attached.

Alderman Sullivan

Thanks.

President Wilshire

You're welcome. Motion is for final passage as amended, any further discussion?

**MOTION CARRIED**

Resolution R-23-102 declared duly adopted as amended.

**R-23-109**

Endorsers: Alderman Patricia Klee  
Alderman Richard A. Dowd  
Alderman Thomas Lopez  
Alderman-at-Large Lori Wilshire

**AUTHORIZING PENNICHUCK CORPORATION AND PENNICHUCK WATER WORKS, INC. TO RENEW ITS FIXED ASSET LINE OF CREDIT WITH TD BANK, N.A.**

Given its second reading;

**MOTION BY ALDERMAN KLEE FOR FINAL PASSAGE OF R-23-109**

**MOTION CARRIED**

Resolution R-23-109 declared duly adopted.

**R-23-110**

Endorsers: Alderman Patricia Klee  
Alderman Richard A. Dowd  
Alderman-at-Large Lori Wilshire

**AUTHORIZING PENNICHUCK CORPORATION AND PENNICHUCK EAST UTILITY, INC. TO ENTER INTO A TERM LOAN AND RENEW A FIXED ASSET LINE OF CREDIT WITH COBANK, ACB**

Given its second reading;

**MOTION BY ALDERMAN KLEE FOR FINAL PASSAGE OF R-23-110  
MOTION CARRIED**

Resolution R-23-110 declared duly adopted.

**R-23-111**

Endorsers: Mayor Jim Donchess  
Alderman Patricia Klee  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman Thomas Lopez  
Alderman-at-Large Ben Clemons  
Alderwoman-at-Large Shoshanna Kelly  
Alderman Richard A. Dowd  
Alderman Derek Thibeault  
Alderman-at-Large Lori Wilshire

**RELATIVE TO THE SUPPLEMENTAL APPROPRIATION OF \$365,083.34 OF FY2023 UNANTICIPATED REVENUE INTO FUND #7024 "OPIOID ABATEMENT EXPENDABLE TRUST FUND"**

Given its second reading

**MOTION BY ALDERMAN CARON FOR FINAL PASSAGE OF R-23-111, BY ROLL CALL PURSUANT TO CHARTER SECTION 49**

A viva voce roll call was taken which resulted as follows:

Yea:	Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran, Alderman Lopez, Alderman Jette, Alderman Clemons, Alderman Comeau, Alderman Dowd, Alderman Gouveia, Alderman Caron, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire	14
Nay:		0

**MOTION CARRIED**

Resolution R-23-111 declared duly adopted.

**R-23-112**

Endorsers: Mayor Jim Donchess  
Alderman Patricia Klee  
Alderman-at-Large Ben Clemons  
Alderman Richard A. Dowd  
Alderman June M. Caron  
Alderman Derek Thibeault  
Alderman-at-Large Lori Wilshire

**RELATIVE TO THE SUPPLEMENTAL APPROPRIATION OF \$18,009 OF FY2023 UNANTICIPATED REVENUE INTO FUND #7026 "CAPITAL EQUIPMENT RESERVE FUND"**

Given its second reading

**MOTION BY ALDERMAN O'BRIEN FOR FINAL PASSAGE OF R-23-112, BY ROLL CALL PURSUANT TO CHARTER SECTION 49**

A viva voce roll call was taken which resulted as follows:



Yea: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran,  
Alderman Lopez, Alderman Jette, Alderman Clemons, Alderman Comeau,  
Alderman Dowd, Alderman Gouveia, Alderman Caron, Alderman Thibeault,  
Alderwoman Timmons, Alderman Wilshire

14

Nay:

0

### **MOTION CARRIED**

Resolution R-23-112 declared duly adopted.

### **R-23-113**

Endorsers: Mayor Jim Donchess  
Alderman Patricia Klee  
Alderman-at-Large Ben Clemons  
Alderman Richard A. Dowd  
Alderman June M. Caron  
Alderman Derek Thibeault  
Alderwoman-at-Large Gloria Timmons  
Alderman-at-Large Lori Wilshire

### **RELATIVE TO THE SUPPLEMENTAL APPROPRIATION OF \$35,360.50 OF FY2023 UNANTICIPATED REVENUE INTO FUND #7026 "CAPITAL EQUIPMENT RESERVE FUND"**

Given its second reading

### **MOTION BY ALDERMAN DOWD FOR FINAL PASSAGE OF R-23-113, BY ROLL CALL PURSUANT TO CHARTER SECTION 49**

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran,  
Alderman Lopez, Alderman Jette, Alderman Clemons, Alderman Comeau,  
Alderman Dowd, Alderman Gouveia, Alderman Caron, Alderman Thibeault,  
Alderwoman Timmons, Alderman Wilshire

14

Nay:

0

### **MOTION CARRIED**

Resolution R-23-113 declared duly adopted.

### **R-23-114**

Endorsers: Mayor Jim Donchess  
Alderman Richard A. Dowd  
Alderman-at-Large Lori Wilshire

### **RELATIVE TO THE TRANSFER OF \$5,000 FROM DEPARTMENT 194 "CONTINGENCY", ACCOUNT 70100 "GENERAL CONTINGENCY" TO DEPARTMENT 144 "EDGEWOOD & SUBURBAN CEMETERIES", ACCOUNTING CLASSIFICATION 51 "SALARIES & WAGES"**

Given its second reading

### **MOTION BY ALDERWOMAN O'BRIEN FOR FINAL PASSAGE OF R-23-114 MOTION CARRIED**

Resolution R-23-114 declared duly adopted.

### **R-23-115**

Endorsers: Alderman Patricia Klee  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman Thomas Lopez  
Alderman-at-Large Ben Clemons  
Alderman Alex Comeau

Alderman Richard A. Dowd  
Alderman Derek Thibeault  
Alderwoman-at-Large Gloria Timmons  
Alderman-at-Large Lori Wilshire

**AUTHORIZING THE MAYOR TO ENTER INTO A FEDERAL AID PROJECT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE FOR THE PURPOSE OF CONSTRUCTING AN ACCESSIBLE RAMP TO THE COTTON MILL TRANSFER BRIDGE AND TO ACCEPT AND APPROPRIATE \$300,000 FOR THE PROJECT**

Given its second reading;

**MOTION BY ALDERMAN KLEE FOR FINAL PASSAGE OF R-23-115, BY ROLL CALL PURSUANT TO CHARTER SECTION 49**

A viva voce roll call was taken which resulted as follows:

Yea:	Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran, Alderman Lopez, Alderman Jette, Alderman Clemons, Alderman Comeau, Alderman Dowd, Alderman Gouveia, Alderman Caron, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire	14
Nay:		0

**MOTION CARRIED**

Resolution R-23-115 declared duly adopted.

UNFINISHED BUSINESS – ORDINANCES

**O-23-047, Amended**

Endorsers: Mayor Jim Donchess  
Alderman Patricia Klee  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Richard A. Dowd  
Alderman Derek Thibeault

**AMENDING THE LAND USE CODE REGARDING MINOR SITE PLAN AMENDMENTS TO PERMIT SEASONAL OUTDOOR DINING APPROVALS**

Given its third reading;

**MOTION BY ALDERMAN MORAN TO AMEND ORDINANCE O-23-047 BY REPLACING IT WITH THE GOLDEN ROD COPY MADE AT THE PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE MEETING  
MOTION CARRIED**

**MOTION BY ALDERMAN MORAN FOR FINAL PASSAGE OF O-23-047 AS AMENDED**

ON THE QUESTION

Alderman Moran

I'd actually like to make a Motion to further amend this Ordinance. My motion is to amend O-23-047 by striking the last sentence thereof and replacing it with the following: "The initial outdoor dining minor site plan amendment application shall be subject to the fees required by §190-267 (A)(3) but subsequent annual renewals shall be charged a \$100 permitting fee." I'd like to speak to that.

**MOTION BY ALDERMAN MORAN TO FURTHER AMEND O-23-047 BY STRIKING THE LAST SENTENCE THEREOF AND REPLACING IT WITH THE FOLLOWING: "THE INITIAL OUTDOOR DINING MINOR SITE PLAN AMENDMENT APPLICATION SHALL BE SUBJECT TO FEES REQUIRED BY §190-267(A)(3) BY A SUBSEQUENT ANNUAL RENEWAL SHALL BE CHARGED A \$100 PERMITTING FEE" BY ROLL CALL**

ON THE QUESTION

Alderman Moran

Okay so a couple of things. One - this will send it back to Planning and Economic Development again because it will require a public hearing if we passed it to send it back or to send it back again and talk about it again. But overall, I had expressed through Alderman Comeau last week while I was out to ask the Planning and Economic Development Committee to table this until I get back so we can further discuss it more. I just don't see given the fact that the Mayor just said we're going to potentially just see right away a 3% tax increase to taxpayers that the work that's being done by the Planning Department if we don't charge the fee, that's just more money that the taxpayers have to pick up for larger corporations that are using this site plan. It's not like the mom and pop restaurants that are downtown. This is Lui Lui and other larger run corporations.

I voted on the \$25 out and had to come back. I thought it would have the opportunity to be back in time from the school vacation that I was on with my kids but it didn't make it. I understand a lot of people might not hear me on this one but fees wholly I'm against when it comes mostly to residential fees. These are corporation fees for businesses that are large businesses that can afford it. If we don't charge them a reasonable fee for the people at these departments that conduct the work, it's just gonna get into the city budget that we're gonna have to pay for these costs anyways through taxpayer money. I think there should be a larger fee to offset the work that departments are doing rather than the \$25. That's my motion.

President Wilshire

Alderman Clemons.

Alderman Clemons

Thank you, Madam President. I will not be supporting that. Poor example by the previous speaker because Lui Lui has two restaurants. The other one is in West Lebanon and they are owned locally.

Further, I know some of the other restaurants that do take advantage of this are also locally owned. The thing about it is, is that for me it's more of the the idea of compromise. We originally said that we weren't going to do a fee at all. This is how the original ordinance came. We decided \$25 was what we we're going to do. That's what the Committee decided. I wasn't there that evening. I believe though from the discussion at the Committee meeting that it was brought up to amend it to a higher amount and the Committee said no. If I had been at that Committee meeting which I am on that Committee, I was unable to attend that evening but had I been there, I would have said no too along with the Committee. So we are basically making a mockery of the Committee process by sending this back.

So I say we vote on this tonight here whether we want to do this or not. If we don't want to do it, then let's move ahead and we can either vote yes or no on the whole thing. I'm going to vote no on the amendment to \$100 because I think \$25 is enough. I think that it was originally proposed that nothing was fine and that came from the department itself. So there if there's no need to be charging a fee when we don't have to. I understand that some of us here feel more comfortable with \$25. I'm willing to go along with that and in the spirit of compromise but I'm not willing to go further than that. So thank you.

President Wilshire

Alderman Comeau.

Alderman Comeau

Yes thank you, Madam President. Alderman Moran touched on most of the points that I was going to mention but I agree with his sentiment that if we don't charge the users of this service the fee, then it's just gonna be passed on to the rest of the Nashua taxpayers which I don't believe is fair. They're already being burdened enough as it is. Director Sullivan Director did come and speak at the last Committee meeting. I did ask the members of that committee to consider tabling this until the full Committee could meet. They declined to do so and it was sent back to the full Board by the two remaining members and an alternate. The amendment wasn't even discussed at that time. I thought that my colleague from Ward 5 did a good job of explaining the explanation that he got as far as where the fees came from. The fee is not just pulled out of thin air. That's based on the time that the Planning Department has to spend on doing the site plan inspections and things like that. The \$25 fee that was agreed upon was actually just an arbitrary number that was pulled out of thin air. It's not based on a math or anything like that. It was just a feel good number. So I do support the amendment on the idea that these restaurants that are going to be using this service should have to pay for the process

that goes along with it so that the rest of the Nashua taxpayers don't have to pick up that tap for them. So I will support the amendment. Thank you.

President Wilshire

Alderman Caron.

Alderman Caron

Yes thank you. I will not support this amendment. Before I continue, can we have - would it be possible to have Director Sullivan and come up and answer a couple of questions because the \$25 fee was not an arbitrary. This was based on some information that he got that he felt was fine for the permitting.

President Wilshire

Director Sullivan.

Matt Sullivan, Community Development Director

The \$25 number was partially arbitrary and partially not arbitrary quite frankly. It was based on a discussion internally amongst the folks in the Planning Department based on the time that it takes to actually conduct a review of the information. Subsequent to that conversation that we had internally, there was a further conversation at the Committee level about the departmental review necessary outside of the Planning Department from the folks in the Fire Department, the folks in the Building Department, and others who sometimes touch our permitting process hence some of the discussion that happened at the Committee level resulting in the discussion of a higher fee beyond the \$25. I would just caution this body and its consideration.

I'm certainly not advocating either direction that the initial contemplation of the legislation was to reduce the recurring fee associated with the permitting process and outdoor dining. By moving towards the installation or process that both charges perhaps an initial fee and a recurring fee, I do fear that we're moving in the opposite direction. I'm uncomfortable making these comments to some extent, however, because I understand that everyone's trying to be equitable to my Department and my Division by providing adequate fees to support the work that we're doing but we certainly understand that there's a tipping point associated with any fee paid as part of the planning process.

The \$25 just to return to that point specifically, the part that is arbitrary about it is that that's not tied to any specific hour count or minute count that a given employee is actually using when reviewing a plan. Some plans if they're the same as a prior year's configuration take no more than two minutes to review. Some plans if they include a reconfiguration and some level of ADA compliance check or review of prior files can take up to 30 minutes to review and there may be some level of interdepartmental coordination necessary. Hence is the nature of any permanent review quite frankly that does range in the way that the review is done in the time that it takes. But I would just close by saying that certainly the idea here was to create an incentive to allow this process to be inspected on an annual basis. I do fear that if we move too far in one direction by installing actually additional fees beyond the minor site plan review process that we have right now that we might actually discourage outdoor dining generally on private property. So I'll leave my comments here and I'd be happy to answer any questions you might have.

President Wilshire

Alderman Caron.

Alderman Caron

Yes. My second question is how many people - how many organizations actually apply for this that it is going to affect our revenue down the road? I'm looking at 20 restaurants at \$100. That's \$2,000. Doesn't make a big dent in costs that the Mayor was talking about earlier. Is that correct or is smaller or bigger?

Matt Sullivan, Community Development Director

So the number has ranged during peak COVID. Apologies for those who have heard me say this a few times. During peak COVID it was around 25 entities that were getting permitted to the process when most folks were being forced to sit outside to stay safe. That number decreased from about 25 to 20 is now more about around 15 to 10 that we think are going to be permitted this year. So certainly the number has decreased over time as folks have become more

comfortable inside but there's still sort of a I would argue a core group of restaurants that have really looked at this as a part of their services.

Alderman Caron

Thank you.

President Wilshire

Alderman Caron.

Alderman Caron

Thank you. Okay so here is my major concern. We have outdoor dining going on right now on Main Street. Sidewalks and now that the barriers are up, we have them on the street which is fine. But now you want to eliminate 11 restaurants from being able to do outdoor dining, whatever it is - set up their locations on their property not until the end of June by the time they would get permitting. That is unfair to those restaurants that are not on Main Street. I'm sorry. I love the restaurants on Main Street but fair is fair when you talk about the rest of the citizens of the city and what it costs. Then you have to look at this as a total picture. It's now May 9<sup>th</sup> and you're looking at June before they can even start applying. That is totally unfair.

As far as staff, staff has their projects. During the winter it's this, during the summer it's this, during the fall with something else. You can't waive fees based on staff. That's their job. In Park Rec in the wintertime, we have basketball - 1,500 children you were dealing with. We didn't get paid because we had 1,500 children and in the spring we only had 200. It was the job. So these fees can't be regulated by how much time they spent whether it's five minutes, or 35, or an hour. We're not being fair to these people who are asking to set up outdoor dining on their property when downtown is already set up on the sidewalks and their barriers which is great because I've seen the people out there. So I will not support this. If you send this back, it is going to send a very bad precedent to those restaurants within our community because our community goes all the way to the Massachusetts boundary. Thank you.

President Wilshire

Alderman Thibeault.

Alderman Thibeault

Thank you, Madam President. I have a couple of questions. My first one is you know we're gonna get people that say oh man they're spending. They're not taking in revenue again. It's going to increase our tax rate. Can you tell us how much this would decrease our tax rate if we went up \$100 per?

Matt Sullivan, Community Development Director

I can't answer that question but the answer is de minimis.

Alderman Thibeault

Minimum, right?

Matt Sullivan, Community Development Director

Absolutely de minimis.

President Wilshire

Alderman Thibeault.

Alderman Thibeault

So my thoughts on this whole thing is there's no way I'm supporting this. I supported this when it first came to committee At zero dollars. It made complete sense. Director Sullivan explained it clearly. We all voted to send it there. I think was unanimous to send it to the Board of Aldermen. It got to the Board of Aldermen and everybody was confused. I was the

only one that voted not to send it back to Committee because I knew exactly what I was voting on. Then I watched the PEDC meeting when it came up again. I watched it and you know we have one Aldermen basically saying I have the votes so let's table it now. Luckily Alderman Caron, and Alderman O'Brien, and Alderwoman Timmons decided not to table it, to put it through to this Board. So we should vote on it. We should not have to send it back to Committee a third time. There's a reason we have committees and there's a reason why they come to us after. It was an approval. So I think we should approve it. So I'm not going to support the tabling of it. It should be compromised at \$25.

President Wilshire

Alderman Sullivan.

Alderman Sullivan

Thank you very much. In 2020 what was the fee to apply for this?

Matt Sullivan, Community Development Director

The fee was zero dollars.

Alderman Sullivan

The following year it was?

Matt Sullivan, Community Development Director

Zero dollars.

Alderman Sullivan

The following year it was?

Matt Sullivan, Community Development Director

Zero dollars.

Alderman Sullivan

So this program is dropping, in my opinion, precipitously regardless of what we charge. I would approve this amendment because I believe this is the cost of doing business. I think that we're allowing these businesses to expand their footprint, add more tables. Perhaps it's not as popular because they can't staff it whatever. It's dropping in popularity for whatever reason. It's not because of the fee. People who work for the City, they leave here you charge portal to portal. However long it takes to get out there to do the inspection because we have to inspect it to make sure that it adheres to all of the codes and whatnot that we're going to allow people to eat. So I think that \$100 is fair. Regardless of whether or not it goes it goes back to Committee, I think another few weeks, or months, or is not going to impact it whatsoever so I'm gonna support that.

President Wilshire

Director Sullivan did you want to add something?

Matt Sullivan, Community Development Director

I believe Alderman Moran may have already made this technical point so I apologize if you did. But any amendment that is made will have to return to Committee assuming it's a substantial amendment with a new public hearing to be set if it's of any substantive nature just based on the fact that this is a piece of land use legislation. So I just want to be clear that if any amendment is made in a substantive in nature tonight, I think the amendment being discussed is, it will need to be referred back to Committee in a new public hearing set. So I believe you may have made that point so I apologize.

President Wilshire

Thank you. Alderman Moran.

Alderman Moran

Thank you, Madam President. Correct me if I'm wrong through you to Director Sullivan. This would impact anyone who wants to do that right now. My understanding is that there's some loophole that allows them to still set up, have their site plan done, and outdoor dining to be put in place why we're potentially negotiating fees. I believe the process is happening right now and this hasn't even been approved by the full Board.

Matt Sullivan, Community Development Director

So this does introduce a new wrinkle however. The process that I explained at the PEDC meeting is that when a piece of legislation or an amended piece of legislation of land use is posted for public hearing, that posting becomes essentially becomes the functional or effective law. So if the amendment that's posted for public hearing that results from this Board's action this evening outlines a fee - whether it be \$100, or \$300, plus \$100. That will be the new law of the land if you will until an action is taken to either amend and post for new public hearing or if there's an action to be taken by this Board.

So today, we are moving forward with rolling out a program to allow outdoor dining and private property based on the \$25 amendment that's been posted and has been recommended back to this Board. Should there be an amendment made tonight, we will have to change the fees that we're advertising to the folks that have submitted.

Alderman Moran

Follow up?

President Wilshire

Alderman Moran.

Alderman Moran

So this has not shut down anyone who would want to build these things on their own private property?

Matt Sullivan, Community Development Director

At the risk of introducing editorial comment, it has certainly not stopped that process. It has introduced a level of complexity and unpredictability that I think none of us would be very happy with if we were dealing with a private business but certainly it has not stopped them from moving forward with a level of outdoor dining but that lack of clarity about the cost, I think, has produced and it's introduced some questions into it.

Alderman Moran

One thing I would say to my own honorable colleagues is, you know, it's only a handful of restaurants. Yes I get it. It's not gonna make a big impact on this line item but if you do it enough times over every city budget or whatever fee, you're skimming from the top here or there and it adds up. I mean anyone else own a multimillion dollar company that ends up having to look at line items every day. Like I understand that this is nothing for these three handful of restaurants but when you do it from department, to department, to department, it adds up then it gets shifted down to the taxpayer. So the numbers game. We can play numbers games all day. I don't want to argue it but yes thirteen whatever restaurants is not going to make a big deal. The point of the matter is if there's folks that are paying to have their plumber come out and install a permit for a pretty hefty cost that don't have a million dollar revenue from a restaurant to back them up. \$25 is nothing for these people; \$100 is nothing to these restaurants. I've heard one person tell me it was like a half hour at a bar of revenues that they're collecting or one turnover of a table in that section. Let's not play the numbers game. This is impacting and shifting cost down whether it's a half a percentage here or there, it adds up over time. I mean that's the reality of math. The CFO is here, I'm sure he can agree with me. I'm not discrediting it but we shouldn't play that numbers game. It's not real to say it that way. Thanks.

President Wilshire

Alderman Lopez.

Alderman Lopez

So I was actually at the PEDC meeting. So it may have come across differently to people watching from TV but I do not recall an Alderman saying I have the votes so table this. I think the Alderman was very conciliatory and very respectfully pointed out that this conversation we're having right now would happen in the Board of Aldermen chamber if they moved it forward. Out of respect for the committee process, he thought it would be a good idea to have that discussion in the Committee rather than sending it back to the Board of Aldermen as it's been sent right now. He also correctly pointed out that the majority of the Committee's assigned members weren't present and they had a temporary member who was filling in for quorum purposes that made the decision for that Committee. So I think if we're going to claim that we respect the Committee process on one side while using it conveniently on another that says something about us.

I also think it is just as much a mockery to say let's bring in everybody from downtown who has a small mom and pop business and have them justify their existence to the people of Nashua for several months as we did last year and then ultimately decided that we need to charge them because their businesses are too small to have a footprint that they can later convert into extra outdoor dining. Then the few businesses that do have a large enough property/footprint to add their own outdoor dining and not need to use any kind of parking spaces or anything, those ones we're gonna give a pass to. Those ones we're going to look out for the mom and pop not the ones that have like four tables inside, and really benefited for having the outdoor dining, and really were part of a collective that when you go downtown - and we talk about how much we like our downtown and our new Nashua Center for the Arts - they contribute to that by having activities, music, people on the street, a festive atmosphere versus property owners who don't. They have their own atmospheres. They have their own environments. That to me that's not consistent. That seems almost hypocritical to say that you support the zero fees and then you don't.

I also think it's not the only time we've ever looked at how much a City staff member gets paid versus the work that they're doing because we've had lengthy conversations about the overnight parking and how we need to be charging inner city residents to park anywhere near their houses because we need to make sure we can pay for the staff member that are there. That doesn't seem to be a salary position even though it is. It seems like we need to be looking at every parking space that's available as a potential revenue source regardless of the individual's ability to pay for it with whatever they're doing. There's a lot of inconsistencies here. I don't have a problem with this particular legislation. I do think it's unfortunate that if we do put public notice to an amendment today that anybody who didn't get their outdoor dining permits in earlier would then have to assume that we're going to do the amended version. I would also point out the date and that most of them probably have actually submitted their applications and I don't think there's a lot of restaurants that are gonna be struggling with hardship. I think we saw a lot of restaurants that were struggling with hardship last year and we made them go through weeks of committee process. So if we decided that we're going to charge per space for the downtown restaurants, I think we should at least have a reasonable fee consistent with the rest of the property inspections that we do elsewhere. Thank you.

President Wilshire

Alderman Jette.

Alderman Jette

Thank you. I think it's important to remember that before COVID, restaurants who wanted to do outdoor dining on their private property, which is what we're talking about here, this doesn't apply to the downtown restaurants that are using the sidewalks and the streets. We're talking about restaurants that have, you know, they're private property and they want to expand their dining into the parking lot or outside on their own property that prior to COVID, they had to apply for an amendment of their site plan. The minimum fee for applying for an amendment to your site plan is \$300. When COVID hit if you remember, these restaurants could not have indoor dining. That was part of the process, part of the safety to deal with COVID. We didn't allow people to go inside restaurants. So in order to help these restaurants, that's when the City came up with a plan to assist these restaurants by allowing them outdoor dining. So you know, we allowed outdoor dining on the sidewalks, in the streets, and we also allowed people on their own private property to move their dining tables and chairs outside and we waived that site plan amendment fee - that \$300 fee. We waived it in order to allow these restaurants to make some money to try to survive that pandemic by offering outdoor dining. So that's what we've been operating under.

Now the emergency rules for COVID are expiring. So now when those emergency rules expire, these restaurants for a couple of years now indoor dining has returned so they're able to offer dining inside. They don't need the outdoor dining as an emergency measure in order to help them survive. They can use their indoor facilities. We found out and one of the silver linings may be an exaggeration but one of the silver linings of COVID was people enjoyed outdoor dining. Some people still don't want to go inside a restaurant. They don't want to take a chance of being exposed to you know COVID,



or the flu, or whatever else it might be. They prefer to dine outside. So now these restaurants are offering this outdoor dining you know the emergency no longer exists and so their decision to offer this outdoor dining is a decision of that they can expand their capacity. They can serve more meals by doing this outside. Now the City and we as Aldermen are charged with making sure that these dining facilities are safe to the public and that includes we have a Health Department that inspects their kitchen. We have the Fire Department to make sure that it's safe, that they have the proper exits, and all that other stuff. We have rules about making sure that it's accessible to people who are handicapped and all of those things.

So if you're going to do outdoor dining, we require that you come in and show us what your plan is - what your site plan is. So this site plan amendment costs \$300 before the emergency. Now that the emergency is over it, it should go back to that \$300. What Director Sullivan is, I think, trying to accomplish is he wants these restaurants to come back on an annual basis and show us that their plan is the same as it was and so he wants an annual review. He's saying they're coming in with this original site plan and if there are no changes, it takes a small amount of time. He doesn't feel that originally he didn't feel that a fee was appropriate. But his proposal eliminates that initial \$300 fee and the initial site plan review is more extensive than just this annual review. So it makes sense to me that we go back to that \$300 for the initial site plan and that's what the amendment calls for. The initial site plan review, amendment, whatever, would go back to that minimum \$300 fee which has been the fee for years. When I questioned Director Sullivan about that, he admitted to me that our fees are much lower than any other city in the State and that he says yeah we have to review our fees. We ought to be increasing them. I think the \$300 initial review is appropriate.

The annual review it would seem that it shouldn't cost the original \$300 but as opposed to what he said tonight when I questioned him about it, I said how are we making sure that these people are doing what they say they're doing when they come in with a plan and they say this is our plan. How do we know that that's exactly what they're doing? Are we just taking their word for it? He said oh, no, no we go out and inspect. Well the minute you send somebody out to inspect you put somebody in a car, they drive out, they look at the place. It seems to me that's a lot more than a couple of minutes. That's a lot more than \$25. I think the \$100 sounds more appropriate to me. I can't believe that a restaurant is going to be discouraged from offering outdoor dining because of a \$100 fee or even a \$300 fee. I cannot imagine that any restaurants business plan is going to be defeated by a \$300 or \$100 fee. It just doesn't make any sense to me. I mean I don't know how many of you go out, how many of you go to restaurants but I don't think it takes many - you don't have to turn that table over very many times to raise that kind of money.

So I support this amendment and to the people who talk about the committee process, I'm sorry but originally we talked about when we first sent this back to the PEDC. A couple of Aldermen talked to Director Sullivan about trying to reach some compromise, come up with a fee that's reasonable that you can support, and agree to, and maybe a majority of the Aldermen would agree to it. So he and I were supposed to talk about it, try to reach that goal, and I said this at the Committee meeting. He's a busy guy, got a lot on his plate. We couldn't meet until the Friday before the scheduled PEDC meeting and on that Friday, we were talking on the telephone. I was ill. I was sick. He sensed that. He said let's not do this today. You're not feeling well. Let's do it next week. Let's do it Monday. I said I'm not available Monday, let's do it Tuesday. Both of us completely were unaware that the PEDC meeting was that Monday night. So we planned on meeting Tuesday, the meeting was Monday night, he called me after the meeting and said, I'm sorry I forgot the meeting was Monday night. They had the meeting. They caught me by surprise. They asked me for a fee. I picked \$25 out of the air. I gave them \$25 and that's what they passed.

So I'm sorry that that confusion resulted in the Committee not having the benefit of a discussion which we had later. Then the most recent PEDC meeting, it was school vacation. Most of the Aldermen were away. There were only two members of the Committee there. When Alderman Comeau asked for someone to table it because of Alderman Moran's request, frankly I was very surprised. I mean I haven't been an Alderman as long as some of you others but I remember under President McCarthy that it was pretty routine that because of absences or whatever, especially the Chairman of the committee asked that something be tabled, that a committee, you know, just two people on the committee and one Alderman-at-Large sitting in to make the quorum would deny that request out of I would think common courtesy. But it was denied and it didn't happen. So I fully support the amendment proposed by Alderman Moran.

President Wilshire

Alderman Clemons.

Alderman Clemons

Thank you Madam President. I move, I would like to move the question by roll call.

**MOTION BY ALDERMAN CLEMONS TO MOVE THE QUESTION BY ROLL CALL**

President Wilshire

Will the Clerk call the roll?

Alderman Thibeault

It's undebatable.

Alderman Sullivan

I just had to ask a question. What a yes or no vote was. Is it a yes for a \$100 fee or is it a no.

President Wilshire

Just to move the question.

Alderman Sullivan

Okay. Got it. Thank you. Sorry.

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Moran, Alderman Clemons, Alderman Dowd, Alderman Caron, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire	10
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Nay: Alderman Lopez, Alderman Jette, Alderman Comeau, Alderman Gouveia	4
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**MOTION CARRIED**

**MOTION BY ALDERMAN MORAN TO FURTHER AMEND O-23-047 BY STRIKING THE LAST SENTENCE THEREOF AND REPLACING IT WITH THE FOLLOWING: "THE INITIAL OUTDOOR DINING MINOR SITE PLAN AMENDMENT APPLICATION SHALL BE SUBJECT TO FEES REQUIRED BY §190-267(A)(3) BY A SUBSEQUENT ANNUAL RENEWAL SHALL BE CHARGED A \$100 PERMITTING FEE" BY ROLL CALL**

ON THE QUESTION

Alderman Jette

Point of order.

President Wilshire

Alderman Jette.

Alderman Jette

I don't think the amendment is just to raise the \$25 to \$100. I think the amendment calls for an initial site plan, minor site plan review to be \$300 to be the fee that exists which is \$300 and subsequent annual reviews would only be the \$100.

Alderman Moran

That's my motion, yes.

President Wilshire

Thank you Alderman Jette.

A viva voce roll call was taken which resulted as follows:

Yea: Alderman Sullivan, Alderman Moran, Alderman Lopez, Alderman Jette  
Alderman Comeau, Alderman Gouveia 6

Nay: Alderman O'Brien, Alderman Klee, Alderman Clemons, Alderman Dowd  
Alderman Caron, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire 8

**MOTION FAILED**

**MOTION BY ALDERMAN MORAN TO AMEND ORDINANCE O-23-047 BY REPLACING IT WITH THE GOLDEN ROD COPY MADE AT THE PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE MEETING BY ROLL CALL**

ON THE QUESTION

Alderman Clemons

Point of Order.

President Wilshire

Alderman Clemons.

Alderman Clemons

We did vote on this and then we had a subsequent amendment to it. The subsequent amendment is what we just voted down, so it reverts back to this.

Alderman Dowd

For final passage.

Alderman Clemons

For final passage as amended by the goldenrod copy.

Steve Bolton, Corporation Counsel

That motion hasn't been made yet.

Alderman Clemons

That motion was made and voted on.

Steve Bolton, Corporation Counsel

A motion to amend by replacing with the goldenrod copy. That motion was made. That motion passed. Then there was a Motion to Amend that ultimately failed. There has now no motion pending.

President Wilshire

Alderman Moran?

Alderman Moran

I'm so sorry everyone. I'm sure everyone wanted to get out of here early but because of me.

**MOTION BY ALDERMAN MORAN FOR FINAL PASSAGE OF ORDINANCE O-23-047 AS AMENDED BY ROLL CALL**

ON THE QUESTION

Alderman O'Brien

Discussion on the motion?

President Wilshire

Discussion?

Alderman O'Brien

Just for clarification, this would mean staying with the original goldenrod at \$25 and not Alderman Moran's amended version to \$100, am I correct?

President Wilshire

You are. Alderman Comeau?

Alderman Comeau

I apologize in advance but I'm going to make a Motion to Amend. For the sake of the Clerk, it's pretty much the same as the motion that Alderman Moran made except for instead of the \$100 annual fee, it would be a waived annual fee for subsequent years but it would still involve the original fee for year one for the initial site plan amendment. My amendment would be for years two and on for that fee to be waived for the annual inspection.

**MOTION BY ALDERMAN COMEAU TO AMEND INSTEAD OF \$100 ANNUAL FEE WOULD BE WAIVED ANNUAL FEE FOR SUBSEQUENT YEARS BUT WOULD STILL INVOLVE THE ORIGINAL FEE FOR YEAR ONE FOR THE INITIAL SITE PLAN AMENDMENT; YEARS TWO AND ON FOR THE FEE TO BE WAIVED FOR THE ANNUAL INSPECTION**

ON THE QUESTION

President Wilshire

Alderman Dowd?

Alderman Dowd

We're still going to be in the same position where it's going to go back and have to have another public hearing and by the time that's ironed out, it's going to be late June. These people already started having their dining outside. Let's get this passed the way it is in a goldenrod copy and if you want to bring it up in the fall for the next season, do it then. I think right now we need to get this passed.

President Wilshire

Alderman O'Brien?

Alderman O'Brien

Thank you. I couldn't agree with Alderman Dowd any more. I respect the opinion of Alderman Comeau but there's too many moving parts at this hour of the game. Let's look at the goldenrod copy and the last sentence, "This ordinance shall become effective immediately upon passage". These people, businesses are waiting for this. This is something that should have been done in February. I don't know why the Chair didn't bring it up at that particular time. I chaired that meeting. Everything was legitimate by Charter. We are allowed to have an alternate to come in and to fill a vacancy. You don't like it, please show up to a meeting. If you don't show up, you void your position. Nothing was strong and nefarious. I would have liked to have granted the courtesy of tabling but because this is a timely manner, we're in May. So therefore, I can't support Alderman Comeau's amended version.

President Wilshire

Alderman Moran?

Alderman Moran

Thank you, Madam President. Briefly, I just - way back when we were sworn in, there was a request by Alderman Kelly to table something that didn't get tabled. We ended up voting on it anyways and there was an email from Alderman Kelly about, you know, basically mutual respect that came out afterwards when she wasn't able to make the meeting. I now know as Chairman, I'll just cancel the meeting in the future. Apparently, I can do that. I didn't know that or reschedule it to another time when more people are back. I maybe should have communicated that to the Vice Chair another standing member of the Committee. Thank you so much Alderman Timmons for standing in. I do appreciate that very much for last moment.

But to belabor the point, I mean there's no one not going to have the outdoor dining if this is passed or not, or that we delay it, or it goes back 1,000 times but we can bring it back up in the fall too. I mean we can just keep doing it and doing it until businesses pay their fair share according to the residential payers. I mean they just got a substantial commercial tax break too. I'm sure that reflects a lot in the market rate of the rent too. So that didn't happen with the residents.

President Wilshire

Alderman Lopez?

Alderman Lopez

I just want to make sure that there's no besmirching of the PEDC Chairs reputation either. It was discussed in the meeting. Director Sullivan pointed out that this was started in February and he had felt it would be a fairly non-contentious process and said maybe we should be looking at this in December in the future. So I mean the fall sounds like it is about right but not all chairs create the legislation that's going to come in front of their committee. Some of them are just doing the business of the Board of Aldermen. So I don't think that's necessarily reflective of the Chair, I think the Community Development Office was working on it in February.

President Wilshire

Alderman Clemons?

Alderman Clemons

The only other time that I've seen this Board debate something so trivial was when we debated whether or not to change the dump permit fee from \$5 to \$10 and that got defeated. So it's still \$5 today. So we do right by our residents here. I think we do right by our businesses and I think the right thing to do in this case is to just pass the goldenrod copy as amended.

President Wilshire

Alderman Comeau?

Alderman Comeau

Yes thank you, Madam President. I just wanted to refute two points real quick. Number one, this debate is not holding anything up. The restaurants that want to take advantage of this process more than likely most of them are already doing it and have already have their outdoor dining set up. So we're not prohibiting anybody from doing that. It's not costing anybody any business. We should be able to take the time to get it right.

That brings me to my second point which is I don't really care if we should have had this conversation in February. The fact is it's now May and if it's later in the year than we wish it was, that doesn't mean pass bad legislation because we took too long. If we should have had this conversation in February, then we should have had it in February. But we have the opportunity to get it right now without harming anyone. It doesn't harm the restaurants to take an extra two weeks and have the conversation which is why we decided as this body to re-refer it back to the Committee. I know that there are some of us who understood it at the first point and have made that very clear that they understood it the first time. I'm pretty sure that every other member of this body voted to re-refer it because they agreed that it deserved a deeper discussion. Then when we had the opportunity to do that, we didn't have the discussion and the acting members of that Committee sent it back to the Board without discussing it. All we discussed was whether or not to table it and no motion was ever even made to table it but we had the discussion on whether or not to table it. We never discussed the merits of the legislation itself and it just got sent back as it was when we re-referred to the first time.

So the fact that it's May now and we should have had this conversation in February is largely our own fault because we're going back and forth with this when we do have the opportunity to just get it right the first time instead of so what now in

the fall I'm supposed to put in new legislation and we're gonna debate it all over again. We have the opportunity to get it right now and we should take that opportunity. Thank you.

President Wilshire

Alderman Thibeault.

Alderman Thibeault

Thank you, Madam President. I think some of us believe what we're doing is right. So I mean, it's all in whoever you are. So I mean you know to Alderman O'Brien who chaired that meeting, I don't know if Alderman – and believe me this is with no disrespect to Alderman Moran. I love Alderman Moran.

Alderman Moran

And I love you too Derek.

Alderman Thibeault

But I would think that if you wanted to table something or cancel something, you'd go to the Vice-Chair of that Committee not to another Alderman who's not even on the Committee. That would probably be the right thing to do and then he can bring up the idea of tabling.

Now the meeting was still there so people could still bring up anything they wanted about it. There was other people there. There wasn't just the Committee. There were multiple people that weren't on that Committee that could have talked about it. No one chose to accept to table it. So I know if Alderman Clemons and myself were there, we would have voted on the \$25. We would have been in step with the other Aldermen that were there. So I mean like I said, I would have voted zero dollars so I would have made the compromise for \$25.

Alderman Moran said earlier, the numbers game. Well he's playing the numbers game too. He keeps switching it from \$0, to \$25, to \$100. So we can go back and forth on who's playing numbers and who's not. I'm not going to support this amendment. I'm going to support as originally in front of us.

President Wilshire

Alderman Dowd?

Alderman Dowd

Roll call.

President Wilshire

A roll call has been requested.

**MOTION BY ALDERMAN MORAN TO AMEND ORDINANCE O-23-047 BY REPLACING IT WITH THE GOLDEN ROD COPY MADE AT THE PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE MEETING BY ROLL CALL**

A viva voce roll call was taken which resulted as follows:

Yea: Alderman Sullivan, Alderman Moran, Alderman Lopez, Alderman Jette,  
Alderman Comeau, Alderman Gouveia 6

Nay: Alderman O'Brien, Alderman Klee, Alderman Clemons, Alderman Dowd  
Alderman Caron, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire 8

**MOTION FAILED**

President Wilshire

We're back to the motion to pass as amended the goldenrod copy. Any further discussion?

Alderman Clemons

Roll call.

President Wilshire

Will the Clerk please call the roll?

**MOTION BY ALDERMAN MORAN FOR FINAL PASSAGE OF O-23-047 AS AMENDED**

A viva voce roll call was taken which resulted as follows:

- Yea: Alderman O'Brien, Alderman Klee, Alderman Lopez, Alderman Jette,  
Alderman Clemons, Alderman Dowd, Alderman Caron, Alderman Comeau,  
Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire 11
- Nay: Alderman Sullivan, Alderman Gouveia, Alderman Moran 3

**MOTION CARRIED**

Ordinance O-23-047 declared duly adopted as amended

**O-23-051**

Endorser: Alderman Richard A. Dowd

**AMENDING THE LAND USE CODE REGARDING THE APPLICATION OF THE SIGN ARTICLE TO GOVERNMENTAL SIGNAGE AND THE APPROVAL OF SIGN PERMITS THROUGH THE SITE PLAN REVIEW PROCESS**

Given its second reading;

**MOTION BY ALDERMAN DOWD FOR FINAL PASSAGE OF O-23-051**

ON THE QUESTION

Alderman Dowd

I'd like to speak to it briefly.

President Wilshire

Alderman Dowd?

Alderman Dowd

Yes, this is to assist in the process used by the Zoning Board and no other reason and I'd like to have Director Sullivan come up and briefly explain it and the motions that were taken by other committees.

President Wilshire

Director Sullivan?

Matt Sullivan, Community Development Director

Thank you very much. Everyone excited for another deep dive into the Land Use Code here, hopefully. I would like to just briefly summarize some of the commentary at the PEDC meeting where this legislation was presented. I hope, I think

we're going to have a more brief discussion this evening but happy to answer any questions that members of the Board may have. But just to fundamentally review the intent of this legislation and maybe the genesis behind its creation, the governmental body and whether it's this governmental body, or the State of New Hampshire, or the federal government's bodies are by default exempted from complying with Municipal Land Use Ordinances under New Hampshire State Statute under RSA-674-54.

However, many communities like the City of Nashua have tried to sort of be the best representative of what they'd like to see in the community and have chosen to opt in to compliance with their own land use statutes. Again, the City of Nashua is one of those municipalities that have chosen to do that. What that results in is in cases where the municipality is presenting a project, a building, or a sign, or a site plan and something does not comply with what our land use ordinances say, the City, or the School District, or whoever it might be actually has to go to the Zoning Board and get a variance if it's something that would require Zoning Board relief to actually get that exemption.

The variance law is subject to the Zoning Board finding in favor of five specific criteria under New Hampshire State Statute. I won't go through each of these but generally they're intended to protect the intent of the zoning, protect the neighborhood integrity, to ensure that variances do not create a general threat to public health, safety, and welfare but they also require this sort of nebulous and more elusive fifth standard be met and that is a standard of hardship. The reason I raised this fifth criteria that the Zoning Board needs to consider when contemplating a variance is that this fifth hardship criteria essentially being some very unique component of the land or the request that makes this any request from the ZBA very, very differentiated is that in the cases where the municipality has gone to seek a variance whether for a sign or for something else, that component of hardship has been very challenging for our Zoning Board to contemplate for a variety of reasons. Our Zoning Board is well versed in the law. They've received regular training on the variance criteria and how they should apply them. What's typically presented to them is that any municipal request really has a level of public health, safety, and welfare to it and is intended to provide some opportunity to the public or provide some support to a municipal entity or a governmental entity. So often the fifth criteria has been represented to the Zoning Board as being the very idea that the intended use, or the structure, or the sign is intended to benefit the public and therefore a variance is warranted.

I'm not going to debate or comment on whether or not that treatment by our Zoning Board has been appropriate in the past but what I can say is that with the exception of just one variance over time on the signage side of things, nearly all variances have been granted for municipal signage. Meaning that if the municipality could not comply with the size, or the area, or the typology, the Zoning Board has acted to actually grant a level of exemption so that the sign could be constructed. There are a few examples of the signage across the City. One I would point out is perhaps there's a sign in front of the Hunt building that encroaches into the front setback. It's a little bigger than it should be. It doesn't fully comply and the Zoning Board had to weigh in.

The proposed ordinance before you this evening seeks to change the process associated with a sign particularly signs when they cannot comply fully with the zoning ordinance that exists in the City of Nashua. What it seeks to do is not to change whether or not there's a public hearing process of the Zoning Board, not to change whether there's public notification, and not to change whether the Zoning Board consider criteria when actually granting some level of relief to a sign. Instead what the legislation before you this evening tends to do is rather than applying that fifth hardship criteria that can be challenging to apply, an applicant, or the municipality specifically, or any governmental entity would instead submit what's known as a "Special Exception Application". So this is an alternative process to the variance process and most critically and maybe fundamental to this board's consideration is that a special exception does not require that an applicant demonstrate hardship. It takes away that standard of review. What it protects is again, public health, safety, welfare impact. It protects injurious impacts to the neighborhood. It intends to generally respect the underlying character of the zoning ordinance that's in place. So not undermine what folks thought they were buying into when they may have bought in to a neighborhood, or into a business, or into some other use. So that public process still exists and more critically going from a variance to a special exception, I'll be at a lesser and less stringent process, it does not change the fact that any provision of the code that cannot be met must be approved by the Zoning Board. So it does not take away the fact that an exemption must be sought, an exemption must be granted, it just changes the form and the process of that exemption takes.

So that's one modification and I can happy to answer any questions. As many folks of the PEDC know, we went on for quite some time talking about this. I think it was a very, very good discussion. There is one additional component that is included in the amendment before you and that is that, planning staff through some years of experience with the ordinance and applying it realize there was a bit of a loophole within our ordinance that actually protected signs that may have been inadvertently or perhaps deliberately presented on site plan applications that went to the Planning Board. I won't get into the details too much but the Planning Board does not have the authority, or in our sort of professional opinion, should not have the authority to render decisions on zoning that would otherwise be subject to administrative review or the Zoning Board. Unfortunately, we



had a loophole in our code that provided the Planning Board an additional level of authority for reviewing and approving signs that were presented on the site plan whether or not those signs comply with our zoning ordinance and so it could have resulted in some unintended signs produced as part of developments that went to the Planning Board. Luckily, I can't speak to any egregious examples where this actually happened but it's something we've recognized in the ordinance that we want to tighten up a little bit. Based on this adjustment to the governmental signage provisions, we felt this was the appropriate time to do so.

Happy to answer any questions about either of these two modifications that anyone might have.

Alderman Dowd

You forgot to mention that the Planning Board approved this.

Matt Sullivan, Community Development Director

Yes. Thank you Alderman Dowd. I should have led with that. There was substantial discussion at the PEDC and ultimately there was a unanimous recommendation there albeit I think some outstanding questions. I'm happy to address tonight and then at last Thursday's Planning Board meeting, this amendment was unanimously recommended out of that referral body as well.

President Wilshire

Alderman Klee?

Alderman Klee

Thank you Madam President. I don't have a question but as a member of the Planning Board, I just wanted to reiterate that it did pass the Planning Board. What one of the loopholes that was discussed by Director Sullivan is to me a very important one. It would allow that if Zoning and so on had approved everything, Planning Board had approved every anything that meant if someone put a sign on the property after the approval process, it didn't have to meet the City standard and that could include the Historic District and so on. That's quite disturbing that this could have happened.

The other thing is the reference to government entity. Just to clarify, it's not just the municipality. So if the post office, and please correct me if I'm wrong, if the post office or federal government, the FAA, or something like that wanted to put up a sign, they would fall within the same exception type thing that the municipality would be meaning that we eliminate the hardship and that is correct. I am correct in that?

Matt Sullivan, Community Development Director

That is correct yes.

Alderman Klee

So it's not just a municipality. It does include any other government entity within the City. So thank you.

President Wilshire

Further discussion? Alderman Jette.

**MOTION BY ALDERMAN JETTE TO AMEND BY STRIKING THE SECOND PARAGRAPH DEALING WITH THE NEW SECTION 190-110.1 MUNICIPAL GOVERNMENT SIGNS**

ON THE QUESTION

Alderman Jette

I'd like to speak to this.

President Wilshire

Alderman Jette?

Alderman Jette

So what my amendment does is it leaves in the elimination of the provision that talks about the signs on the site plan but it strikes this new provision regarding municipal government signs. So what it says is notwithstanding any other provision of this article, signs proposed to be erected by the City of Nashua. No one else - not the post office, or federal government, or. This ordinance that's before us is directed to the City of Nashua only.

It goes on to say related to government use are permitted in every zoning district by special exception and it goes on from there. Now, so what this does Director Sullivan and I have talked about this quite a bit and not surprisingly, we have different opinions. I think that this is a substantial change. As Director Sullivan said, our Land Use Code specifically subjects the City to our zoning laws including the sign ordinance. That was a deliberate decision made by the Board of Aldermen a number of years ago in answer to citizen complaints that the City was ignoring the zoning ordinance and was putting things in violation of the zoning ordinance. So this was put in because of abuses in the past. I agree with that. I don't think the City ought to be treated, as opposed to what Director Sullivan thinks, I don't think the City ought to be treated any differently than any other citizen, any other developer, anyone else that wants to build anything whether it's individuals. I think we should all be subject to the zoning laws that the Board of Aldermen adopt.

So when it comes to signs for example, the sign ordinance provides - depending upon the zoning district that you're in - there are signs that are permitted of certain sizes, certain characteristics. For example in residential zones, electronic messaging signs are prohibited. They're not permitted. You can't do it. Because the Aldermen sometime in the past decided that in residential zones and places in neighborhoods where people live, whether we have houses, people are living, that we should not be subject to electronic messaging signs. I think everybody knows what I'm talking about is these signs that have movable type or graphics. At the Planning Board meeting, reference was made to that sign that that mortgage company had on Amherst Street that was put up before electronic messaging signs were prohibited. So people, I think, the Aldermen at the time and hopefully you all still feel the same way. We don't want our neighborhoods subjected to these types of signs. The signs you see on Amherst Street or the Daniel Webster Highway. In our residential areas, we don't want those signs - those flashing signs, moving characters.

Alderman Dowd

Point of order. I think we're getting off subject. The things you're talking about aren't related to.

Alderman Jette

I'm sorry. I've got the floor.

Alderman Dowd

Yes but you brought up that there were people that gave information that said that they didn't like the City not complying. I was Chair of the Zoning Board many years ago for many years.

Alderman Jette

I'm sorry does he have the floor? I thought I had the floor.

President Wilshire

Alderman Dowd could we...you have the floor Alderman Jette.

Alderman O'Brien

Unfortunately.

Alderman Moran

Point of Order. Can we just respect the Alderman speaking? Thank you.

Alderman Jette

So I was saying that we you know the reason that we have different rules for different zones you know is to provide like for residential areas to keep them free of these kinds of signs for example.

Now what this ordinance would do is allow these signs by special exception. A special exception seeks permission to do something that the zoning ordinance permits under certain special circumstances. A variance seeks permission to do something that the ordinance does not permit. So under our current law for example, an electronic messaging sign is not permitted in a residential zone. So you can't put up a sign with the electronic messaging aspect to it without getting a variance. In order to get a variance, you have to go through the five criteria and you know it makes it difficult to do so on purpose. There's a reason for that. That unnecessary hardship provision is specifically designed so that you can't do something that the zoning ordinance prohibits except that in very special cases. It has to be something that makes that particular property unique where complying with the zoning ordinance would make the use of the property impossible, a reasonable use of the property impossible.

By making it a special exception, you're doing away with that. Instead of starting from the viewpoint that is prohibited, you're starting from the viewpoint that it's permitted under special circumstances. Special circumstances in other examples of zoning ordinances that provide for special exceptions, there's a list of specific items that have to be met in order to meet the special exception requirement. This proposed ordinance says that municipal government signs related to a government use are permitted in every zoning district by special exception. Now government use is defined in the Statutes as any public purpose which is statutorily or traditionally governmental in nature. So it's not a very precise definition is it? A governmental use is something that's used by the government. I think it opens a wide door to allowing city departments - the School Department, Public Works Department, any other department of the City to go to the Zoning Board and say we want to put up a sign that doesn't comply with the sign ordinance but it's going to be for a governmental use. That to me is a big mistake.

You know what is the big problem? Director Sullivan says of the variances, sign variances that the City has requested, he could only find one where the variance was not granted. So what's the big problem? He's says that the Zoning Board is struggling with this unnecessary hardship provision. Well they seem to have gotten around it and whether or not that that's in compliance with the law or not is a different subject. I just think that the City ought to comply with its own laws. If the City, if we Aldermen think hey times have changed. I've heard that a lot. That electronic messaging signs are fine. The City ought to be able to put up bigger signs. They ought to be able to put up electronic messaging signs to get out whatever message they need to get out. If that's how we feel, then we ought to change the sign ordinance. We could say like some towns, some cities have limited - they've accepted the municipality from the sign ordinance for things like, you know, traffic control devices. If we wanted to do that, we could do that. If we wanted to say that for example schools - a lot of these signs that have been approved have been for schools. If we wanted to say, you know, schools can have a certain kind of sign in order to get a message out. We could change the sign ordinance and provide that. If we wanted to say it could be done by special exception in certain limited cases and define them that would be another possibility. To just say that the City can put up signs for any governmental use without defining that more, I think that just opens up a wide door to allowing the City to put up signs anywhere in the City without much restriction. So that's why I made my motion. Thank you.

President Wilshire

Alderman Klee?

Alderman Klee

Thank you, Madam President. At the risk of seeming contrary, and I apologize if I do seem this way, I believe the ordinance references RSA 674-54 which does in fact define governmental use means is construction or development of land owned or occupied or proposed to be owned or occupied by the State, university system, the community college system in New Hampshire by county, town, city, school district, or village district, or any of their agents for any public purposes which is statutory or traditionally governmental in nature. I think that's what was so - I'm going to ask Director Sullivan if he could correct the record if I'm wrong here.

Matt Sullivan, Community Development Director

You are both correct in fact. The Statute absolutely is more broad in nature. The reason that the proposed ordinance reads the City only is that other governmental bodies are already exempted out of the City's ordinance. The only body

that is fully subject to the City's ordinances under I think its NRO 190-2 is the City itself and that's why the language was written that way Alderman Jette. So you're in fact both correct. The Statute is more broad. The reason this is so narrow is that those other governmental entities are already exempted under the existing Land Use Code.

Alderman Klee

May I continue?

President Wilshire

Alderman Klee?

Alderman Klee

Thank you very much. I think one of the reasons for it and while again, I respect my colleague and all the comments that he had made, they were very good comments. This does not exempt the City from still having to go in front of the Zoning Board or anything like that. It takes that one element away and that one element is the hardship. I think in the past the Zoning Board has been lenient with the hardship. We always look at the hardship as what is the cost to someone's business and so on. I think that they've kind of made a broader definition of it and this kind of takes that burden away from them. It doesn't mean that they don't have to pass all of the other rules of signage and so on. So I do think it's a good idea to remove that one element and not put the burden on our Zoning Board. If this were taken away and said that they no longer had to go through, I wouldn't support it under any circumstances. I do agree that for most part it should always go through and I think the City should be held to somewhat to the same standards.

Some people may argue and say I think what was kind of alluded to before that the hardship is that the information isn't going to the public which most signages do. Whether it be the signage for the landfill or signage for the new middle school telling report cards are due or something to that nature. So some people could argue and say well the public's not getting that information. That's the hardship. I don't think I would put that as a hardship. So I think it's okay to remove this as long as they still have to maintain some criteria, still have to go in front of the Zoning Board, etc. So thank you for listening.

President Wilshire

Further discussion? We're voting on the amendment.

**MOTION FAILED**

**MOTION BY ALDERMAN DOWD FOR FINAL PASSAGE OF O-23-051  
MOTION CARRIED**

Ordinance O-23-051 declared duly adopted.

**MOTION BY ALDERMAN THIBEAULT TO REMOVE FROM THE TABLE OF THE PERSONNEL/ADMINISTRATIVE  
AFFAIRS COMMITTEE ORDINANCE O-22-028 REQUIRING NONPUBLIC SESSIONS TO BE ENTIRELY IN PERSON  
MOTION CARRIED**

**O-22-028**

Endorsers: Alderman Derek Thibeault  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman Thomas Lopez  
Alderman-at-Large Ben Clemons  
Alderwoman-at-Large Gloria Timmons

**REQUIRING NONPUBLIC SESSIONS TO BE ENTIRELY IN-PERSON**

Given its second reading;

Alderman Thibeault

Thank you. In recent weeks we've found out that the City can be hacked.

President Wilshire

You should make the Motion.

Alderman Thibeault

Oh sorry, sorry.

**MOTION BY ALDERMAN THIBEAULT FOR FINAL PASSAGE OF O-22-028**Alderman Thibeault

In recent weeks and we saw that we can be hacked when we originally debated this issue way back, Mr. Miseirvitch stood up here and said nothing - none of our apps, none of our software is safe and we've seen that. We've seen that in the last couple of weeks. So I don't know why this wouldn't be an easy slam dunk not to use Zoom as an app for a non-public session when it's a security issue. Even when we did use it, we had two people on it that we couldn't even hear because we can't figure out the technology to be able to let the people leave, and still have a microphone in here, and be able to hear the people on Zoom. It was two things to it, right? So the security of it and the fact that it hasn't really worked. So I don't know. I mean I was gonna let it die in Committee until we've had this recent hack. I think that's a perfect time to bring it up and determine if it's something we want to do going forward. We've had people in here saying that no app is safe so.

President Wilshire

Alderman Gouveia?

Alderman Gouveia

Thank you, Madam President. I would be against this motion on the floor right now. We went over this in the Personnel Committee for not just one but two committee meetings and it was really productive. I thought we had really good debate over it. I think both sides made very valid points. But at the end of the day for me what it comes down to is allowing an Alderman to do their job. As we all know when we go into these non-public sessions, we do important work. For me personally limiting an Alderman's ability to participate in that non-public, it doesn't benefit us as a body.

I do definitely see the security aspect of it but at the same time if we have a consultant or an outside vendor that wants to talk at one of these non-publics are they now supposed to fly in? Are we now going to pay for them to travel in for these so that expense will go up? I feel the Zoom option is convenient and sure we could we could waive that for somebody but then we get into the whole point of well is it safe or not? Is it only safe when it's convenient? I just think this is too much of a slippery slope. The Committee debated this heavily. I thought we brought up a lot of good points if anybody hasn't seen that meeting yet, guys go back and look. We saw a lot of opinions that night. I stand by what the Committee's work was done there and I would not support this. Thank you.

President Wilshire

Alderman Comeau?

Alderman Comeau

Yes thank you Madam President. I agree wholeheartedly with my colleague from Ward 1. I don't believe that Zoom, and I wish Mr. Miseirvitch was still here, and I don't believe Zoom is connected to the City's secure networks. If it was, that might be a reason to consider this but as the previous speaker said, this is just one aspect of the way Zoom is used. If we got rid of zoom for non-public sessions for Aldermen, we'd still be using it for regular sessions for Aldermen. The Zoning Board would still be using it. The Planning Board would still be using it. I've participated in a number of committee meetings. The BIDA uses it. So it's either secure or it's not. If it's not secure, then nobody should be using it. If it's secure enough for all of these other boards and for the regular board to be using it in regular session, then it's good enough to use in non-public as well. It's not a security risk as far as you know a hacking threat as far as I know. That's why I wish Mr. Miseirvitch was still here. But it's just a communication tool. It's not connected to our secure network. It's not tied into our payroll system. Nobody's using it as a gateway to get into our data. So like the previous speaker said, the only thing this ordinance would do, the one thing it would accomplish, is making it harder for the 15 of us to do our jobs. So for that reason, I will not support it and I didn't support it in the fall for the same reasons.

President Wilshire

Alderman Clemons?

Alderman Clemons

Thank you Madam President. So I would agree with the sentiment that it's probably not a security threat in the sense of somebody's going to hack in and get into our system. However, where I diverge from that is that I don't necessarily think that somebody couldn't hack into it and get the information from the non-public session from a Zoom session. The difference there is that on a Zoom session that's a public meeting, it's a public meeting anyway. So if somebody was foolish enough to hack into it and see that, well they could have gotten into that in the public anyway because that's open to the public to begin with.

In a non-public setting though, the idea is that you're keeping the information that away from the public for a certain reason under the law. So if there's the ability to get in via that to an actor whoever it may be, for whatever reason they may want to, then I think we're opening ourselves up. I agree with some of the previous speakers about how you know it could be more costly to the City. Especially, you know, tonight, we were given the example that one of the attorneys, an attorney couldn't come for whatever reason because it would be an expensive thing. Well, if we couldn't do a non-public session on Zoom because of that, I suppose we could do it via telephone. So you know, we could set up a telephone line and a telephone line is much more secure than something open on the internet. So I think for me in light of everything, I'm going to support this this evening.

President Wilshire

Alderman Klee?

Alderman Klee

Thank you, Madam President. In the in the past prior to Zoom when we had these non-publics, I believe we had two phone lines that were available for someone to call in, so it's not like they were excluded. It's rare that we would have more than two Aldermen that would be missing for something like that. They could still call in. The reference that was made to the Zoom that we had with the non-public, I believe it was a Director Cummings and Director Sullivan who had who had Zoomed in, and they could talk to themselves but they could not talk to us and that made it very difficult. So I think at that point we were kind of like texting back and forth. It would have been so much nicer to just have them on the phone where they could have explained this to him. To my colleague who brought that up, yes, we could and I was thinking that same thing. We wouldn't be bringing them here and we never did in the past. We did not bring them here. We used the phone system. I think our phone system is good. The phone system stays within this horseshoe and so on.

What happened at that - it wasn't the last non-public, I think it was the previous non-public when we had the two that were on line. As I said, one of the things is when they leave the space when they have it and they turn all the microphones and everything down in that space. So they would have to leave it up, the microphones have to be up, and it could be heard through the door. Some could argue it could be heard through this door as well but that's just one more, one more area. I did reach out to Jeff and say to him, can you guys do it? He said, it's nearly impossible for us to do it. If we threw a lot of money at it could they do it? Probably could but I think using the phones to allow whether we had two phones or three phones whatever it was allow them to call. I think that's the way we should go at least for now. I think that this is a good ordinance and I will support it. Thank you.

President Wilshire

Alderman Moran?

Alderman Moran

Thank you, Madam President. First maybe a clarifying question. We can always use phones. Is that correct? Is that an option currently? No.

President Wilshire

It would be if we had a phone line in here. We do, okay.

Alderman Moran

Attorney Bolton is shaking his head no.

Steve Bolton, Corporation Counsel

This Ordinance prohibits electronic communication in non-public sessions. A telephone is an electronic communication.

Alderman Moran

I'm glad I asked that clarifying question because I thought we were just talking about Zoom because I thought as my colleague to my right Alderman Clemons' stated, the phone use is more secure.

Also, keeping this this in mind, what just happened to respect in a committee process. Let's do it in a separate meeting if we're gonna use that but maybe it needs to stay in Committee to work out that particular thing about the phones. I don't like Zoom. I don't think Zoom should be used. I think if someone is traveling and you want to call in, there's a secure line in here that you can listen in. Because maybe this happened recently, maybe the recording system is down, we don't have a transcript that we go sit down and read in the Clerk's office. Maybe we're looking at someone's handwritten notes that then encompass the entire conversation. I think it's upon us to be fully informed for any major decision that we might make even if we're not present if we have to do it at a later time to have all the information. Like I co-sponsored this because I'm against the Zoom piece but hearing Attorney Bolton with the phone scenario and several members have said phones an option but apparently it's not. So maybe it needs to stay in Committee. Maybe it'll be telling on who supports it, who just was talking about respecting the Committee process but who knows, that's depending on when you have the votes I guess.

President Wilshire

Alderman Sullivan?

Alderman Sullivan

Thank you, Madam Chair. I didn't vote for this before and I can understand and respect the timing on it because of everything that happened. However, non-public sessions happen at the drop of a hat. To the point that was made earlier in order to kind of gather up enough Aldermen at some point, you have to make sure you have to make it available for people to access the meeting.

Zoom as a platform doesn't sit on our City website. I would make the argument now that the link that you can buy tickets to the Nashua Performing Arts Center is more at risk than Zoom because that sits on our website, and then it goes to another webpage, and accesses information, and that's the way in. Zoom sits on a completely different server. We don't record the meeting, its password protected, its host enabled. Only people that you want in get in. Before I think it was an issue when we were putting the Zoom link out to everybody. It was on the City website even. If there's a non-public session, it's a finite number of people that get the link and the password. I think there are many more ordinances that we could pass to protect the City. I don't think this is one of them but I can understand and respect the timing around it but I can't support it. Thanks.

President Wilshire

Alderman Jette?

Alderman Jette

Thank you. So I guess the – could I through you could I ask the maker of the motion was this tabled in Committee or was it tabled here?

President Wilshire

Alderman Thibeault?

Alderman Thibeault

So it was voted a "no" at Committee. It voted down. It failed.

Alderman Jette

It was voted down in Committee?

Alderman Thibeault

Yeah and then we tabled it indefinitely or whatever.

Alderman Jette

The Board tabled it?

Alderman Clemons

It was tabled.

Alderman Thibeault

It was tabled. We're pulling it out of Committee.

Alderman Jette

Okay. So if I could continue?

President Wilshire

Alderman Jette?

Alderman Jette

So I feel, you know, I'm probably the least qualified person to talk about this stuff. I feel that with all due respect to my colleagues, I hear somebody saying that Zoom is safe. I hear someone saying it isn't safe. I hear different opinions. You know we do have, I think, in our IT Department people who are expert in this area who could answer our questions and give us information. So I don't want to cut off debate but I would like to suggest that maybe it'd be sent back to Committee and have the Committee look at it with the benefit of whatever in-house experts we can gather to guide the Committee and come back with a recommendation.

President Wilshire

So your motion is to re-refer back to the committee?

Alderman Jette

Does that cut off debate or not?

Steve Bolton, Corporation Counsel

If it passes it's no longer before the Board? It's been assigned to Committee.

Alderman Jette

It would cut-off debate here?

President Wilshire

Yes because it's no longer in our...

Alderman Jette

I'll hold off on that.

President Wilshire



Okay. Alderman Thibeault?

Alderman Thibeault

Thank you Madam President. A couple of things. To Alderman Jette's point, I mean in the Committee we had Mr. Miseirvitch stand right there and he said it's not safe. We can go back and look at the tapes. Even though he said that, the Committee around me still voted to table it. So I mean he can come back here. He's gonna say the same thing. So I mean what we do for that? But I mean we did have him come in here specifically for that.

As far as people who say do it in the Committee, well the reason why I'm bringing it back out of Committee is because things have changed in the City. We got a hack otherwise I wasn't bringing it back. I was gonna let the Committee do its job. I had never planned to pull this out of Committee. That wasn't the goal. But then with this recent - and is it safe? I don't know. Somebody said the other day wise man said, all apps can be hacked. Again I know to Alderman Comeau's point, it's not going to take down payroll or anything like that but what's said in non-public sessions should stay here. What did what did Aldermen do for 100 years before Zoom was invented? I mean did they just miss stuff or now we all have more pressing commitments and we can't drop it on a hat but back then, you know, there was nothing to do. So they were able to get to the meeting. I don't know. There wasn't Zoom back then. People had to find a way to communicate. I don't know but just that's why I brought it up not because I do respect the Committee process. But to me, the circumstances have changed and that's why I brought it out not because I'm just being a jerk here and just saying hey let's vote on this because I want to be here till 11 o'clock at night so.

President Wilshire

Alderman Lopez?

Alderman Lopez

I think we can look at the video unless we vote tonight and I think we can have Mr. Miseirvitch speak for himself and answer questions if we do put it to Committee. So I kind of favor that because as I recall, it was also stated that the phone systems through here were also electronic and weren't necessarily more safe. There were a bunch of different examples of ways that anything can be hacked or interfered with. It was pointed out that even just being in the room like someone could leave something recording in here. We're not scanning the room. We're not checking that kind of stuff. So nobody with any kind of internet security credentials is gonna say something is safe because this is waiting for the person to hack it and now is no longer safe. So I do think this is a worthy discussion but I would prefer it be reviewed back in the Committee setting.

President Wilshire

Alderman Dowd?

Alderman Dowd

I think I have a compromised position that'll make everybody happy, maybe not. I'm used to dealing with classified information and it's on several levels - confidential to DSSCI. There's five steps in between. Depending on which level you're talking about increases the amount of security you need. So like compromises, I like to make an amendment to this says unless advised against it by either IT or Legal.

**MOTION BY ALDERMAN DOWD TO AMEND TO INCLUDE "UNLESS ADVISED AGAINST IT BY EITHER IT OR LEGAL"**

ON THE QUESTION

President Wilshire

Alderman Comeau?

Alderman Comeau

Yes thank you. If I could ask through you to the maker of the motion, could you explain what you think that motion will do for this legislation? So I'm just not getting what you're saying. Thank you.

Alderman Dowd

Well we have people saying that we think that software can be compromised. If we're talking about something that's yeah non-public because we don't want people to know but it's something that probably would be stopping non-public the next day or something versus the thing we talked about recently. Different levels of watching your data. So I said yes you could all - actually this motion says you have to always be here. So I'll withdraw my motion.

**ALDERMAN DOWD WITHDREW HIS MOTION**President Wilshire

Okay. Alderwoman Timmons?

Alderwoman Timmons

Oh thank you, Madam President. It's not just the Zoom that's the problem because we don't know what the person on the other side of that Zoom is really doing. I'm supporting this because I sit on the Board of Education and know that we did not do things on Zoom. It was in person. It wasn't on Zoom. We did it in person. The reason why you do it in person because people have other people in house and you don't know whose back there. I think by having everybody in person not to stop any of the Aldermen or women from not doing their job, you cannot secure what comes in your house or walk by you while you're on Zoom.

Now I really don't live with a lot of people but some of you do. Sometimes we get pretty loud in here and you can hear stuff. I think you should be in person with these and I'm going to support it. That's the main reason because I know things get out on Zoom unintentionally sometimes. Sometimes intentionally. You leave things down you. You write little notes at your little desk there but you don't know who's watching that, who's seeing that. So that's why I will support this legislation because I think it's the right thing to do.

President Wilshire

Alderman Gouveia?

Alderman Gouveia

Thank you Madam President. To go off of what my colleague from Ward 4 said earlier with the phone system, we did bring this up if I recall correctly. Mr. Miseirvitch said that it was a VOIP system so it's voice over IP. So for us to get a I would say I guess a more secure line for lack of better terms, it would bring more and it would be more of a cost to the chamber itself. What that is I don't know. That's above me really. I could be open to a compromise for phones if we do go more that route. I think there, in my opinion, there should be an option available and whether that's Zoom or that's on the phone, I think that's up for debate but I would like to see this go back to Committee for more conversation. Thank you.

President Wilshire

Alderman Moran?

Alderman Moran

Thank you Madam President. I would like to make a motion to re-refer to committee. And can I speak to that motion?

**MOTION BY ALDERMAN TO RE-REFER TO COMMITTEE**ON THE QUESTIONPresident Wilshire

Yes.

Alderman Moran

So I understand my colleague from Ward 8's reasoning for bringing this up. I completely understand it. I co-sponsored

with him. I don't think personally we should be allowing Zoom because of the security risk. However, there should be some kind of option worked out at the Committee level to figure out how an Alderman can listen in a secure way to meetings that are upon them to represent their constituents. Clearly we cannot hash that out here as the full Board. IT is not here. Other technology folks aren't here. Does it need to be a copper line? Who knows? These are questions that can be asked at the Committee. Again, earlier we've heard how great the Committee work is and how much the work should be done there. Thank you.

President Wilshire

Motion is to re refer. Alderman Comeau?

Alderman Comeau

Yes, thank you Madam President. I will support the Motion to re-refer because I'm nothing if not consistent. I made several arguments earlier tonight as well about how this type of thing should be hashed out at the Committee level. I'd like to point out that it already has been hashed out at the Committee level and so I was one of the ones who understood this ordinance the first time it came before us but I will still support re-referring it so that we can get it right the first time as I like to say. Thank you.

President Wilshire

Alderman Clemons?

Alderman Clemons

Thank you Madam President. I am going to not support sending it back to Committee. I understand the need to bring it out of Committee because of the circumstances that the City was in. I don't think that this - I don't find myself in contradiction from my earlier comments about respecting the Committee because I think we are in a unique situation in this particular instance. You have to look at each thing with its own lens and therefore, I won't support sending it back to the Committee because I think it should be passed this evening.

President Wilshire

Alderman Thibeault?

Alderman Thibeault

Thank you Madam President. Yeah, I mean I'm not sure what people don't get that keep taking swipes. Times have changed. That's why I brought it up. I did understand it the first time. I voted the way I wanted to vote both times I voted for it before. The reason why I'm bringing it up is because things are different. Hacks came up. Like I said before, I was going to leave it there to die. I really wasn't ever going to bring it back again. I didn't think I would ever have enough support for it but I think at this point times have changed, things changed, and I thought security reasons were a good reason to bring it back. So there's all only good intention there. There's no intention to my Alderman here to the right. I support her review on that but that's not the view I'm coming at with it. I'm coming at it with purely security and the fact that we haven't been able to really figure it out the last time. So yeah, that's it really.

President Wilshire

Motion is to re-refer. Further discussion?

Alderwoman Timmons

Can we do roll call?

President Wilshire

We can do a roll call.

A viva voce roll call was taken which resulted as follows:

Yea: Alderman Sullivan, Alderman Moran, Alderman Lopez, Alderman Jette,

Alderman Comeau, Alderman Gouveia

6

Nay: Alderman O'Brien, Alderman Klee, Alderman Clemons, Alderman Dowd,  
Alderman Caron, Alderman Thibeault, Alderwoman Timmons  
Alderman Wilshire

8

**MOTION FAILED**

President Wilshire

Alderman Klee?

Alderman Klee

We're back to the original motion, correct?

President Wilshire

Yes.

Alderman Klee

I have a question for the maker of the actually of this particular ordinance. Would you be willing to put in a provision that would allow for phone or could we even do that? I guess I would have to look to Counsel for that.

Steve Bolton, Corporation Counsel

It could be done, certainly. I don't prefer doing legal documents on the fly without any notice but it could be done.

President Wilshire

I assume we could have a phone line installed that's not a voice over IP that's a landline. Just a basic hot line.  
Alderman Clemons?

Alderman Thibeault

Do you want me to answer her? You asked me, right?

Alderman Klee

I did.

President Wilshire

Okay. I'm sorry. Yes.

Alderman Thibeault

If somebody wanted to amend it that way, I'd be absolutely fine with it.

President Wilshire

Alderman Clemons?

Alderman Clemons

I would be okay with amending it to using a phone line but so long as that phone line was a traditional - was not voice over

internet protocol. So I would be okay with an amendment that said that. Again saying that though that would have to - that would require this body to appropriate the money to put that such a line in and I don't know what the cost of that would be. So my preference would be to pass this as it is, and find out how much that would cost. If that's going to be the case, we can bring up new legislation in the future. But for now, I would say we just allow non-public sessions in person.

President Wilshire

Alderman Dowd?

Alderman Dowd

Yeah I agree. I also want to add the last time we had a phone line into this chamber no more than two people could be on it. I'm not even sure it was a straight landline whether you can only have one but you certainly couldn't have multiple people on a single phone line. So yeah, Donna is saying we're still limited to two. So that is intrinsically unfair. I think we ought to pass this as is and discuss it further and get IT involved. I think they're a little busy right now so let's pass this as is and wait till the current firestorm has gone by.

President Wilshire

Okay. Motion is for final passage.

Alderwoman Timmons

By roll call please.

President Wilshire

By roll call.

**MOTION BY ALDERMAN THIBEAULT FOR FINAL PASSAGE OF O-22-028 BY ROLL CALL**

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Moran, Alderman Clemons, Alderman Dowd, Alderman Caron, Alderman Thibeault, Alderwoman Timmons Alderman Wilshire	9
Nay: Alderman Sullivan, Alderman Lopez, Alderman Jette, Alderman Comeau, Alderman Gouveia	5

**MOTION CARRIED**

NEW BUSINESS – RESOLUTIONS

**R-23-119**

Endorsers: Mayor Jim Donchess  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Patricia Klee  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman Richard A. Dowd  
Alderman June M. Caron  
Alderman Derek Thibeault

**CHANGING THE PURPOSE OF UP TO THREE HUNDRED AND FIFTY-FOUR THOUSAND SIX HUNDRED AND FIFTY-EIGHT DOLLARS (\$354,658) OF UNEXPENDED BOND PROCEEDS FROM THREE WASTEWATER PROJECTS TO THE SEWER INFRASTRUCTURE IMPROVEMENTS PROJECT**

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE and SCHEDULE A SPECIAL BOARD OF ALDERMEN PUBLIC HEARING at 7:00 PM ON WEDNESDAY, MAY 24, 2023 in the aldermanic chamber, by President Wilshire

**R-23-120**

Endorsers: Mayor Jim Donchess  
Alderman Patricia Klee  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman Thomas Lopez  
Alderman-at-Large Ben Clemons  
Alderman Richard A. Dowd  
Alderman Derek Thibeault  
Alderman-at-Large Lori Wilshire

**AMENDING THE PURPOSE OF A FISCAL YEAR 2023 UNLIKE ESCROW FOR THE POLICE DEPARTMENT**

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE, by President Wilshire

**R-23-121**

Endorsers: Mayor Jim Donchess  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Patricia Klee  
Alderman Richard A. Dowd  
Alderman June M. Caron  
Alderman Derek Thibeault

**RELATIVE TO THE SUPPLEMENTAL APPROPRIATION OF \$24,550 OF FY2023 UNANTICIPATED REVENUE INTO FUND #7026 "CAPITAL EQUIPMENT RESERVE FUND"**

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE and SCHEDULE A SPECIAL BOARD OF ALDERMEN PUBLIC HEARING at 7:00 PM ON WEDNESDAY, MAY 24, 2023 in the aldermanic chamber, by President Wilshire

**R-23-122**

Endorsers: Mayor Jim Donchess  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Patricia Klee  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman-at-Large Ben Clemons  
Alderman Alex Comeau  
Alderman Richard A. Dowd  
Alderman June M. Caron  
Alderman Derek Thibeault  
Alderman-at-Large Lori Wilshire

**AUTHORIZING THE MAYOR TO ENTER INTO A FEDERAL AID PROJECT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE AND THE TOWN OF HUDSON FOR THE PURPOSE OF REHABILITATING THE TAYLOR FALLS AND VETERANS BRIDGES AND A RELATED AGREEMENT FOR REIMBURSEMENT WITH THE TOWN OF HUDSON AND TO ACCEPT AND APPROPRIATE \$2,500,000 FOR THE PROJECT**

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE and SCHEDULE A SPECIAL BOARD OF ALDERMEN PUBLIC HEARING at 7:00 PM ON WEDNESDAY, MAY 24, 2023 in the aldermanic chamber, by President Wilshire

**R-23-123**

Endorsers: Alderman Patricia Klee  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman-at-Large Melbourne Moran, Jr.  
Alderman Richard A. Dowd  
Alderwoman-at-Large Gloria Timmons  
Alderman-at-Large Lori Wilshire

**AUTHORIZING THE GRANTING OF AN EASEMENT TO PENNICHUCK WATER WORKS, INC. FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER LINE**

Given its first reading; Assigned to the PENNICHUCK WATER SPECIAL COMMITTEE, PLANNING BOARD, AND GREELEY PARK ADVISORY COMMITTEE by President Wilshire

**R-23-124**

Endorsers: Mayor Jim Donchess  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Patricia Klee  
Alderman-at-Large Melbourne Moran, Jr.

Alderman Thomas Lopez  
Alderman Derek Thibeault

**RELATIVE TO THE SUPPLEMENTAL APPROPRIATION OF \$500,000 FROM FY2023 ASSIGNED FUND BALANCE INTO DEPARTMENT 128 "RISK MANAGEMENT", ACCOUNT 89650 "TRANSFER TO PROPERTY & CASUALTY SELF INSURANCE FUND"**

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE and SCHEDULE A SPECIAL BOARD OF ALDERMEN PUBLIC HEARING at 7:00 PM ON WEDNESDAY, MAY 24, 2023 in the aldermanic chamber, by President Wilshire

***Without objection, President Wilshire suspended the rules to allow for the first reading of Resolution R-23-125 that was received after the agenda was prepared.***

**R-23-125**

Endorsers: Mayor Jim Donchess  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Richard A. Dowd  
Alderman-at-Large Lori Wilshire

**RELATIVE TO THE ADOPTION OF THE FISCAL YEAR 2024 PROPOSED BUDGET FOR THE CITY OF NASHUA GENERAL, ENTERPRISE, SPECIAL REVENUE AND GRANT FUNDS**

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE and SCHEDULE A SPECIAL BOARD OF ALDERMEN PUBLIC HEARING at 7:00 PM ON MONDAY, JUNE 12, 2023 at Nashua High School North Auditorium, by President Wilshire

NEW BUSINESS – ORDINANCES - None

PERIOD FOR GENERAL PUBLIC COMMENT - None

REMARKS BY THE MEMBERS OF THE BOARD OF ALDERMEN

Alderman Klee

Thank you, Madam President. I really just have one comment to make tonight. Superintendent Andrade reason why he wasn't here held a special Mount Pleasant forum for those that are supporting Mount Pleasant and so on. I want to thank him for doing that. I wish it had been put out there publicly so more people would have known about it and so on but I do appreciate the efforts. I truly appreciate all those people that came out and spoke. I had to leave a little early for this meeting but I heard it went on to close to eight o'clock so thank you.

Alderman Moran

Thank you, Madam President. Just commenting on the outside dining downtown. Looks great. I was at Casey McGee's the other night and Matt told me that he's going to be starting outdoor dining in his facility tomorrow. He's going to have it all "tricked out". So I'm hoping more and more people go downtown and enjoy the seating. I was back and forth even today. I was bringing my kids go to the music school down there. I don't want to say too much but no traffic really. I didn't hit anything. It was pretty much a breeze. Same thing about picking my kids up to and from going down Main Street. So I think, again, the work that we did way back when has really paid off. The business owners downtown definitely love it, and enjoy it, and they're putting extra effort into it now that they're paying to make it look great.

Overall, you know, a little contentious tonight. I do that for now and again. I mean no personal disrespect to anyone. It's just like to air everything out in public instead of behind the doors. But one thing that irritate me and I would just ask that, you know, obviously Alderman Thibeault and I are friends. If he says he loves me, I love him. We don't need to diminish the statement that men can love each other. I found that a certain Alderman's under breath comment about it not too great and offensive. But other than that, I just wanted to share that two men can love each other whether it's jokingly or not, it can be said.

Alderman Lopez

So last Friday, a couple of constituents approached me regarding a Union Leader article that there was lead found in one of the Nashua schools. In reading the article, it was my understanding that the lead detection levels through recent State legislation have been refined and in a lot of ways improved. So it's not like there's necessarily more lead but now the standards have become more stringent which is always a good thing. It was clarified that it wasn't found at Ledge Street even though the names are similar. I asked Director Bagley if she'd be able to have the Board of Health discuss it

because I found that like I don't know the lead safety levels were already in existence in the State of New Hampshire I guess has lowered them. I don't usually trust the State of New Hampshire to do anything. So I don't know what the actual safe levels are, or what the impacts are, or what the actual results are of testing throughout the school. So that should be at tomorrow's Board of Health meeting. Director Bagley said she would have them discuss it which I think is a great forum for that because you have three health care experts plus our Environmental Safety Department. So if anybody's worried about that or wondering about that, definitely check out the Board of Health.

May 16, next Tuesday, is a big day. A special election in Ward 4. Any Ward 4 residents that are in the sound of my voice or anybody who knows those Ward 4 residents, please let them know that the polls are open from 6:00 AM to 8:00 PM at Ledge Street School. We had a discouraging turnout last at the primary for this but I think that was just because it was for the primary and I'm hoping a lot of residents show up because this special election, as unusual as it is to have one, is very important. We only have one out of our three State Representatives actually sworn in representing us at the State. So come to Ledge Street on May 16, cast your vote.

Additionally anybody who happens to be looking for a job in the morning, the Continuum of Care is organizing Employment Connect at the library. So it's an opportunity to meet employers directly, interview with them, find out about their jobs, talk about yourself as a candidate, and do that kind of face-to-face interaction that we're also fond of. Thank you very much.

#### Alderman Comeau

Yes thank you, Madam President. Just two quick things. Hopefully this will be the last time this year anyway, you hear me talking about high school wrestling. The Nashua Telegraph released their All Area Wrestling First Team which included several members of the Nashua South wrestling team, including back-to-back State Champ Anthony Fernandez, CJ Vancellette, Connor Whitman, Damien Perez, and my sweet, sweet baby boy Connor Comeau, as well as three honorable mentions which is like second team Edneil Adorno-Reyes, Toby Bracket, and Carder Tillman from Nashua North. So like I said, it'll be the last time I talked about high school wrestling this year.

The only other thing I wanted to mention as previous speaker made mentioned, sometimes it does get contentious in this room. We debate things. We all have a lot of passion for things that go on in the City which is why we're all here and that's a good thing. There were a couple of things tonight that did kind of bother me. One of my colleagues was trying to speak and make his point and was interrupted, laughed over, mocked a little bit, and I'd like to think that generally we are better than that. We have a code of conduct that we are to treat each other with respect and I hope that going forward we don't see things like that again. You know sometimes we each take our turn on a topic that we're passionate about and we go a little long but luckily for us we don't have time limits. So you know if we go a little bit long and tonight it's my turn to go long, then you know next week I'll be putting up with somebody else when it's their turn to go long. So I think it just kind of comes with the territory that we're all here to speak about the things that are important to us and I hope that we treat each other with a little bit more respect in the future. Thank you.

#### Alderman Dowd

Yeah, two quick things. One - I did talk to Mr. Smith and all the schools are being checked for lead and the places that need correction are being corrected.

The other thing is I was fortunate enough to attend the 100th anniversary of the Symphony at the Nashua Center for the Arts and it was outstanding. It was sold out and everybody thoroughly enjoyed the performance, the sound quality, the venue, everything was just perfect. So kudos to all the people that were involved in making the Center for the Arts a reality.

#### Alderman Thibeault

Thank you, Madam President. Just a couple of things. To Lopez's point, please Ward 4 go out and vote. It's important.

Anthony Fernandez, great kid. I've never seen a family more into wrestling than his family. They are intense. He's a great kid, and he does a great job, and he's probably gonna be wrestling in college I assume.

Another point I want to make, I want to apologize to Alderman Comeau. I did feel that his comments were harsh when I watched it at the PEDC Committee. Maybe saying you know that he has support was I had twisted more into that it was more harsh than it actually was. So I want to apologize for that we should be debating issues not berating each other so I'm completely be a mea culpa on that one.



And then nobody mentioned it and Attorney Bolton is waiting for it, Happy Mother's Day to the mothers in the room. I will not say it to my mother because I'll speak to her when I see her Steve, Attorney Bolton, but Happy Mother's Day to you guys. Thank you.

President Wilshire

I appreciate your remarks Alderman Comeau about the tone of what goes on in the room. I do appreciate that you brought that up.

I, too, want to mention the Ward 4 vote. I live in Ward 4 and we need Representatives so please go out and vote. Any of you who are still listening at this hour and live in Ward 4, May 16<sup>th</sup> is the election for State Rep.

Committee announcements:

Alderwoman Timmons

Thank you, Madam President. Tomorrow is the Board of Health meeting and I'm going to bring that up about the lead. It's tomorrow here at City Hall at 12:30.

Alderman Dowd

Yeah, I didn't think it needed to be mentioned but we're starting the marathon of Budget meetings tomorrow night and there will be several during the month into June.

President Wilshire

When you said "there will be", I was hoping you said dinner, or some pizza, or something involved but no. Okay.

Alderman Dowd

We'll see if we can add it to the budget.

Alderman Moran

No PEDC this month, no agenda.

Alderman O'Brien

Yeah to clear the way for Budget which seems to take priority at this time, there'll be no Infrastructure meeting on the 24th.

ADJOURNMENT

**MOTION BY ALDERMAN O'BRIEN THAT THE MAY 9, 2023, MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED**

**MOTION CARRIED**

The meeting was declared adjourned at 10:41 p.m.

Attest: Dan Healey, City Clerk



## RESOLUTION

### RELATIVE TO THE ADOPTION OF THE FISCAL YEAR 2024 PROPOSED BUDGET FOR THE CITY OF NASHUA GENERAL, ENTERPRISE, SPECIAL REVENUE AND GRANT FUNDS

### *CITY OF NASHUA*

*In the Year Two Thousand and Twenty-Three*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Fiscal Year 2024 Proposed Budget for the General Fund of the City of Nashua be and is hereby adopted, and that the following amounts are hereby appropriated for the several accounts and for other needs of the City of Nashua General Fund for the fiscal year beginning July 1, 2023, and ending June 30, 2024, and for the purpose of Section 50-a et seq. of the Nashua Revised City Charter, as amended, each item of this budget shall be considered as a separate appropriation. The proposed General Fund appropriation amount is \$317,503,290 with estimated General Fund Revenues of \$66,639,831 including estimated state funding for education in the amount of \$36,177,736.

That the Fiscal Year 2024 Proposed Budget for the Enterprise Funds of the City of Nashua be and is hereby adopted, and that the following amounts are hereby appropriated for the several accounts and for other needs of the City of Nashua Enterprise Funds for the fiscal year beginning July 1, 2023 and ending June 30, 2024, and the purpose of Section 50-a et seq. of the Nashua Revised City Charter, as amended, each item of this budget shall be considered as separate appropriation. The proposed Enterprise Funds appropriation amount is \$37,187,106 (inclusive of anticipated Capital Appropriations), with estimated Enterprise Funds Revenues of \$30,621,470 and any additional funding for capital and CSO-related expenditures from retained earnings, bonding and/or State Revolving Fund Loans.

That the Fiscal Year 2024 Proposed Budget for the Special Revenue Funds of the City of Nashua be and is hereby adopted, and that the following amounts are hereby appropriated for the several accounts and for other needs of the City of Nashua Special Revenue Funds for the fiscal year beginning July 1, 2023 and ending June 30, 2024. The proposed Special Revenue Funds appropriation amount is \$33,779,016 with estimated Special Revenue Funds Revenues of \$33,779,016 for the City of Nashua. The proposed Special Revenue Funds appropriation amount is \$23,557,029 with estimated Special Revenue Funds Revenues of \$23,557,029 for the Nashua School District.

## RESOLUTION

R-23-125

Neither the approval and adoption of this budget, or any appropriation contained herein, or to any City department or agency, including the Nashua School District, whether as proposed or amended, shall be deemed to mean that the City has approved any program or responsibility for funding in accordance with Part 1, Article 28-a of the Constitution of the State of New Hampshire. Notwithstanding any appropriation herein, the city hereby expressly declines to approve funding for any program or responsibility for which it is entitled by law to payment from the State of New Hampshire pursuant to Part 1, Article 28-a of the State Constitution, whether it has previously been determined that the City is entitled to said funding or not.

Pursuant to NRO § 5-145, E, the accumulated sum of all appropriations of the FY2024 combined annual municipal budget pursuant to Nashua City Charter §56-c is \$412,026,441. The FY2024 dollar amount under the limit established by City Charter Section 56-c is \$43,727,235. Please find attached the Combined Annual Municipal Budget Calculation for the FY2024 Proposed Budget.

**City of Nashua Combined Budget Analysis to the  
FY24 Proposed Budget**

**Combined Annual Municipal Budget Calculation**

<u>Line</u>	<u>Description</u>	<u>FY2023</u>	<u>FY2024</u>
1	<b><u>Appropriations</u></b>		
2	General Fund	\$ 303,358,903	\$ 317,503,290
3	Enterprise Funds	44,082,704	37,187,106
4	Special Revenue Funds (includes Grants)	59,581,977	57,336,045
5	<b>Total Appropriations</b>	<b><u>\$ 407,023,584</u></b>	<b><u>\$ 412,026,441</u></b>
6			
7			
8	<b><u>Supplemental Appropriations</u></b>		
9	General Fund	\$ 1,771,199	\$ -
10	Enterprise Funds	-	-
11	Capital Project Funds	21,567,517	-
12	<b>Total Supplemental Appropriations</b>	<b><u>\$ 23,338,716</u></b>	<b><u>\$ -</u></b>
13			
14	<b>Total Appropriations</b>	<b><u>\$ 430,362,300</u></b>	<b><u>\$ 412,026,441</u></b>
15			
16	<b><u>Spending Cap Calculation</u></b>		
17	FY2023 Total Appropriations		\$ 407,023,584
18	Add: FY2023 Supplemental Appropriations		23,338,716
19	FY2023 Total Appropriations		<b><u>\$ 430,362,300</u></b>
20			
21	Last 3-Years Annual Average S&L IPD		5.9%
22	Allowable Spending Over Prior Year Total Appropriations		<b><u>\$ 25,391,376</u></b>
23			
24	<b>Maximum Appropriations Allowed (Line 20 plus Line 23)</b>		<b>\$ 455,753,676</b>
25	Total Proposed Appropriations - FY2023		412,026,441
26	<b>Total Appropriations Under the Spending Cap</b>		<b><u>\$ (43,727,235)</u></b>

**LEGISLATIVE YEAR 2023**

**RESOLUTION:**

**R-23-125**

**PURPOSE:**

**Relative to the adoption of the Fiscal Year 2024 proposed budget for the City of Nashua general, enterprise, special revenue, and grant funds**

**SPONSOR(S):**

**Mayor Jim Donchess**

**COMMITTEE  
ASSIGNMENT:**

**Budget Review Committee**

**FISCAL NOTE:**

The tax rate cannot be determined at this time. The entire budget is a comprehensive package and each component impacts the tax rate.

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**ANALYSIS**

This resolution adopts the Fiscal Year 2024 Budget for the City's general, enterprise, special revenue, and grant funds. For the purpose of Section 50-a et seq. of the Nashua Revised City Charter, as amended, each item of this budget shall be considered as a separate appropriation.

A public hearing on the budget shall be held before its adoption by the Board of Aldermen with at least seven days' notice. Nashua City Charter § 56-a; NRO § 5-8.

Nashua City Charter § 56-b provides that the Board of Aldermen may reduce any item in the mayor's budget by a majority vote, but an increase or addition requires a vote of two-thirds of the members of the board. Court decisions concerning Nashua's Charter suggest that a court may find that this provision, when applied to the budget resolution itself, is inconsistent with state statutes and therefore unenforceable. See memorandum of Corporation Counsel dated March 8, 2018.

The budget shall be finally adopted not later than August 1, 2023. Nashua City Charter § 56-b.

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**Approved as to content,  
account structure, numbers,  
and amount:**

**Financial Services Division**

By: 

**Approved as to form:**

**Office of Corporation Counsel**

By: 

Date: 