

LEWISTON CITY COUNCIL WORKSHOP AGENDA

Tuesday, February 10, 2015

City Council Chambers

6:00 p.m. Workshop

Pledge of Allegiance to the Flag.
Moment of Silence.

WORK SESSION

1. Overview of the Governor's Proposed Budget by State Senator Nate Libby.
2. Review of Proposed State Budget Impacts on the City of Lewiston.
3. Update on County Budget Controversy.
4. Facility Use Policy.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, FEBRUARY 10, 2015
6:00 P.M.
CITY COUNCIL CHAMBERS, LEWISTON CITY HALL

1. Overview of the Governor's Proposed Budget by State Senator Nate Libby.
2. Review of Proposed State Budget Impacts on the City of Lewiston

Please see the attached memo which outlines the projected impacts of the Proposed State Budget on the City and its Finances.

3. Update on County Budget Controversy

The Council recently adopted a resolve (attached) taking issue with the County Commissioners' dismissal of the Budget Committee's approved adjustments to the compensation of Commissioners and other super-majority vote reductions in the County budget. We also requested that the Maine Attorney General review these issues, which she has declined to do. The resolve further authorized the City Administrator to support other efforts to resolve these concerns and to work with other municipalities in the county to outline potential remedies and likely costs, with incurring any additional costs subject to Council authorization. We recently received a letter from the County Commissioners (attached) on these issues. I would like to review the status of this controversy with you and discuss how to proceed. See attached background memo.

4. Facility Use Policy

Based on budget discussions last year, the Facility Use Policy was amended to require all users of city facilities pay a \$50 application fee. When the policy was amended, it extended this requirement to the City itself along with other government agencies. The Lewiston State Legislative Delegation has normally used a small room on the first floor of the Library to meet with constituents on a periodic basis during the legislative session. Any citizen may participate in these sessions. Given that this provides a service to our constituents and is being done by elected officials of another governmental body, it would seem appropriate to allow this use without requiring the application fee. Similarly, it makes no sense to charge the City for its use of its own buildings and it would be appropriate to allow state and federal organizations to do so when the meetings are on an issue of potential interest to our residents and are open to the public. The attached amended version of the policy would waive the fee in these instances. The Library Board of Trustees has also expressed concern over the impact of this fee on small non-profit organizations that have been exempt in the past. See attached email from Jennifer GendronCarleton. Given that we are looking at modifying the policy, I would be interested in direction from the Council on any further changes.



EXECUTIVE DEPARTMENT

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Edward A. Barrett, City Administrator
Phil Nadeau, Deputy City Administrator

February 6, 2014

To: Honorable Mayor and Members of the City Council
Fr: Edward A. Barrett
Su: Impact of Governor's Proposed Budget on the City of Lewiston

The Governor has proposed a two year state budget with the explicit goal of reducing state income taxes. It accomplishes this by increasing the sales tax base while broadening its base and by reducing certain payments to local governments. The following attempts to outline the proposal's impact on the City's budget and finances. The specific changes that will impact us include: elimination of municipal revenue sharing; restricting the homestead exemption to those over 65 and doubling it for this group from \$10,000 to \$20,000; (For Lewiston taxpayers this would convert to from \$9,100 to \$18,200 based on our 91% ratio of assessed value to market value.) transitioning Business Equipment Tax Reimbursement property to the Business Equipment Tax Exemption program; changing the formula and eligibility requirements for General Assistance; flat funding General Purpose Aid to Education; transferring the telecommunications tax from the state to local municipalities; and making certain non-taxable property subject to the property tax at 50% of value. Please note that this analysis is not intended and should not be viewed as an effort to determine the impact of the Governor's overall budget and tax proposal on individual citizens given other proposed changes to the income tax and various tax credits proposed to mitigate the impact of a higher and broader sales tax and the potential for increased property taxes.

The changes affecting Maine's municipal government are spread out over the two year budget and beyond, with most of the significant changes going into effect in the budget's second year, which, for us, would be the municipal FY17 budget that goes into effect in July 2016.

FIRST YEAR IMPACTS

In year one (for our budget year beginning this July), the only changes involve the homestead exemption and General Assistance formula.

Homestead Exemption

The homestead exemption would be eliminated for those under 65 and doubled for those 65 and older. We do not have exact information on the number of current homesteaders who are 65 and older. Statewide, however, Maine Revenue Service estimates that about 30% are 65 or older. Since this group will see their exemption doubled, we can estimate that the homestead will be about 60% of the current amount, with 50% reimbursed by the state. This year, we have about \$56.6 million in homestead value. At 50%, we are reimbursed about \$750,000 by the state. Assuming the new program reduces this amount by about 40%, this would mean the loss of about \$300,000 in revenue, which equates to about 16 cents on the tax rate. At the same time, however, the total homestead value will decrease, returning about \$22.5 million to our assessed value. This increase in value

effectively cancels the loss of homestead reimbursement. In summary, this change does not appear to impact the City's overall revenues and tax rate.

However, it will affect individual homeowners. Those who lose the homestead will see an additional property tax of \$242. Those whose homestead doubles would see a decrease of a similar amount.

Please also note that there will be an impact on City operations. Since we do not have information on the age of those currently receiving the homestead, a new application process will be required including proof of age. This will be further complicated since this change, if approved, will effectively be retroactive to homeowner age as of April 1, 2015. Depending on when the state budget is adopted, it is likely that we will incur expenses in notifying those who currently have the exemption of the change and requiring a new application with proof of age. Depending on timing of state budget approval, this could delay our commitment of FY16 taxes and potentially shorten the period between the time bills are issued and first half payment is due.

Finally, since our assessed value will increase, there may be some effect on formulas based on our value including the county tax and general purpose aid to education. This will depend on whether the City has a higher or lower percentage of homesteads owned by those 65 or over than the state average. Since this is not known, it can't be estimated at this time; however, this impact, if any, would not affect the budget in the first year.

General Assistance

The budget proposes a change in the formula for reimbursement of General Assistance. Today, the state reimburses at the 50% level until a certain threshold is reached. Beyond it, the state reimburses at 90%. This formula cushions local municipalities from the upside risk of large and increasing General Assistance costs. The revised formula would reimburse municipalities at 90% until the state's reimbursement reaches 40% of a municipality's six year average costs. Beyond that point, the municipality would receive 10%. This transfers the risk for large increases in General Assistance costs to the municipality

Overall, however, the proposed formula is likely to result in lower reimbursement over time. Mathematically, the formula will reimburse communities at roughly 45%+/- of their payments in a subsequent year in which those payments are equal to the prior six year average. In recent years, we have seen a reimbursement rate of about 60%. Theoretically, if we saw a significant reduction in GA in a given year, we could see a reimbursement rate above 60%. However, as lower annual costs are factored into the formula, the reimbursement rate will fall. On the other hand, if costs rise above the six year average, we would be reimbursed at a lower rate.

For simplicity, applying the new formula to a year in which we paid out the same amount as the average over the prior six years, the City would receive about \$45,000 less in reimbursement from the state.

Overall Year One Impacts

Year one impacts are relatively minor in regard to the City's budget. For the City, the homestead change is effectively a wash with the loss of state reimbursement balanced out by an increase in assessed value due to those under 65 losing program eligibility. The General Assistance formula change will reduce our revenues, although that revenue loss could be mitigated by changes in eligibility and a reduction in overall costs.

YEAR TWO IMPACTS

More significant changes come in year two of the budget, our budget year beginning in July 2016. These include elimination of revenue sharing, certain exempt property becoming partially taxable, the initial year phase out of the Business Equipment Tax Reimbursement Program, and the devolution of the telecommunication tax to municipalities where such equipment is located.

Revenue Sharing

If revenue sharing is eliminated, the City will lose upwards of \$2.5 million at current funding levels, roughly \$1.30 cents on the tax rate, and \$6 million at statutory levels, or \$3.20 on the tax rate. Even at current reduced funding levels, loss of this revenue source would be a major financial blow. If lost, it would also then become certain that the program will never return to statutory funding levels.

Taxing Tax Exempts

In an effort to address the loss of revenue sharing, the Governor has proposed making certain currently tax exempt properties partially taxable. This would affect non-church and government tax exempts that own property with a value in excess of \$500,000. The amount above \$500,000 would be taxed at a 50% rate. According to City Assessor Joe Grube, this could produce \$3.6 million in revenue, an amount that would exceed the current level of revenue sharing we receive. This represents about \$1.91 on the tax rate. Attached you will find a listing of the tax exempts that we believe would be subject to this provision.

It should be noted that, as with other elements of the Governor's proposals, there will be strong opposition to this from both the tax exempts that will be affected such as hospitals and private higher education institutions, and also from certain municipalities. Per MMA, a minority of communities, primarily those with private hospitals and colleges, will benefit from the tradeoff between revenue sharing and taxing now exempt property. I suspect that some will oppose the change given that they will not benefit from it and that they will conclude that their residents will face higher costs as tax exempts adjust to this new expense.

BETR to BETE transition.

We currently have \$73.8 million in BETR value. Under this program, the business that owns the equipment pays the City the full personal property tax and is later reimbursed for this expense by the state. If all of this value was immediately transferred to the BETE program (where we are reimbursed at 57%), we would see a loss of about \$844,000 in property tax revenues.

The proposal, however, phases the program in over four years, lessening the immediate impact. In addition, the BETR program has been closed to most new business equipment in recent years, leading to a gradual decline in the value of enrolled property. Using an estimated annual decline in BETR value of about 15% due to attrition, the impact of the four year phase out can be estimated for each of the following fiscal years:

	Annual Revenue Loss	Cumulative Revenue Loss
FY 16	0	
FY 17	\$154,126	\$154,126
FY 18	\$262,015	\$416,142
FY 19	\$334,069	\$596,084
FY 20	\$378,612	\$712,681

This would continue the on-going erosion of the City's business equipment tax base. Once all BETR property transitions to BETE, the City will be receiving 57% of the revenue that it would have received if all of this property had remained fully taxable. This represents a total revenue loss estimated at \$1.9 million by FY 20 when the BETR to BETE transition would be completed. Please also note that from a budgetary perspective, the annual revenue reduction in a major revenue line item is not a positive situation.

It is also possible that this change could have a negative effect on certain Tax Increment Financing agreements that are in effect, particularly those which include personnel property and where the revenue generated is used to pay obligations of the City, such as infrastructure improvements which have been bonded, or where the revenue is directed to the City's economic development fund. We are still analyzing this and hope to have more information for Tuesday's meeting.

Telecommunications Tax

The telecommunication tax would be transferred from the State to the municipalities in which this equipment is located. This tax produces about \$8 million annually on a statewide basis. The state does not, however, maintain records on where this equipment is located. As a result, we cannot estimate the amount of revenue this will produce. I understand the State Revenue Service is working to develop this information.

Total Second Year Impacts

The following summarizes the potential impacts of the year two proposals.

Revenue Sharing	(\$2,500,000)
Reduce Non-Profit Tax Exemption	3,600,000
BETR to BETE	(154,126)
General Assistance Reimbursement	(45,000) ¹
Telecom Tax	unknown
Total Impact	\$810,875

CONCLUSIONS

The immediate relatively good news is that with the exception of the proposed General Assistance formula change, the state budget, if adopted as proposed, would have a limited impact on our FY 16 budget to go into effect in July. The major impacts will be felt in FY 17. As the budget is proposed, we project that the City could actually see an increase in revenue of approximately \$810,000 in that year due to the property tax generated by non-profits. I remain skeptical, however, that this element of the budget will be approved as presented given

¹ Please note that this is a highly uncertain estimate per the General Assistance discussion above.

the strong opposition it will face from affected non-profits as well as from elements of the municipal community that would not benefit from swapping a tax on non-profits for revenue sharing.

Longer term, as the full effects of the BETE to BETR transition are felt, it appears that the additional revenue from tax exempts will be more than offset by the loss of revenue sharing and personal property taxes

	Owner	Assessment	Taxes
1	Bates College	\$120,345,070	\$1,593,340
2	Central Maine Medical Center	\$89,075,920	\$1,177,617
3	St.Mary's Regional Medical Center	\$40,753,010	\$535,164
4	Marcotte Nursing Home	\$9,935,400	\$125,444
5	John Murphy - J F M Corporation	\$3,505,250	\$39,955
6	Androscoggin Home Health	\$3,322,960	\$37,531
7	Tri County	\$2,865,530	\$31,449
8	Kora Temple	\$1,640,940	\$15,168
9	Franco American Heritage	\$1,619,300	\$14,881
10	Y W C A	\$1,491,150	\$13,177
11	Sand Castle	\$1,398,000	\$11,939
12	Greater Androscoggin Soc	\$1,362,150	\$11,462
13	Colby Bates Bowdoin Education	\$1,249,050	\$9,958
14	New Beginnings	\$1,207,730	\$9,409
15	Goodwill Industries	\$1,169,900	\$8,906
16	Seniors Plus	\$1,151,540	\$8,662
17	Community Partners	\$965,800	\$6,193
18	Public Theatre	\$857,000	\$4,746
19	Salvation Army	\$652,000	\$2,021
20	Support Solutions Inc	\$648,040	\$1,968



EXECUTIVE DEPARTMENT

Edward A. Barrett, City Administrator
Phil Nadeau, Deputy City Administrator

February 6, 2014

To: Honorable Mayor and Councilors
 Fr: Edward A. Barrett
 Su: County Budget Dispute

Background

Late last year, the County Budget Committee completed its review of the County budget. The Committee approved a final budget that included super majority vote line item reductions of \$81,742, of which all but \$12,750 was restored by the Commission in the final budget, and reductions in Commissioner salaries and benefits, of which \$76,346 was restored. In total, the Commissioners restored \$89,096 to the County budget, taking the position that two provisions of the County Charter were essentially meaningless and without substance. Lewiston's share of the \$89,096 is \$25,285. (See attached budget analysis by Councilor and budget Committee member Lachance.)

During the controversy that erupted following the budget's adoption and which continues, a significant focus has been on the issue of Commissioners' salaries and benefits. In my opinion, this is a side issue at best and a major distraction at worst. The key issue involves the authority of the budget committee, not the salaries of commissioners.

After the new charter was adopted and during the process of forming the Budget Committee, my recollection is that everyone involved in the process believed that line items in the budget could be overridden by a supermajority vote of 11 of the budget committee's 14 members. I also vividly recall that many in the municipal community, including prior budget committee members, were not happy with this reduction in the committee's authority and questioned whether it would be likely to ever achieve the 11 votes needed (or, in fact, whether 11 members would even be at all meetings). This certainly remained the budget committee's understanding until after the committee completed its work and the Commissioners reinstated some of its cuts.

So, again, the issues are the authority of the budget committee to modify the budget and approve the salaries and benefits of the commissioners, not what those salaries and benefits should be.

The two Charter provisions relating to the authority of the committee are:

3.7 COMPENSATION

Salaries and benefits of all County elected officials shall be recommended by the Board and approved by a majority plus one vote of the full Budget Committee. Said salary shall constitute full compensation for all services. Reimbursement for reasonable expenses incurred in performance of the officials' duties may be allowed upon formal review and approval by the Board.

5.5.2 First Meeting of the Budget Committee:

The Budget Committee shall have the authority to reject or modify any line item in the budget by the affirmative vote of 11 of its members. The Budget Committee's proposed budget shall include proposed salaries and benefits for elected officials.

The Commissioners overrode the committee on the basis of a legal opinion from Brian Dench that concluded "the board of commissioners has the authority to enact the final county budget under Section 5.5.4 and all actions of the budget committee are advisory only." The language of 5.5.4 is:

5.5.4 Adoption of Budget; Tax Levy: The Board has the authority to modify the proposed budget and the authority to adopt the final budget for the County. The Board shall act on the proposed budget in a timely fashion and, in any event, shall vote to adopt the final budget not later than 15 days prior to the end of the fiscal year. The budget as adopted shall be the final authorization for the assessment of county taxes which shall be apportioned and collected in accordance with 30-A M.R.S.A. § 706. A copy of the final approved budget shall be filed with the State Auditor as provided by law.

Attorney Dench's full opinion is attached.

Council Resolve

In December 2014, the City Council adopted a Resolve expressing concerns over the decision of the Commissioners to override the budget committee; asking the Attorney General to review the issues and render an opinion; and authorizing the City Administrator to work with other municipalities in Androscoggin County to resolve these concerns, subject to Council direction particularly if city funding was required. A copy of the resolve is attached.

SUBSEQUENT EVENTS

Requirements of State Statute

Councilor Lachance identified a section of state law regarding county government's budget process that may apply:

30-A M.R.S.A. § 1353 -- Finance committee

A county adopting a charter under this chapter may provide for a method of appropriating money for county expenditures other than the method in sections 2, 701 and 702. Any alternative method provided must give the county legislative body the authority to appropriate money, according to the budget, which must first be approved by majority vote of the finance committee. If the budget is not approved before the start of a fiscal year, the county shall, until a budget is finally adopted, operate on an interim budget which may not exceed 80% of the previous year's budget.

This language appears to require the budget committee of a county with a charter to approve the budget by majority vote. This information brought into the discussion questions of state statute to go along the pre-

existing questions of how to interpret the county charter. This statute was not addressed by Attorney Dench, whose opinion focused primarily on the language of the County Charter.

Attorney General

The Attorney General has declined to issue an opinion on the basis that the subject did not fall within the statutory authorization of the office to issue an opinion.

Maine Municipal Association

The issues involved have been presented to the Maine Municipal Association's Legal Staff. They have reviewed the County Charter and the state statute and have had preliminary conversations with Attorney Dench regarding these issues. I anticipate that these discussions will continue and that MMA will provide us with a legal opinion in the near future. I hope to have at least a preliminary reading from MMA by Tuesday's meeting.

Other Communities

To date, I am aware of four communities that have recently discussed this issue and that have indicated an interest in continuing to pursue it up to and including incurring costs. These include: Livermore Falls, Greene, Minot, and Leeds. In some instances, the willingness to provide funding is contingent on the number of municipalities that are willing to participate.

State Legislation

The state legislature can amend the charter of a county. Senator Libby will be sponsoring legislation to do so, although the language has not yet been finalized.

FUTURE DIRECTION

At this point, Council direction is required on how to proceed.

The first major question is whether our focus should be on the current charter and state law and the budget adopted by the County in December or whether we focus on efforts to clarify the authority of the budget committee and commissioners for the future. If we are primarily concerned about the future, we might want to concentrate our effort on seeking a legislative charter amendment to resolve the dispute. Please note, however, that when Commissioner Makas appeared before the Council in December, I expressed my opinion to her that the Commissioners had an obligation to come forward with a recommendation on how to resolve the on-going dispute by clearly defining the authority and responsibility of the budget committee and commissioners and addressing how the salaries and benefits of elected officials are set. The Commissioners have not yet done so. I also anticipate that the Commissioners would not be supportive of a legislative change that would be based on the understandings which everyone apparently had during the period the budget committee was being organized.

If we are concerned about the current budget, several options remain. These include waiting for the MMA legal opinion and, if it differs from what the County actually did, calling on the Commissioners to review the opinion and reconsider their actions. If this is unsuccessful, we, in conjunction with other municipalities in Androscoggin County, could then seek a court ruling clarifying the charter and the applicability of the state law referenced above.

Regardless of the action taken, I would recommend that we pursue state legislation to address roles and responsibilities. One option would be simply to make it clear that Charter sections 3.7 (elected official salaries and benefits) and 5.5.2 (supermajority to change line items) limit the language of section 5.5.4, which gives the Commissioners the authority to modify the proposed budget and adopt a final budget.

Hello All,

I have spent some time reviewing the Commissioners "final" budget and compared the document to the Budget Committee approved budget. Where the Commissioners have disregarded the Budget Committee line items I have indicated the respective figures and Budget Committee votes. Please feel free to double and triple check my figures and correct if necessary.

BC= Budget Committee (## - #) Budget Committee Votes

CC= County Commissioners override

Any Line Item (supermajorities)

1005.4835 Witness Fees - Postage	BC: 150 (11-0)	CC:200
1015.4099 District Attorney - Professional Services	BC: 2000 (11-0)	CC: 2350
1015.5345 District Attorney - Printing & Reproduction	BC: 3300 (11-0)	CC: 4300
1020.4105 County Commissioners - Mileage	BC: 1000 (12-0)	CC: 1200
1020.4110 County Commissioners - Meals	BC: 1500 (12-0)	CC: 1650
1020.4315 County Commissioners - Telephone (air cards)	BC:1000 (12-0)	CC: 4400
1020.5335 County Commissioners - Office Supplies	BC: 500 (11-1)	CC: 550
1020.5345 County Commissioners - Printing & Repro.	BC: 800 (12-0)	CC: 1000
1020.7325 County Commissioners - Office Furniture	BC: 9000 (12-0)	CC: 12700
1070.5335 Registry of Probate - Office Supplies	BC: 2000 (11-0)	CC: 2250
1070.5650 Registry of Probate - Minor Misc Equipment	BC: 500 (11-0)	CC: 800
1075.5405 Sheriff's Dept. - Clothing, Uniforms	BC: 14000 (12-0)	CC:15000
1076.4105 Civil Process - Civil Process Mileage	BC: 50 (12-0)	CC:0
1078.4110 Communications - Meal	BC: 200 (12-0)	CC: 350
2005.4715 Andro-Sag Counties Extension Assoc -	BC: 45742 (14-0)	CC: 47742

Summary-

Budget Committee Modified Line Items (Total budgeted): 81,742

County Commissioner Line Item Overrides (Total budgeted): 94,492

Line Item Amount added back by Commissioner overrides: \$12,750

Salaries / Wages / Benefits (majorities plus-one)

1020.3120 County Commissioners - Salaries & Wages BC: 147721.52 (10-2) CC: 168017.52

2025.4724 Employee Benefits BC: 1200420 (10-2) CC: 1256470

Budget Committee Modified Salaries Wages Compensation Total: 1,348,141.52

County Commissioner Override for Salary & Benefits Total: 1,424,487.52

Salary & Benefits Added back by Commissioner overrides: \$76,346.00

Grand Total Added Back by County Commissioners: \$89,096.00

M E M O R A N D U M

TO: Board of Commissioners of Androscoggin County
FROM: Bryan M. Dench, Esq.
DATE: November 19, 2014
RE: Androscoggin County Charter – Authority of the Budget Committee and Board of Commissioners

This will confirm my advice that the board of commissioners has the authority to enact the final county budget under Section 5.5.4 and all actions of the budget committee are advisory only. The minutes of the Charter Commission meeting of January 26, 2012, for example, say

Section 5.5.2.¹ It was noted that the Commission had constituted the Budget Committee as advisory and that should be made clear. It was moved and seconded to add language to the second paragraph of section 5.5.2 and change the word “adopt” to “approve” in the last sentence of 5.5.3. UNANIMOUS

.Among other things, in enacting the final budget for the county the board of commissioners has the authority to set the salaries and benefits of all elected county officials. Let me explain more fully as follows with reference to specific Charter provisions.

Section 3.7 – COMPENSATION

This section provides that salaries and benefits of all County elected officials “shall be recommended by the Board and approved by a majority plus one vote of the full Budget Committee.”² The language itself is clear this is merely a recommendation.

Section 4.1 – GENERAL PROVISIONS

This section states that “all functions and duties of the county “shall be under the responsibility of the Board [of Commissioners].” This underscores the ultimate authority of the board of commissioners over all county functions, which obviously would include the establishment of the county budget. This is declarative of the “final authority” of the board of commissioners under 30-A MRS § 102.³

Section 5.1 BUDGET

¹ This is an incorrect cross reference, as the word “adopt” is in section 5.5.3 not 5.5.2, and the final charter approved by the voters still says “adopt” not “approve,” if the two terms are different in actuality.

² As the budget committee is 14 members 8 is a majority so a majority plus one is 9 votes. However, Section 5.5.2 states that 11 votes are needed for the budget committee to reject or modify any line item in the proposed budget.

³ “The county commissioners have final authority over the operation of all county offices by elected or appointed county officials, except in circumstances for which a County Personnel Board has been established under subchapter VII, article 2 with the powers and duties set forth in that article and in section 501. The county commissioners must act as a board and not on an individual basis in exercising this authority.”

As a general matter, as noted above, the Charter Commission minutes anticipate the budget committee will be purely advisory. This was confirmed by members of the Commission we met with last year.

Under Section 5.5.2 the budget committee can “reject or modify” any proposed line item in the board of commissioners’ initial proposed budget by the affirmative vote of 11 of 14 members (though a quorum is 8, the committee cannot act without 11 votes, making 11 the quorum as a practical matter). “The Budget Committee’s proposed budget shall include proposed salaries and benefits for elected officials,” according to this section. It then says the budget committee “shall adopt a final budget and transmit the same to the Board.”

Thus it is very clear the salaries and benefits included in the budget committee’s proposed budget are only “recommended” and “proposed,” not final.

Under section 5.5.3 the budget committee is to submit its “proposed budget” to the board of commissioners. The board “shall act on the proposed budget” no later than December 16th of each year. Section 5.5.4. It says, “The budget as adopted shall be the final authorization for the assessment of county taxes . . .” The only body described as acting on a final budget is the board of commissioners. In acting on the budget under Section 5.5.4 the board of commissioners can change it from the budget adopted by the budget committee. There is no language in the Charter that says, or even implies, that the budget committee makes a final binding determination of any line item in the budget, including the salaries and benefits of elected officials, that the board of commissioners cannot change when it acts on the proposed budget.

I am aware that some members of the Charter Commission believe that their intention was to have the salaries set by the Committee be final but the text of the Charter does not say that, and the voters enacted a text not an intention.



COUNCIL RESOLVE

Resolve, Expressing the Concern of the City Council Regarding Certain Actions Surrounding the Establishment and Authorization of Compensation for Elected County Officials.

Whereas, in 2012, the voters of Androscoggin County approved a new charter for county government changing the nature, responsibilities, and composition of both the Board of County Commissioners (the Board) and the County Budget Committee (the Committee); and

Whereas, the Committee's role was redefined from approving all county budget expenditures to advising on such expenditures, but with two exceptions: a requirement that the Board's compensation be approved by the Committee (County Charter section 3.7) and authorizing the Committee to override specific line items recommended by the Board by an affirmative vote of 11 of its members (County Charter Section 5.5.2); and

Whereas, when the new charter went into effect, the newly constituted Committee and the transitional Board agreed that Section 3.7 of the Charter ultimately meant that the Board could not set its own salaries or benefits since final authority remained with the Committee; and

Whereas, this same understanding was investigated and reiterated without objection at the outset, interim, and conclusion of this year's budget process; and

Whereas, on October 22, 2014, the Chair and the Vice Chair of the Androscoggin County Charter Commission testified in-person to the assembled Committee and Board that the intent of section 3.7 was that the salaries and benefits of Commissioners are set by the Committee by a majority-plus-one vote of 9 of its members and cannot be changed by the Board; and

Whereas, on October 24, 2014, the Chair, Vice Chair, and Secretary of the Androscoggin County Charter Commission submitted a formal letter to Androscoggin County Clerk Patricia Fournier, reiterating that the intent of section 3.7 was that the salaries of elected county officials are to be set and approved by the Committee with a majority-plus-one vote of 9 of its members; and

Whereas, the Board's proposed compensation for themselves as presented to the Committee was adjusted by the Committee by a majority vote of 9 or more of its members; and

Whereas, only following final presentation of the budget and adjournment by the Committee, did the Board (upon an opinion solicited from legal counsel) disregard the Committee's action on compensation of Commissioners; and

Whereas, there appear to be additional disagreements between the framers of the County Charter Commission and the Board regarding the final authority of the Board and Committee; and

Whereas, disagreement as to the respective authorities of the Board and the Committee and the checks and balances intended thereof by the framers of the Charter can only serve to undermine the legitimacy of the County's governance structure;

Now, therefore, be it resolved by the City Council of the City of Lewiston that

Given the clear statement of intent by the members of the Androscoggin County Charter Commission and the apparent agreement of the Board of County Commissioners prior to and throughout this year's budget process, and with regard to the compensatory authority of the County Budget Committee, we are concerned that the subsequent actions taken by the County Commissioners to overrule the Budget Committee on compensation of Commissioners raises fundamental questions regarding the authority and responsibilities of both the Budget Committee and County Commissioners. These fundamental questions must be resolved to ensure the legitimacy of the new charter and form of government for Androscoggin County. To this end, the City Council:

- Requests the Board of County Commissioners reverse its dismissal of the Budget Committee's approved adjustments to the compensation of Commissioners; and
- Supports the effort to ask the State Attorney General to review the issues that have been raised and to render an opinion that clarifies the respective authority of the Board of Commissioners and Budget Committee relating to the county budget and compensation of commissioners; and
- Calls upon all parties to accept and abide by the opinion of the Attorney General on these issues; and
- Authorizes the City Administrator to support other efforts, in concert with other municipalities in Androscoggin County, to resolve these concerns; and
- Subject to further review by the Council of costs, authorizes the City Manager to work with other municipalities in Androscoggin County to outline potential remedies and the likely costs of pursuing them should these issues not otherwise be resolved;

Be It Further Resolved, that

The City Clerk shall provide copies of this resolution to the County Clerk, Board of County Commissioners, members of the County Budget Committee, Maine Attorney General, and all other municipalities in Androscoggin County.

JANET T. MILLS
ATTORNEY GENERAL

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

January 20, 2015

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
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FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
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Mr. Michael Marcotte, Chair
Androscoggin County Budget Committee
Androscoggin County
2 Turner Street
Auburn, ME 04210

Dear Chairman Marcotte and members of the Androscoggin County Budget Committee:

By letter dated December 12, 2014, you have requested that our office issue an opinion to resolve a dispute over the interpretation of certain provisions in the recently adopted Androscoggin County charter relating to the setting of county commissioners' salaries. Pursuant to Title 5, section 195 of the Maine Revised Statutes:

The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters.

Your request does not fall within the scope of this statute, and any informal opinion we might offer would not be binding and might not prevent someone from taking legal action. Thus we must decline to issue the opinion you have requested.

I regret that the parties have been unable to come to an agreement about the commissioners' compensation. It may be that only a declaratory judgment action can resolve the issue. If legal action is impractical, I urge the parties to engage a private mediator to help find middle ground.

With best wishes,

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet T. Mills".

JANET T. MILLS
Attorney General

cc: Androscoggin County Board of Commissioners
Members of the Androscoggin County Charter Commission

FACILITY USE POLICY

Ed Barrett

From: Jennifer GendronCarleton <jgendroncarleton@sunjournal.com>
Sent: Friday, October 03, 2014 9:44 AM
To: 2014 Elected Officials; Ed Barrett; Rick Speer
Cc: Adam Sherman; Art Turley (ajt@ajturley.com); Elizabeth Clifford (Lizcliffo@gwi.net); GendronCarleton, Jen; Kemper, Anne; Mohamed Abdillahi; Painter, John; Ted Walworth (ezwalworth@gmail.com); Darby Ray
Subject: Lewiston Public Library - fees for use of small conference rooms

Good day ladies and gentlemen,

The Board of Library Trustees was informed at our September meeting that the City Administration was now requiring local non-profit organizations to pay an annual application fee - \$50 for use of small conference rooms at the Lewiston Public Library. Prior to this point, these organizations were able to use the Library's Couture Room and Third Floor Conference Room at no charge for meetings.

Over the last 20 years the Library Board has worked hand-in-hand with the City Administration and Council to develop the library's services and resources to meet the needs of Lewiston's citizens. These needs are wide-ranging and include acquiring books, audio-visual resources, access to the internet/technology, and library programming to meet local educational, cultural and recreational needs. They also include the need for the library's facility resources to allow for groups and individuals to come together to discuss a variety of issues that are important in our community.

The Library's mission statement "Preserving our history, Connecting our community, and Enriching the life of the mind," recognizes the importance of the library as a place where community members can meet on common ground to discuss their common connections. However, this recent change in the way we interpret our Facility Use Policy runs counter to the library's mission.

These groups who are now being asked to pay the \$50 application fee are made up of residents who have already paid through their taxes to support and operate the library facility. To ask them to pay an additional amount to use this same facility seems to be an unfair, added burden.

It might be different if we were talking about a major portion of a City facility such as Callahan Hall or the gym at the Armory. The use of the smaller conference rooms during regular library hours do not require any extra city resources — the rooms are already being heated or air conditioned and staff are not required to monitor the use of the spaces.

The Library Board, by unanimous consent, respectfully asks that the Mayor and City Councilors consider taking the steps necessary to allow local nonprofits to continue to be able to use City conference rooms free of charge.

Thank you for your consideration,

Jennifer GendronCarleton
 Lewiston Public Library - Chairperson of the Board of Trustees
 16 Lemay Avenue
 Lewiston, ME 04240
[\(207\) 330-1772](tel:2073301772)

FACILITY USE POLICY

Application must be signed and returned no later than thirty (30) business days prior to the date of the event and a \$50 non-refundable application processing fee must accompany the application except where exempted elsewhere in this policy.

Field Code Changed

This Policy is designed to govern the use of City-owned facilities by other individuals, groups, and/or organizations that are not directly associated with the City of Lewiston. The Policy governs all city owned property, even if such property is not specifically listed within the Policy.

The following rules and regulations have been adopted with the intent to better serve those who have occasion to use the facilities while protecting the public's interest.

Section 1 - Definitions

Public Use Facility: Any City-owned property that has been designated by policy to be available for use by individuals, groups, or other organizations that are not directly associated with the City of Lewiston, Maine.

Facility: Any City-owned property

Director:

1. Assistant Director of Public Works for Recreation or his/her designee when referring to use of the Armory.
2. Library Director or his/her designee when referring to use of the Library or Hartley Center.

Armory: City of Lewiston Memorial Armory

Hartley Center: Marsden Hartley Cultural Center

Library: Lewiston Public Library

Committee: Facilities Use Review Committee

Section 2 - Definition of Facility Use

The City, by this Policy, defines the following facilities as public use facilities, subject to the regulations, restrictions and other requirements that are established.

A. The Memorial Armory, 65 Central Avenue

B. Certain athletic and public parks, subject to the other policies and ordinances that have been, or may in the future, be adopted to govern those specific locations.

1. Chapter 54 of the City Code of Ordinances regarding Public Park usage.

FACILITY USE POLICY

2. City Policy Manual, Policy Number 3, regarding use of the Athletic Fields.

C. Lewiston Public Library and Marsden Hartley Cultural Center, 200 Lisbon Street

Unless otherwise listed above, all other City-owned facilities are not available, and henceforth defined as public use facilities. However, on occasion, such properties may be used for private purposes, subject to Section 11 of this Policy.

Section 3 - Application Process

All individuals and/or organizations desiring to use a City-owned facility must complete an application for use.

All inquiries concerning the Armory should be directed to the attention of the Director of Recreation, Memorial Armory, 65 Central Avenue, Lewiston, Maine 04240, Tel.: 513-3005.

All inquiries concerning the Library or the Hartley Center should be directed to the attention of the Library Director, Lewiston Public Library, 200 Lisbon Street, Lewiston, Maine 04240, Tel: 513-3004.

All applications for the use of a facility shall be returned to the Director for review. The Director shall within ten (10) business days of receipt of a completed application either:

- A. Approve it;
- B. Conditionally approve it; (See Section 6c)
- C. Disapprove it; or
- D. Refer it to the Facilities Use Review Committee for further review.

The Director shall then notify an applicant of the disposition of the application.

Should the Director conclude that an application requests a use which is appropriate for review by additional City officials, approval must be obtained from the Facilities Use Review Committee.

Section 4 - Facilities Use Review Committee

A. Purpose and Organization

Since the Memorial Armory and Library are public facilities, the City of Lewiston is concerned that they be used for proper purposes and in a manner consistent with the public interest. The Director may forward an application to the Committee for further review. The Committee shall be comprised of the following City staff members or their representatives.

- 1. City Clerk
- 2. Police Chief
- 3. Fire Chief
- 4. Director of Recreation or his/her designee
- 5. Deputy City Administrator

FACILITY USE POLICY

B. When Use Application Referred to Committee

Proposed uses for which the Director may require approval by the Committee include, but are not limited to:

1. Entertainment events (i.e. concerts, live performances, circuses);
2. Events which require a state or municipal license or permit;
3. Events which impose age restrictions for admission;
4. Events to which the general public is invited;
5. Events or organizations which request free use of the facility.

C. Action on Application

If an application is forwarded to the Committee for approval, the Committee shall, within five (5) business days, either approve, conditionally approve, or disapprove it. The Committee shall report its decision to the Director who shall then inform the applicant.

Section 5 - Criteria for Approval of Use Applications

A. In approving any application which comes before the Committee or the Director, the following may be considered:

1. Time of day event is to be held;
2. Number of days event is to be held;
3. Number of people expected to attend;
4. Age of people admitted or expected to attend;
5. Whether liquor is to be available at the event;
6. Purpose of event (i.e. fund raising, profit making, etc.);
7. Whether the event is appropriate for a publicly-owned and managed facility;
8. Whether the use may disturb the peace or cause excessive traffic congestion;
9. Whether the use is likely to burden the fire or police departments or present safety hazards;
10. Whether the use may adversely affect the facility or neighboring property.

B. The primary use of Callahan Hall at the Lewiston Public Library is for City and Library sponsored programs that fit the following purposes:

1. Cultural and arts events.
2. Programs which celebrate ethnic diversity and promote inter-cultural communication.
3. Educational programs, lectures, workshops and seminars.

All applications for the use of Callahan Hall must fit under one of the three purposes above. In order to assure the availability of Callahan Hall for its primary uses, no application may be made more than 60 days in advance of such use.

FACILITY USE POLICY

Section 6 - Conditional Approval

Should an application be conditionally approved, the following conditions may be imposed:

- A. A requirement that the applicant provide adequate security for the event (depending on type of event, number of people expected, etc.);
- B. A requirement that the applicant post a security deposit in case of damage to City property or costs are incurred by the City as a result of breach of the agreement;
- C. A requirement that the applicant post a fee to defray additional public costs which include, but are not limited to:
 - 1. Police - traffic direction or protection;
 - 2. Municipal inspection of special electrical equipment needed for events;
 - 3. Cleaning - events which result in excessive debris from event or attendees;
 - 4. Electrical - events which result in excessive use of electrical power.
- D. A requirement that the applicant provide insurance pursuant to Section 9 of this policy.

Licensees will be required to sign a Facility Use Fee Agreement which sets forth all costs involved, prior to final approval.

Section 7 - Licensee Privileges and Responsibilities

- A. The licensee may be allowed, with approval of the Director, access to the facility for the purpose of setting up decorations, installing booths and other equipment (during normal operating hours). The licensee may be allowed, with approval of the Director, access to the facility on the forenoon next following the rental date for the purpose of removing decorations, booths, and so forth, provided that the facility is not booked or occupied for said time.
- B. Any licensee requiring additional electrical hookup in the facility will obtain the services of a qualified electrician in order that all such electrical work will meet the City of Lewiston code requirements. Additional information concerning electrical work to be done may be obtained by contacting the City of Lewiston Director of Code Enforcement or his representative.
- C. No licensee shall be allowed to store any equipment, paraphernalia, or other items in the facility without prior permission from the Director.
- D. No animals will be kept in the facility overnight.
- E. Nothing shall be nailed, screwed, fastened, or otherwise attached to the walls,

FACILITY USE POLICY

ceilings, or floor surfaces.

- F. The Memorial Armory and Library are public buildings and therefore smoking is not allowed. It shall be the responsibility of the licensee to monitor and enforce these regulations.
- G. If the licensee plans to handle food of any kind for any reason when utilizing the facilities, it is its responsibility to contact the Lewiston City Clerk's Office at City Hall to obtain the proper permit(s). This permit must be displayed in a prominent place in the facility during the event or program. Licensee must provide a copy of the permit to the Director prior to the event.
- H. The licensee shall be responsible for all other licenses, permits, and/or approvals required by the State of Maine and the City of Lewiston. Failure to obtain said licenses and permits may be just cause for cancellation of the event or program and withholding of any deposits or fees collected by the City of Lewiston. Licensee must provide a copy of all licenses/permits to the Director prior to the event.

Section 8 - City Requirements and Responsibilities

- A. Tentative holds on dates will be allowed for only a period of seven (7) calendar days. After this period has expired, the tentative hold may be canceled at any time.
- B. No refund shall be made upon cancellation of any booking unless such cancellation is made at least thirty (30) days prior to the scheduled event.
- C. The Director shall inform both the Police Chief and the Fire Chief in writing of all major scheduled events following the signing of a contract.
- D. It shall be the responsibility of the Chief of Police and Chief of Fire, in cooperation with the Director, to determine how many police officers and fire guards and what, if any, additional private security will be required for the scheduled event. Certain events will require the services of a representative of the Fire Marshall's Office. The determination shall be made by the person or persons acting on the application, and the fee for this service shall be the responsibility of the licensee.
- E. Public dances, primarily for high school students, or other such events will not operate beyond 10:30 p.m. without special permission from the Director.
- F. Similar type competitive events will not be allowed within seven (7) days of a contracted booking. The decision as to whether or not an event is considered to be a competitive event shall be made by the Director.
- G. The Director may waive any provisions or requirements of this policy, except for fees, with prior approval of the City Administrator's Office or the Facility Use Review Committee.

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Section 9 - Liability

- A. The licensee shall be liable for any damages to the building or to any contents owned by the City during the period of use, whether such damage is caused by licensee or its agents, servants or employees, or by any invitees, licensees, or trespassers.
- B. The City of Lewiston shall not be liable for any damage or loss to any property of the licensee from any cause whatsoever while said property is located on the premises for storage purposes or otherwise.
- C. The licensee agrees to defend, indemnify, and hold harmless the City of Lewiston, its departments and their representatives, officers, agents or employees from and against all claims of any nature whatsoever for damages, including damages or loss to personal property, personal injuries and death resulting there from the licensee's use of the Lewiston Memorial Armory or Library. However, nothing contained herein shall be construed as rendering the licensee liable for acts of the City of Lewiston, its departments, or their agents or employees.
- D. The Director or the Committee is authorized to require that the licensee file a certificate of insurance with the City. When requested to do so, the licensee shall provide comprehensive general liability insurance with minimum limits of liability of \$1,000,000 combined single limit for each occurrence. The City shall be named additionally insured under the policy. Additional coverage may be requested when deemed necessary.

Section 10 - General Use

The general use fee (See Sec. 12) covers usual building services such as "house" lights, heat, water, lobby areas, concession, ticket booths, stage, balcony and gymnasium. (See below)

- A. The fee does **not** include the setting up or knocking down of chairs, bleachers, tables, booths, ramps, staging, lighting, etc. The arrangement, performance, and costs of these services shall be sole responsibility of the licensee.
- B. Additional custodial and cleaning services shall be charged to the licensee for any overtime required, as determined by the Director, by regular custodial staff at the rate which will cover the cost of overtime salaries including fringe benefits and administration. This charge shall cover all hours which the custodial staff is required to be on duty, including hours worked prior, during, and after the event.
- C. The building must be left in the same condition it was when the licensee took occupancy. Floors must be clear of all chairs, tables, booths, decorations, debris, etc., by noon of the day following the event. If the day following is a Sunday, arrangements must be made to have a custodian on duty. If additional personnel are needed to clean up after an event, in order to prepare the building for the next day's

FACILITY USE POLICY

use, the licensee will be responsible for the extra cost involved. The need for additional cleaning personnel will be left to the discretion of the Director.

- D. None of the services and equipment described in this policy are available for non-City use and/or rental outside of the Memorial Armory, Library or other City property and/or facilities.

Section 11 - Special Exceptions to Use Other Facilities

Upon application to the City Administrator's Office, the City Council by specific vote, may allow other individuals and/or organizations to utilize other City-owned facilities on a case by case basis, subject to the following:

- A. City Administrator's Endorsement: The City Administrator's Office shall endorse the request.
- B. Consistent with Policy: The applicant must follow all other sections of this policy, except that which has been specifically exempted by the City Council.
- C. Additional Restrictions: The City Council may place any additional restrictions that are deemed appropriate as a condition of approval, for requests that would be considered exceptions to the Policy.

This section is specifically designed to address such events as the various festivals, special events, and other types of requests that are deemed to have broad public benefit to the inhabitants of the City of Lewiston. It is not intended to allow private individuals and/or organizations the opportunity to use such public property not otherwise available for functions that do not meet the requirement of broad public benefit.

Locations that receive approval to be used by others, consistent with this section, does not change the designations established by Section 2 of this Policy.

Section 12 - Fee Policy

- A. For the purposes of this policy, the following user classifications have been developed:

CLASSIFICATION DEFINITIONS

GROUP	DEFINITION
Commercial (Revenue Producing) A	Defined as any type of commercial event where admission is charged, donation accepted, sales made, or other income derived.

FACILITY USE POLICY

Commercial (Non-revenue Producing) B	Defined as any type of commercial event where no admission is charged or donation accepted, nor any sales made, nor other income derived.
Non-Profit (Revenue Producing) A	Defined as church groups, civic groups, political organizations, fraternal groups, social organizations, conventions, or any other non-profit groups or activities sponsored by such groups where admission is charged, donations accepted, sales made, or other income derived.
Non-Profit (Non-revenue Producing) B	Defined same as non-profit (revenue producing), except that no admission is charged or donation accepted, nor any sales made, nor any other income derived.
Exempt (Lewiston Non-Profit, Government) *\$50 non-refundable application fee will not be waived.	Defined as non-profit groups or organizations located in the City of Lewiston (and not classified as non-profit revenue), also the governments of the City of Lewiston, State of Maine and United States, their departments, agencies or committees.
<u>Exempt (Government)</u> <u>*\$50 non-refundable application fee will be waived</u>	<u>Defined as the governments of the State of Maine and the United States and their departments, agencies, committees, or officials when the meeting is open to the public and on a topic of interest to the residents of Lewiston and the City of Lewiston.</u>

- B. Determination of which classification an applicant is charged fees shall be made by the Director based on information furnished, in writing, by the applicant.
- C. Applications must be signed and returned no later than thirty (30) business days prior to the date of the event and a \$50 non-refundable application processing fee must accompany the application. Upon approval, a licensee must sign a Use Agreement, pay the total use fee (no personal checks), and satisfy all other conditions within fifteen (15) business days of the date of the Use Agreement.
- D. Should an applicant fail to comply in any material aspect with the terms of the application or Use Agreement, the Director may immediately terminate said agreement. In that event, the applicant shall not be entitled to the use of the facility or the refund of any fees paid in connection with the application.

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- E. Organizations that wish to hold an event in either the Memorial Armory or Library to which the general public is invited and where there is to be no admission fee charged, donations accepted, or other income derived, may make application in writing to the City Administrator for free use of the facilities (does not include overtime, floor covering, set-up, take down, etc.). Allocation of the facilities for free use will be approved or rejected by the City Administrator or may be referred to the Facilities Use Review Committee for further investigation.
- F. Rental Rate Schedule (See Appendix A Attached)

Section 13 - Copyright

Licensee assumes full responsibility for any copyright infringements, charges, or royalties that may occur on account of activities at the facility pursuant to this Agreement. Licensee warrants that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their legal representatives and agrees to indemnify and hold the City harmless from any and all claims, losses or expenses incurred with regard thereto, including legal fees. Licensee, upon request, shall provide the City with written proof prior to the start time of rental that all copyright provisions and laws have been satisfied by Licensee or some other party. The City reserves the rights to contact owners of copyrights to inform them of the impending event and to inquire whether appropriate copyright(s) fees have been paid. If these fees have not been paid and the City is informed of a claim which could or will result from the event contemplated by Licensee in this Agreement, then the City or the City Contractor shall have the right to withhold from the box office receipts a sum of money sufficient to satisfy any such claims and shall have the right to pay such amount to the holder(s) of the copyright(s).