

**MUNICIPALITY OF NEW LEBANON
REGULAR COUNCIL MEETING
January 21, 2025, at 7:30 p.m.**

The meeting was called to order at 7:30 p.m. by Mayor Nickerson. The invocation was given by Mayor Nickerson, followed by the Pledge of Allegiance.

Verbal Roll Call of Council Members Present for the Record

Council Members:

Timothy L. Back	Present
Gale Joy	Present
Chris Sands	Present
Melissa Sexton	Present
Nicole Adkins	Present
David Nickerson	Present

Others Present:

Acting Manager Anderson
Interim Law Director Rose
Fire Chief Keyser
Acting Police Chief Wortman
Service Director Easom

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Approval of Minutes

- Approval of the January 7, 2025, regular council meeting minutes.

Council Member Sands made a motion to approve the minutes as presented. Council Member Sexton seconded the motion.

5 yes votes and 1 no vote, minutes approved as presented.

- Approval of the January 14, 2025, special council meeting minutes.

Council Member Sands made a motion to approve the minutes as presented. Council Member Back seconded the motion.

5 yes votes, 0 no votes, and 1 abstention, minutes approved as presented.

Unfinished Business

Vice-Mayor Adkins discussed the food trailers parked at the business on Main Street stating that one of the trailers is parked in the grass. Mr. Anderson stated he would ask Mr. Long in zoning to call the owners to make sure they are parked properly.

Council Member Back asked if the blueprint for the salt barn was sent over to Montgomery County. Mr. Anderson stated he will need to contact an architect to do a footer drawing. Mr. Back then followed up on Mr. Bundy and Mr. Dunnigan's homes. Mr. Anderson stated that Mr. Bundy has been working with Mr. Long in zoning, and they are currently in the enforcement process. Mr. Anderson advised he will follow up with Mr. McNamee regarding Mr. Dunnigan's home, which is far more complex.

Council Member Sexton asked about the grant process for the tennis court renovation. Mr. Anderson advised the plans need to be ready and then goes out for bid for construction and the grant has already been approved.

Council Member Back asked what the plans were for the courthouse, recommending that it be sold. Mr. Anderson stated he will look for a broker or real estate agent to move the process forward to solicit proposals if council would like to sell the building.

Council Member Sands asked about the N.L.Y.A. contract. Mr. Anderson advised there is a ninety-day extension in the current contract and that he sent the agreement to our attorney to simplify and fix the language and suggested the park board may want to review it as well.

New Business

Mayor Nickerson motioned to add resolution 2025-02 to the agenda:

A RESOLUTION: RECOGNIZING THE SELF-EXECUTING FORFEITURE OF COUNCIL MEMBER PERKINS' POSITION ON VILLAGE COUNCIL AND SETTING FORTH THE PROCEDURE TO FILL SAID VACANCY.

Council Member Joy asked for time to read the resolution.

Vice-Mayor Adkins verified it was the same thing they received online.

Mr. Anderson stated they could all sympathize with what Mr. Perkins is going through with regard to his own personal health and the health of his wife. He stated it is very honorable and admirable taking care of his wife. Mr. Anderson stated, with that being said he doesn't think there is a way around this charter provision and his non-legal reading of this is fairly straightforward and exact. He said while we can grant excused absences, that is not even considered in section 2.09 of the charter. He stated it is unfortunate, but fell slightly under the 75% requirement, and thinks this is something the council has to do and doesn't know that there is much choice. He stated he has spoken with Mr. Perkins, Mr. Perkins calls him almost every day, and they have had conversations about this. Mr. Perkins is aware, is obviously not happy with this, and will let him know how council will move forward. He stated there really isn't any wiggle room for council to take any other action and will defer to Nate on the legal aspect of it.

Attorney Nate Rose said ultimately the village charter is the most important principles that the village was founded upon and the way by which you change that is through the votes of the citizenry. He stated 75% is based on attendance and doesn't address any sort of absences or unexcused absences for that matter. Unfortunately, he fell below that threshold and our hands are tied from a legal perspective. Mr. Rose stated ultimately it is council's decision if they want to take action on it, but there are ramifications as well to not taking action.

Mr. Anderson stated this is not a new section of the charter this was adopted in 1993.

Council Member Sands asked if there is any state ordinance, or charter or rule that governs excusing more absences than required.

Mr. Rose said in state law there is not a specific Ohio Revised Code section that addresses excused and unexcused absences. However, they do have certain laws that say that it is within the discretion of the village council to determine proper sanctions, however, this is a home rule issue where we have a provision in place that says what you will do in this instance so that would trump any sort of reading of Ohio law because this provision is in place. He stated normally you would defer to state law in the absence of it not being addressed by charter, but there is nothing that specifically addresses this in Ohio Revised Code.

Vice-Mayor Adkins stated in 105.13 they do have about excused and unexcused absence in Ohio Revised Code.

Mr. Rose asked if he could pull it up real quick.

Council Member Sands stated the only thing he read about it is that if they go beyond the first two, they can reduce their wages by a certain percentage.

Vice-Mayor Adkins stated we can also vote to excuse them.

Council Member Back stated that was his understanding because we all took a vote to excuse it even though there's nothing in the charter that at that point it then kicks over to the Ohio Revised Code because there is nothing in our charter about excused absences, so because a vote was taken it kicks to the Ohio Revised Code from his understanding.

Vice-Mayor Adkins stated another thing is we have nothing there about excused absences or actually the process for removal so when you go and look at the process for removal in Ohio Revised Code and it says that the council has to take a vote.

Mr. Rose stated if you read the relevant provision, it says each council member and mayor shall be required to attend at least 75% of all regular scheduled meetings annually and failing to do so shall be deemed to have resign the position. He explained it's not even that you're voting to remove him, it's a resolution recognizing the fact that he did not attend 75% of the meetings and therefore he has resigned his position. Mr. Rose advised that section 105 is for state government and wouldn't cover the townships, municipalities, or in this case, village.

Mayor Nickerson read the motion again.

Council Member Sexton seconded the motion.

Council Member Sands stated it said 2024. Mr. Anderson said he will correct it to say 2025.

Roll Call:

Council Member Sexton	Yes	Council Member Back	No
Council Member Joy	Yes	Mayor Nickerson	Yes
Council Member Sands	Yes	Vice-Mayor Adkins	No

4 yes votes and 2 no votes, motion to add resolution 2025-02 to the agenda passes.

Council Member Joy asked if we should table this resolution to get a legal opinion since Council Member Back is concerned. Mr. Anderson replied that the legal opinion from the law director was sent to them and attorney Nate Rose was there to answer any questions.

Council Member Joy stated he has not read 105.13 so he can't say one way or the other what it actually says.

Mr. Anderson replied that Mr. Rose said that applies to state government and does not apply to local townships and municipalities.

Council Member Joy asked if there was any consolation in the ORC.

Council Member Joy asked for Mr. Rose to pull it up and read it.

Mr. Rose stated there is nothing to pull up because he did all the research and there is nothing specifically that addresses excused or unexcused absences.

Mr. Rose stated chapter one of the Ohio Revised Code in general addresses state government. Chapters five and seven are the ones that govern townships, municipalities, or villages. He said when you start with chapter one, generally speaking, it is going to be irrelevant to the government of a village.

Mr. Anderson stated there is a home rule for the municipality and the charter takes precedence over the ORC.

Mr. Rose explained that home rule means that as long as you are not in conflict with any state law, and there is nothing governing excused and unexcused absences, then whatever rule you have in place in your village is what controls. He stated the only thing we have in our charter is the 75% attendance requirement and there isn't anything built into that for excused or unexcused absences, so you are adhering to the rule that is relevant to this situation and unfortunately as Rob went over irrespective of the health that Mr. Perkins is dealing with him and his wife that is the rule that we have in place.

Vice-Mayor Adkins said it is actually 705.13 and apologized for that.

Mr. Rose pulled up 705.13 and stated that it has to do with pay and doesn't have to do with, again, unexcused and excused absences in terms of your removal from council.

Vice-Mayor Adkins said unless such absence is authorized by two-thirds which was taken.

Mr. Rose stated that is the price of pay and again, home rule, the rule that you have applies as long as it is not in conflict with state law. Mr. Rose stated, and again, even if

you excuse the absence itself, he's still not at 75%. Even if you do 17 out of 23 meetings, he's still not above the threshold of 75% regardless of how you spin it. Mr. Rose stated you would have to count the meeting he was excused from as being a meeting attended for him to be at 75%. It would have to be 18 out of 24.

Council Member Back stated he was excused from the meeting he was absent which was supposed to be the last meeting that he could miss, which was the last one for the end of the year so if he was excused for that absence then that would put him below the threshold because that meeting that he missed would put him at the threshold.

Vice-Mayor Adkins stated that is exactly what was said.

Council Member Joy asked if he was excused for more than one.

Vice-Mayor Adkins stated yes, he was.

Mr. Rose stated ultimately, again, we can go to the excused and unexcused. He stated there are villages, cities, and municipalities in the state of Ohio that address excused and unexcused absences because that is what they have agreed to by law and this village has not done that. It has a 75% attendance rate that doesn't allow you based on the language as written right now to take into consideration excused or unexcused absences.

Mr. Anderson added the charter provision is not something council adopted, it was something the voters approved.

Mr. Rose added ultimately the spirit of the attendance rate is that if you're the voice of the elector you need to be actively participating. He stated he knows this is different that someone just being absent for the sake of being absent.

Mayor Nickerson said we've voted to add it to the agenda under new business and will go ahead and move forward.

Ordinance 2025-01 - AN ORDINANCE TO APPROVE THE 2025 PAY SCALE FOR NON-BARGAINING UNIT EMPLOYEES AND DECLARING AN EMERGENCY.

Vice-Mayor Adkins motioned to table the ordinance due to council packets getting delivered late and no time to review, seconded by Council Member Joy.

Council Member Joy asked why this would be declared an emergency and Mr. Anderson stated it would become effective immediately and the employees could get their step increase.

Roll Call:

Mayor Nickerson	Yes	Council Member Sexton	No
Council Member Joy	Yes	Council Member Back	Yes
Vice-Mayor Adkins	Yes	Council Member Sands	No

4 yes votes and 2 no votes, motion to table the ordinance passes.

Resolution 2025-02 - A RESOLUTION: RECOGNIZING THE SELF-EXECUTING FORFEITURE OF COUNCIL MEMBER PERKINS' POSITION ON VILLAGE COUNCIL AND SETTING FORTH THE PROCEDURE TO FILL SAID VACANCY.

Council Member Sands' motion to approve was seconded by Council Member Sexton.

Roll Call:

Vice-Mayor Adkins	Abstain	Council Member Joy	No
Council Member Back	No	Mayor Nickerson	Yes
Council Member Sexton	Yes	Council Member Sands	Yes

3 yes votes, 2 no vote, and 1 abstention, motion to approve resolution 2025-02 passes.

Vice-Mayor Adkins stated she abstained because we already voted on it and we voted to approve his excused absence and now we want to back pedal.

Public Comments or Questions

None

Administrative Staff Comments

Interim Police Chief Wortman stated a lot of people have been asking about Officer Townsend and he confirmed he has been working and is finishing working on policy information.

Fire Chief Keyser gave a public safety announcement regarding the cold weather and the electric grids and gas service being taxed, causing some overload issues on some equipment resulting in an increase in calls. He encouraged everyone to be mindful in their homes and asked if anyone was uncertain about something to call and they would come out and check things. Fire Chief Keyser also informed council about the fire at the American Legion where a fire started in the furnace and that is where most of the damage was. He stated the bulk of the damage beyond the fire was water damage from the sprinkler system.

Mayor Nickerson stated how cold the night of the fire was and thanked the fire department for their good work as well as the other neighboring departments that responded.

Municipal Manager's Comments

Mr. Anderson introduced council to Dennis Easom, our new Service Director. Dennis is taking over as operator of record for our water and sewer plant and will lead the service department.

Mr. Easom stated he has been doing water and wastewater since 2001 and has dual three certifications in each on the treatment side and has done everything from fixing main breaks at 3:00 in the morning to figuring out why the chlorine levels aren't correct anymore, from customer service to plant upgrades.

Council welcomed Mr. Easom.

Mr. Anderson stated he put information on the website regarding warming stations informing council that the village building is open 8:00-4:30 Monday through Friday and the Fire Chief has opened a portion of the fire department that is open 24 hours if anyone needs to get out of the cold. Mr. Anderson also put a list on the website of other warming centers in the region.

Mr. Anderson stated he is in the process of making an offer to one of the two police chief candidates and will update them with information at the next meeting. He also began review of the village manager applications and will begin interviews within the next couple of days with those candidates that have the best experience and are the best fit.

Mayor Nickerson asked if there had been any sign of the homeless gentleman that was brought up previously and the replies were that nobody had seen him.

Council Member Joy asked about the tax officer position and Mr. Anderson informed him there will be an advertisement going out for a full-time position for someone that would do some tax work as well as HR. Council Member Joy also asked about the CFO

position. Mr. Anderson stated he has received applications and wanted to get a village manager in place and let that person do the hiring for that position. He added our consultants are doing a good job helping manage our finances, so it isn't as critical as finding a replacement manager.

Council Members' Comments

Council Member Back thanked the fire department and said the cold didn't make their jobs any easier.

Vice-Mayor's Comments

Vice-Mayor Adkins hoped everyone stays warm, has a good evening, and for the police and fire to stay safe.

MAYOR'S COMMENTS

None

Request to be Added to the Agenda

Theresa Cooper, 433 Hazelhurst, thanked Shannon for bringing accountability to our village and being a voice. She stated the charter is our bible for the village and we should go by that charter. Mrs. Cooper discussed her having questions about her water bill for about five months and the previous manager called her a liar and she didn't get any answers or help. She said a service worker was finally sent out and explained everything to her and he was very good. She thanked Shannon for the work she was doing. Mrs. Cooper stated you must go by the charter every single time.

Executive Session

Pursuant to C.O. Section 30.03(B)(3) there is a need for an executive session for the purpose of a conference with the Interim Law Director and outside legal counsel concerning disputes involving the municipality that are subject to pending or imminent court action.

Council Member Back motioned to adjourn into executive session; Council Member Sexton seconded.

Roll Call:

Council Member Sands	Yes	Council Member Joy	Yes
Council Member Back	Yes	Mayor Nickerson	Yes
Council Member Sexton	Yes	Vice-Mayor Adkins	Yes

6 yes votes and 0 no votes, the motion passes to enter into executive session.

The regular Council Meeting was reconvened at 8:53 pm. Mayor Nickerson stated that the topic discussed in the executive session was an update from our legal counsel regarding a pending lawsuit filed against the Village by Curtis Hensley.

Council Member Sexton motioned to adjourn the executive session; Council Member Sands seconded.

Roll Call:

Council Member Sands	Yes	Council Member Joy	Yes
Council Member Back	Yes	Mayor Nickerson	Yes
Council Member Sexton	Yes	Vice-Mayor Adkins	Yes

6 yes votes and zero no votes, the motion passes, and the executive session is adjourned at 8:54 pm.

Adjournment


Council Member Back motioned to adjourn the regular meeting; Vice Mayor Adkins seconded.

Roll Call:

Mayor Nickerson	Yes	Council Member Joy	Yes
Council Member Sands	Yes	Vice-Mayor Adkins	Yes
Council Member Back	Yes	Council Member Sexton	Yes

6 yes votes and zero no votes, the motion passes, and the regular meeting is adjourned at 8:55 pm.

Approved:



Mayor Nickerson

2/18/25

Date



Acting Clerk of Council

2/14/25

Date

*Minutes amended in italics.