



# CITY OF CONCORD

## REPORT TO THE MAYOR AND CITY COUNCIL

**FROM:** Brian LeBrun, Deputy City Manager Finance

**DATE:** July 6, 2017

**SUBJECT:** Resolution accepting and appropriating the sum of \$852,591.97 in previously collected street damage fees as a transfer to the Highway Reserve Fund retroactive to June 30, 2017.

### **Recommendation**

Accept this report and set the attached resolution accepting and appropriating the sum of \$852,591.97 in previously collected street damage fees as a transfer to the Highway Reserve Fund retroactive to June 30, 2017 for a public hearing.

### **Background**

On September 14, 2009, City Council amended the Code of Ordinances, Title I, General Code, Chapter 5, Public Works, Article 5-1, Highways and Sidewalks (Ordinance No. 2766), which included revised permit requirements, fees and penalties, and introduced the protection of new paved streets in the form of a 5-year no-cut moratorium and the assessment of street damage fees. In early 2010, Liberty Utilities (formerly Energy North Natural Gas Company) filed suit against the City of Concord alleging that the street excavation Ordinance amendment was not valid under New Hampshire law. That case remained under consideration until recent action.

### **Discussion**

After years of suffering through continued damage by excavation cuts in newly paved streets throughout Concord, the City Council amended the street excavation ordinance in 2009. The amended Ordinance introduced several new features including a new fee structure with street damage charges, and specific enforcement measures and protected street components, all of which are missing from the previous Ordinance requirements. The amended Ordinance would be enforced starting in the 2010 construction season.

Shortly after its enactment in 2010, Liberty Utilities (formerly Energy North Natural Gas) filed suit against the City alleging that the Ordinance amendment was not valid under New Hampshire law. Although the case was active before the courts, fees for street excavation damage were nonetheless assessed and collected.

On June 16, 2017, the New Hampshire Supreme Court issued an order finding the City's excavation fee ordinance to be valid under New Hampshire law. Fees for street damages collected since the enactment of the amended Ordinance in 2010 can now be transferred to the Highway Reserve Fund to be used for their intended purpose.

Therefore, it is recommended that the City Council accept this report and set the attached resolution accepting and appropriating the sum of \$852,591.97 in previously collected street damage fees as a transfer to the Highway Reserve Fund retroactive to June 30, 2017 for a public hearing.

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