

**LEAVENWORTH CITY COUNCIL**  
**Study Session Agenda**  
**City Hall - Council Chambers**  
**May 10, 2016 9:00 a.m.**

**9:00 – 9:20 Chamber Report**

This time is provided for a Chamber of Commerce representative to provide an update to the City Council on items of interest to the Chamber and City.

**9:20 – 9:50 Discussion on Overnight Rentals within the Residential Neighborhoods**

This time is provided to discuss guidance and direction regarding overnight / vacation / short-term rentals in residential neighborhoods. The Planning Commission has been able to conduct several meetings regarding the topic of overnight rentals within the residential neighborhood and has received considerable public input. During the May 4, 2016 meeting in discussions on this topic, the Planning Commission developed their (if asked today) recommendation to the Council which is to retain the current prohibition of overnight / vacation / short-term rentals in residential neighborhoods; and review the Code to ensure that such can be upheld. The Planning Commission desires that the Code is developed in a way that is expressly clear and defensible from challenges. Today, the Planning Commission is seeking guidance and direction from the Council: 1) If the Council, in general, agrees or supports this direction; 2) If the Council, in general, disagrees; or 3) If there is need to conduct additional research and public outreach. This is to gain an understanding and feedback to see if the Planning Commission is on the “same page” as the Council.

There are no items included under **TAB A**.

**9:50 – 10:10 Draft Six-Year Transportation Improvement Plan**

The Six-Year Transportation Improvement Program (STIP) is a short-range planning document that is annually updated based on needs and policies identified in the Leavenworth Comprehensive Plan and Transportation Plan. RCW 35.77.010 requires a perpetual 6 year plan. It represents Leavenworth’s current complete list of needed projects and programs for the next six years and future years. The document also identifies secured or reasonably expected revenues and expenditures for each of the projects included in the STIP. Typically, projects listed in the first three years of the document are shown as having secured funding while projects in the further out years can be partially or undetermined regarding funding.

Programs and planning efforts help achieve the City vision by meeting a particular transportation need (such as a mode or safety) in a systematic way, completing smaller scale projects, and planning for the need over a long period of time. Plans help determine the future transportation network through citywide and corridor long studies.

The annual STIP update starts with the previously adopted plan; this year’s STIP is identified with the dates of 2017 – 2022. Projects in the previously adopted STIP are reviewed and projects that have been completed, or because of changing conditions are no longer needed, are removed. The

remaining projects carried over from the previous STIP are reviewed for changes to cost estimates, project funding, schedule, or scope during the update process to ensure that the best information is represented in the STIP.

New projects are generated from many sources, including appointed commissions and committees representing parks (bicycle and pedestrian trails) and traffic safety, elected officials, City of Leavenworth staff, and other interested individuals and groups. In many cases, City of Leavenworth staff use tools such as the STIP Pavement Management Program – Performance Management Dashboard to help identify potential new projects.

Updated projects from the previous STIP and new projects are then used to create a draft STIP project list. The phasing and funding of these projects is based on an evaluation of project priority compared with priorities laid out in the Leavenworth Transportation Plan, commitments to projects, partnerships the City has entered into with other jurisdictions and agencies, and new opportunities that arise to leverage local transportation funding in combination with other funding sources.

Once the draft STIP has been developed, a public hearing is held to provide an opportunity for the community to comment. The City Council will conduct a public hearing at an evening meeting; based on the results of the public hearing and comments from the Leavenworth City Council, a final version of the STIP will be developed for final Council approval if needed.

The following items are included under **TAB B**:

- The 2016-2021 Original 6-year STIP, 2016-2021 redline changes, 2017-2022 Draft
- PCR Score Mapping – City of Leavenworth
- Map of completed street projects

#### **10:10 – 10:30 Utility Rate Study Recommendation by Public Works Committee**

This time is set aside for the City Council to discuss the direction they would want to proceed with regarding a Utility Rate Study. The 2016 budget authorized \$70,000 for the development and completion of a Utility Rate Study. Early in 2016 a Request for Qualification (RFQ) was developed by City Staff and advertised. The City received three responses to the posted RFQ. All three firms responding, FCS Group, HDR Engineering, Inc., and the Wenatchi Group, Inc provided a scope of work and estimated cost proposal within the budgeted amount. At the April Public Works Committee meeting several of the members questioned moving forward with the selection process and completion of the work. The concern stated that the City was contemplating several changes in the development codes concerning the utilities which may have a significant change on management of utility accounts, utility service connection fees, and several significant capital improvement projects. The Committee recommended further discussion with the full Council before proceeding with the selection process.

A Utility Rate Study is comprised of several pieces. One of the first tasks is to determine whether the existing rate structure conforms to industry / legal guidelines and achieves other industry or city specific objectives. Based upon the results of this evaluation, a detailed billing analysis is used to develop a recommended rate structure that will satisfy community objectives while ensuring adequate revenues to satisfy the utility cost requirements. These would include both ongoing

operational costs, capital costs and related debt service costs. The City's last utility rate study was completed in 2011. Typically the recommendations from a utility rate study are for a five year period. Looking forward, a rate study will examine future capital improvements and any known significant changes to the billing calculation or system. In Leavenworth's case, this would include the significant cost of improvements for the waste treatment facility and a study would provide some analysis on the financing options for that improvement. Additionally, if the City were to consider a significant change in the billing process, for example a more aggressive water conservation rate structure or a change in sewer charges based on use, the Rate Study could be used to forecast the revenues based on those changes. Another question that rate studies typically focus on is the charges for services between rate classes for different utility users; for example examining the cost of garbage services between residential and commercial users. The goal or metric of a successful utility rate study is to provide the information and justification to the Council and community on rates; the level, what costs they cover, and that they are equitable to all the user groups.

A Utility Rate Study is not a required document, it is a tool for the City Council to gain information that the rates established by the City Council cover the cost of service, capital improvements and debt service for each utility. As history has indicated, although the Utility Rate Study provides a recommendation on rate adjustments over time, the City Council has made adjustments to those recommended rates. Included in the packet is a Utility Rate Comparison table for review which compares the suggested rates of the 2011 Study and the rates approved by the Council. If the Council decides to delay the rate study for 2016, staff will provide recommendations on any fee modifications in September based on the current funding received for 2015 and 2016, estimated operating costs for 2017/2018 and the capital projects scheduled for 2017 and 2018.

There following items are included under **TAB C**:

- 2011 – 2016 Utility Rate Comparison
- 2012 – 2014 Utility Revenues vs. Expenditures
- 2008 – August 2014 Tap In Fees/Buy-In/System Development Charges

### **10:30 – 10:50 Review Cemetery Code Changes**

This time is being set aside for the Council to review the revised draft of the Mountain View Cemetery Regulations, Chapter 12.28, for future Council approval. The revisions and corrections shown were initiated by the Public Works Director in consultation with the Parks Division and the Utility Division in response of a need to update certain aspects of the regulations to be in compliance with other similar city managed cemeteries, as well as create a more precise uniform regulation policy. The revised draft was presented to the Parks Committee in the fall of 2015 for review and comment. Those revisions have been applied and the draft is now being presented to Council for further revision and/or approval before being brought before Council for consideration of approval.

The following item is included under **TAB D**:

- Correction Draft of the Mountain View Cemetery Ordinance, Chapter 12.28

## **10:50 – 11:20 Discussion Regarding Non-Conforming Uses**

This discussion topic is a continuation of the discussion on the changes that were approved by City Council for Accessory Dwelling Units (ADU). While changes were adopted to the code language, several council members requested further discussion on existing non-conforming uses. Specifically, within the City there are a number of garages that do not comply with the existing setback provisions of City Code or Building Code Requirements. As long as they remain garages, they remain non-conforming and they can continue to be used. When the property owner looks at a change in use of that garage to an ADU, the property owner must then conform to the new code requirements, both in zoning and in the Building Code requirements. The Council in the discussion on the changes to the ADU language requested more information on the Non-Conforming language within the code.

### **Overview**

The City of Leavenworth has enacted zoning ordinances that regulate the development of real estate within Leavenworth (per the Growth Management Act (GMA) and other legislative directives). The City is divided into zoning districts that permit a particular use of property: residence, commercial, or industry. Within these three main types of zoning districts, population density, building height, and other construction is regulated. Zoning attempts to conserve the value of property and to encourage the most appropriate use of land throughout a particular area.

However, when zoning is established, the ordinance cannot eliminate structures already in existence. Thus, if a district once zoned commercial is changed and now zoned residential, the existing corner grocery store and neighborhood service station become nonconforming use sites. These businesses may remain even though they do not fit the predominant classification of real property in the zoning district.

**As long as the property having nonconforming use status does not change, its status is protected.**

The burden of establishing that any nonconformity is a legal nonconformity, in all cases, is upon the owner of such alleged nonconformity and not upon the City. Documentation submitted by the property owner must ascertain the date the nonconformity was established and that it conformed to the applicable development regulations in effect at that time. Documentation may consist of such historical items as utility statements, property tax bills, real estate contracts, leases, building permits, dated photographs, newspaper clippings and other relevant documentation, when applicable. Unsubstantiated anecdotal evidence cannot be accepted for the determination of existing nonconforming status.

### **When change occurs.**

The Development Services Department works with folks every day that want change, and changes from one use to another within the same category of use are reviewed and typically permitted (this is true for building occupancy classification and allowed permitted uses).

In general, substantial alterations in the nature of the use for the non-conforming building, for example, new equipment that is not a replacement but a subterfuge to expand the use of the property, or a new structure amount to illegal expansion or extension. In addition, the current

Leavenworth Municipal Code (LMC) specifically states, “No nonconforming use, building and/or structure shall be enlarged, increased or extended to occupy a greater area of land, nor shall it be moved in whole or in part to any other portion of the lot or parcel being occupied by such use.” These types of actions will result in the loss of the nonconforming use status, and require compliance with today’s LMC.

For example, if the corner grocery builds an addition to house a restaurant, that would be a significant change. If, however, the grocery updates its refrigeration equipment, that would not be an illegal change.

The International Building Code Section 901.3 Change of occupancy classification states: Where the occupancy classification of a building changes, the provisions of Sections 902 through 912 shall apply. This includes a change of occupancy classification within a group as well as a change of occupancy classification from one group to a different group. Sections 902 through 912 include compliance with the current (today’s) building code.

If a nonconforming use structure is destroyed or partially destroyed by fire (for example) or similar occurrences beyond 75 percent of the value and/or exceeds one year, it cannot be rebuilt.

If a business stops operating in excess of one full year at the nonconforming use site, the City classifies this as a discontinuance and revokes the nonconforming use status. As a practice, discontinuance due to repairs, acts of war or nature, government controls, foreclosure, condemnation, or injunctions are not regarded as intent to abandon the nonconforming use status (basically, if the situation is beyond the business owner's control, the City allows the non-conformity).

Amortization provisions, which allow for the continued operation of the use for a period of time deemed sufficient to recoup the investment put into the use, are applied to restrictions or prohibitions imposed on signs. Leavenworth LMC specifically states: “Notwithstanding the foregoing, existing nonconforming signs shall be brought into compliance with this code no later than March 15, 2030.”

Basically, one of the ultimate goals of the zoning code is to achieve uniformity of property uses within each zoning district which can only be accomplished by the elimination of uses that do not conform to the specifications of current district regulations.

## **Types**

### **Nonconforming use.**

A nonconforming use is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations, is no longer a permitted use.

### **Nonconforming structure.**

A nonconforming structure is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations.

### **Nonconforming lot.**

A nonconforming lot is one that, at the time of its establishment, met the minimum lots size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, is now smaller than that minimum lot size.

### **History**

State law does not regulate nonconforming uses, structures, or lots. So, the City is free, within certain constitutional limits, to establish its own standards for regulation of these nonconforming situations.

Nonconforming uses and structures are not illegal uses and structures; they are generally allowed to continue as is, subject to local restrictions. In *Rhod-A-Zalea v. Snohomish County*, 136 Wn.2d 1, 7 (1998), the state supreme court explained the basis for this treatment of nonconforming uses:

- The theory of the zoning ordinance is that the nonconforming use is detrimental to some of those public interests (health, safety, morals or welfare) which justify the invoking of the police power. Although found to be detrimental to important public interests, nonconforming uses are allowed to continue based on the belief that it would be unfair and perhaps unconstitutional to require an immediate cessation of a nonconforming use.

The City prohibits expansion of nonconforming uses and structures (within limits and with some flexibility). As discussed above, nonconforming uses lose their legal status if they are discontinued for a year. Nonconforming structures lose their legal status if they are destroyed, such as by fire, in whole or in part (75% of the value).

Uses that become nonconforming as a result of changes in zoning regulations are still subject to reasonable regulations under a city's police power to protect the public health, safety, and welfare that are enacted subsequent to the use being established. *Rhod-A-Zalea v. Snohomish County*, 136 Wn. 2d at 8-9. In that decision, the court held that a company that had the right to mine peat as a nonconforming use was subject to a later-enacted local building regulation that required a grading permit excavate or fill the property.

Property owners are allowed to build on their nonconforming lots, although they must meet setbacks (and other standards) applicable to that zone, unless a variance from such setbacks is applied for and can be granted under the adopted criteria for variance approval. Denial of the ability to build on a nonconforming lot could, in some cases, constitute a "taking" under the federal and state constitutions.

The application of the current language on nonconforming use within City Code is there to protect the property owner and provide the City over time to have changes in the code requirements, development codes and building codes, implemented. This allows for the implementation of changes in safety regulations, community standards, and construction materials to occur over time. One last thought, landowners usually retain their nonconforming status until it becomes economically undesirable. At that time, the property owner makes a decision and investment to make changes in the use, structure or property to address the nonconforming status.

The following item is included under **TAB E**:

- Chapter 18.68 - Nonconforming Provisions.

### **11:20 – 11:45 Annual Retreat Follow-up / Continue Goals Discussion**

This time has been provided for continuing the Council Retreat discussion on the goal development worksheet. As goals and objectives are identified, these will be used to develop the 2017/2018 budget and project initiatives for the City. The remaining area for discussion is identified as Community Building. As noted in the early discussions, the Council is asked to first identify the goals within the area and then identify objectives or initiatives that will help achieve those outcomes. The timelines for achieving either the goal or objective is not defined. Some goals or objectives may be short term; others may be much longer, depending on the goal, objective, and needed resources. Once the goals and objectives are identified, staff will provide recommendations and strategies on how to achieve the desired outcomes and the resources that may be needed. These strategies will be incorporated into the 2017/2018 budget development and corresponding workplan. The Goal Development Worksheet, which is provided, was updated with the discussion from the April Study Session and includes the original discussion from the Council March Retreat.

The following item is included under **TAB F**:

- Draft: Goal Development Worksheet

### **11:45 – 11:50 Community Development Block Grant Closure**

The City Council will receive an update on the Community Development Block Grant (CDBG) closeout. Staff has been exploring the requirements for a minimal reimbursement through the grant funders, Department of Commerce, or having the Council terminate the grant contract. We hope to present that information on Tuesday with a recommendation on the next steps for the grant closeout.

There are no items included under **TAB G**.

### **11:50 – 12:00 Council Open Discussion**

The remainder of this time slot allows for Council discussion of items not on the agenda.