

ORDINANCE NO. 1722

CITY OF LEAVENWORTH, WASHINGTON

AN ORDINANCE OF THE CITY OF LEAVENWORTH, WASHINGTON ADOPTING A SIX-MONTH MORATORIUM ON FILING WITH AND PROCESSING BY THE CITY OF CONDITIONAL USE PERMIT APPLICATIONS FOR BED & BREAKFASTS AND DIRECTING STUDY OF LMC CHAPTER 18.54, RELATED TO ADDING RESTRICTIONS ON THE USE OF RESIDENTIAL UNITS CONSTRUCTED USING THE CITY'S PRE-APPROVED PLAN PROGRAM TO BED AND BREAKFASTS, AND REVISING THE METHOD OF CALCULATING HOUSING STOCK AS SUCH CALCULATION MAY LIMIT THE NUMBER OF BED AND BREAKFASTS IN THE CITY

WHEREAS, in 2020, the City Council looked at options to address the community's housing pressures for affordable housing and budgeted up to \$60,000 to provide pre-approved building plans for the construction of in-fill accessory dwelling units.

WHEREAS, in 2021, a contract was awarded to develop several sets of pre-approved ADU Construction Plans and to provide ongoing contract services in the amount of \$72,960.

WHEREAS, since the program's initiation, there have been a total of five permits issued using the City's Pre-Approved Plan Program; three of which have received final certificate of occupancy.

WHEREAS, the three completed residential units using the City Pre-Approved Plans have been converted into Bed & Breakfasts (B&Bs) through the Conditional Use Permit process.

WHEREAS, the Housing Advisory Committee at their January 29, 2026 committee meeting discussed the matter of conversion of ADU residences built using the City's pre-approved plan program and whether the program subsidized development costs for B & Bs but did achieve the program goal of affordable long-term residential rentals.

WHEREAS, the Housing Advisory Committee drafted a letter to the City Council, dated February 26, 2026, requesting the Council to consider the restriction of residences permitted through the pre-approved plan program, prohibiting the conversion of these residences into a B&B for a period of at least 5 years from Certificate of Occupancy.

WHEREAS, the City Council, discussed this memo during an open public meeting on March 10, 2026, and directed staff to explore code and/or policy changes setting restrictions on the use of structures built using pre-approved plans.

WHEREAS, the City Council further discussed errors in the codified method for calculated stock to establish the 4 percent B&B cap within the city limits.

WHEREAS, during their March 24, 2026 open public meeting, the City Council

discussed the adoption of six-month moratorium on new Conditional Use Permit applications for B&Bs, to provide staff time to review options and draft code amendments to address the Council's concerns.

WHEREAS, on March 24, 2026, the City Council approved a motion to set a Public Hearing on the proposed moratorium.

WHEREAS a public hearing has been set for and occurred on April 14, 2026.

WHEREAS, the City needs to ensure the pre-approved plan program addresses community housing needs, as intended.

WHEREAS, all occupied dwelling units constructed using the city pre-approved plans have been converted into Bed and Breakfast facilities (transient accommodations) and do not provide long-term housing for the community.

WHEREAS, the codified housing stock calculation does not accurately identify the current housing stock and is inconsistent with US Census housing counts.

WHEREAS, both federal and state law recognize that local governments have broad police powers to impose measures addressing local issues where the measure "promotes public safety, health or welfare and bears a reasonable and substantial relationship to accomplishing the purpose pursued" and the measure does not conflict with the general law of the State (quoting *Weden v. San Juan County*, 135 Wn.2d 678, 700 (1998));

WHEREAS, Washington law recognizes that imposition of development moratoria and interim regulation is within this police power granted to local governments under article XI, section 11 of the Washington State Constitution ("While no positive grant of authority exists under the SMA to impose a moratorium, such an explicit grant is not required in the face of Washington Constitution article XI, section 11's broad delegation of police power to the local governments." *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 704 (2007) (Opinion of Justice Chambers "concurring in result"), and Washington courts have historically upheld moratoria on a variety of grounds (see, e.g.: *Jablinske v. Snohomish County*, 28 Wash.App. 848, 626 P.2d 543 (Div. 1 1981), *Matson v. Clark County Bd. of Com'rs*, 79 Wash. App. 641, 647-48, 904 P.2d 317, 320 (Div. 2 1995), and *Ord v. Kitsap County*, 84 Wash. App. 602, 929 P.2d 1172 (Div. 2 1997));

WHEREAS, Federal law precedent recognizes that imposition of development moratoria or interim regulation is within the broad police power granted to local governments, and that such regulation or moratoria are important and useful tools to manage land development and growth, and to allow time for thoughtful and proper planning, as well as to deal with emergent and unforeseen situations ("moratoria, or 'interim development controls' as they are often called, are an essential tool of successful development," *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), and temporary planning moratoria provide local governments with "an important land-use planning tool with a well-established tradition," *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 216 F.3d 764, 777 (9th Cir. 2000));

WHEREAS, the State Legislature has expressly authorized cities like the City of Leavenworth to adopt interim regulations or a moratorium for up six months, which can be renewed, for up to one year pursuant to a work plan, pursuant to RCW 35.63.200 (the State Planning Enabling Act), RCW 35A.63.220 (authorizing non-charter code cities to enact interim regulation or moratoria), and RCW 36.70A.390 (authorizing interim regulation or moratoria as part of the GMA);

WHEREAS, and additionally, under RCW 35A.11.020 and RCW 35A.21.160 code cities such as the City of Leavenworth have all the powers which any city or any class may have consistent with the state constitution and not specifically denied to code cities by law;

WHEREAS, due to the above-described circumstances, it is further requested that interim regulation, and a six (6) month moratorium, be imposed to preserve the current status quo pending further study to avoid significant adverse impacts and consequences to public health, safety, welfare and property if the status quo was not preserved;

WHEREAS, the moratorium is necessary to provide time to review and update codes as necessary to prevent additional loss of long-term housing and the proper limitation on the number of B & Bs in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LEAVENWORTH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of the interim moratorium is to temporarily suspend the application of new Conditional Use Permits for Bed and Breakfast facilities until updates to LMC 18.54 can be drafted and implemented to address concerns related to use of pre-approved plans and calculation of housing stock which limits the number of B & Bs in the City .

Section 2. Findings of Fact. The above “Whereas” clauses constitute findings of fact based on the record including that from the public hearing and support the moratorium established by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 3. Public Hearing. A public hearing concerning the moratorium imposed by this Ordinance was set for and occurred on April 14, 2026.

Section 4. Moratorium on Conditional Use Permits Established. A moratorium is hereby established upon the adoption of this Ordinance, on the filing of and processing by the City of new Conditional Use Permit applications for Bed & Breakfasts within the city of Leavenworth, under LMC Section 18.52.010. During the pendency of this moratorium, and any extension, staff shall further study use of the pre-approved plans program and the calculation of housing stock as it effects the number of Bed & Breakfasts in the City. Any extension of this moratorium shall require a public hearing and may require development of a work program for further study.

Section 5. No Special Duty Created. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular individual, class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance.

No provision or term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers, agents, or employees, for whom the implementation or enforcement of this Ordinance shall be discretionary and not mandatory.

Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees, or agents.

Section 6. Severability. Should any section, paragraph, sentence, clause and/or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional, illegal or otherwise invalid for any reason by a court of competent jurisdiction, or should any portion of this Ordinance be preempted by state or federal law or regulations, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 7. Effective Period of Moratorium. The moratorium established by this Ordinance shall become effective as set forth in Section 8 below and shall continue for six (6) months thereafter unless repealed, renewed, or modified by the City Council after a subsequent public hearing and entry of findings of fact.

Section 8. Effective Date. This Ordinance shall become effective five (5) days after passage and publication as provided by law.

Adopted by the City Council of City of Leavenworth, Washington and approved by the Mayor at an open public meeting on the 14th day of April, 2026.

CITY OF LEAVENWORTH

DocuSigned by:
By: Carl Florea
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Carl J. Florea, Mayor

Approved as to form:

DocuSigned by:
Thom Graafstra
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Thom Graafstra, City Attorney

Attest:

Signed by:
Andrea Fischer
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Andrea Fischer, City Clerk