



City of Leavenworth  
100 N. 5<sup>th</sup> Street  
Leavenworth, Kansas 66048

CITY COMMISSION REGULAR MEETING  
COMMISSION CHAMBERS  
TUESDAY, JANUARY 9, 2024 6:00 P.M.

Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting  
Meetings are televised everyday on Channel 2 at 6 p.m. and midnight and available for viewing on YouTube

**CALL TO ORDER** – Pledge of Allegiance Followed by Silent Meditation

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**PRESENTATION:**

1. Presentation to Jermaine Wilson, Mayor 2023

**OLD BUSINESS**

**Consideration of Previous Meeting Minutes:**

2. Minutes from December 12, 2023 Regular Meeting

**Action:** Motion (pg. 3)

**Second Consideration Ordinances:**

3. Second Consideration Ordinance No. 8231 Amending Article X Chapter 10 of the Code of Ordinances

**Action:** Roll Call Vote (pg. 12)

4. Second Consideration Ordinance No. 8232 Amending Article XI Chapter 10 of the Code of Ordinances

**Action:** Roll Call Vote (pg. 21)

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**NEW BUSINESS:**

**Public Comment:** (i.e. Items not listed on the agenda or receipt of petitions)-Public comment is limited to 2-3 minutes and no action will be taken by the Commission on public comment items - Please state your name and address. A signup sheet will be provided in the commission chambers for anyone wishing to speak.

**Public Hearing:**

5. Public Hearing for Unsafe and Dangerous Structure 407 Maple Street

(pg. 29)

- a. Open Public Hearing
- b. Review of Property by Staff and Public Comments
- c. Close Public Hearing
- d. Consider Resolution B-2358 Demolition or Extension to Repair

**Action:** Motion

**Action:** Motion

**Action:** Motion

**General Items:**

6. Mayor's Appointments

**Action:** Motion (pg. 39)

7. Consider Cereal Malt Beverage Licenses for JK Mart and Eddie's Grocery

**Action:** Motion (pg. 40)

8. Update on Unsafe or Dangerous Fire Damaged Structure 805 N 18<sup>th</sup> Street

**Action:** Motion (pg. 41)

9. Update on Unsafe or Dangerous Structures; Given 60-Day Extension at October 24, 2023 Meeting

**Action:** Motion (pg. 43)

**Resolutions:**

10. Resolution B-2359 Kansas Municipal Investment Pool

**Action:** Motion (pg. 44)

**Bids, Contracts and Agreements:**

11. Consider Award of Contract for 2024 Camp Leavenworth Event

**Action:** Motion (pg. 48)

12. Consider Contract for Easement and Right-of-Way Acquisition Services for the Vilas Street and Sidewalk Project

**Action:** Motion (pg. 58)

13. Consider Award of Bid for City Hall HVAC Hydronic & Mechanical Piping Replacement

**Action:** Motion (pg. 61)

14. Consider Bids for Water Pollution Control Division 2024 Chemical Purchase

**Action:** Motion (pg. 65)

15. Consider Contract for the Redesign of the 4<sup>th</sup> Street Improvement Project

**Action:** Motion (pg. 67)

**First Consideration Ordinance:**

16. First Consideration Ordinance for Special Use Permit to Allow a Daycare at 1913 Choctaw Street

**Action:** Consensus (pg. 89)

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**Consent Agenda:**

Claims for December 9, 2023, through January 4, 2024, in the amount of \$3,482,688.80; Net amount for Payroll #25 effective December 15, 2023 in the amount of \$423,929.11 (Includes Police & Fire Pension in the amount of \$7,134.65) and Payroll #26 effective December 29, 2023 in the amount of \$413,118.76 (No Police & Fire Pension).

**Action:** Motion

**Other:**

**Adjournment**

**Action:** Motion



**CALL TO ORDER** - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Jermaine Wilson, Mayor Pro-Tem Griff Martin, Commissioners Nancy Bauder, Edd Hingula and Holly Pittman.

**Staff members present:** City Manager Paul Kramer, Assistant City Manager Penny Holler, Chief Building Inspector Harold Burdette, Finance Director Roberta Beier, Planning & Community Development Director Julie Hurley, Public Works Director Brian Faust, City Attorney David E. Waters and City Clerk Sarah Bodensteiner.

Mayor Wilson asked everyone to stand for the pledge of allegiance followed by silent meditation.

**PRESENTATION:**

**Mayor's Award** – Mayor Wilson presented the Mayor's Award for Community Service to Joana Scholtz for her contributions and dedicated service to the community. Ms. Scholtz was present to accept the award.

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

Commissioner Hingula moved to accept the minutes from the November 28, 2023 regular meeting and the minutes from the December 5, 2023 special meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Second Consideration Ordinance:**

**Second Consideration Ordinance No. 8228 Kansas Gas Franchise Agreement** – City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced at the November 28, 2023 meeting.

Mayor Wilson called the roll and Ordinance No. 8228 was unanimously approved.

**Second Consideration Ordinance No. 8229 Special Use Permit to Operate a Fire Station in R-MF Zoning District** – City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced at the November 28, 2023 meeting.

Mayor Wilson called the roll and Ordinance No. 8229 was unanimously approved.

**Second Consideration Ordinance No. 8230 Special Use Permit to Allow Assisted Living Facility in R1-9 Zoning District**– City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced at the November 28, 2023 meeting.

Mayor Wilson called the roll and Ordinance No. 8230 was unanimously approved.

**Public Comment:** *(Public comment on non-agenda items or receipt of petitions- limited to 2-3 minutes)*

Harold Pederson, 1001 10<sup>th</sup> Ave:

- Chaplain Sam Sanford passed away this Monday
- Participated in ministries impacting those with PTSD
- Asking the Commissioners and community members who knew him to attend his services at Davis Funeral Home on December 20<sup>th</sup> from 3pm-7pm

Walter Williams, 1817 Evergreen St:

- Presented Mayor Wilson with an award for being the 2023 Citizen of the Year from the brothers of Omega Psi Phi Fraternity Inc.

Gail Kempter, 906 9<sup>th</sup> Ave:

- Addressed the Commission regarding property tax
- Increases are hard to accommodate as a person on a fixed income

**General Items:**

**Commission Nominations for Terms December 12, 2023 to December 10, 2024**

**Mayor**

Mayor Wilson moved to nominate Griff Martin for Mayor December 12, 2023 to December 10, 2024. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Mayor Pro-Tem**

Mayor Martin moved to nominate Holly Pittman for Mayor Pro-Tem December 12, 2023 to December 10, 2024. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Financial Claims Reviewer**

Commissioner Wilson moved to nominate Edd Hingula for Financial Claims Reviewer December 12, 2023 to December 10, 2024. Mayor Martin seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**2024 Cereal Malt Beverage Licenses** – City Clerk Sarah Bodensteiner presented for approval 19 establishments that have applied for a 2024 Cereal Malt Beverage License. These include both off-premise and on-premise consumption licenses. They are as follows:

OFF PREMISE CONSUMPTION:

7-Eleven	609 Metropolitan Ave
Casey's General Store #1261	2004 Spruce St
Casey's General Store #2609	950 Eisenhower Rd
Casey's General Store #2826	2100 S 4 <sup>th</sup> St
Family Dollar	104 N Broadway St
Family Dollar	1906 Spruce St
Dillons #40	720 Eisenhower Rd

Home Town	111 N Broadway St
Minit Mart #600576	3122 S 4 <sup>th</sup> St
Murphy USA #7486	1050 Eisenhower Rd
Price Chopper #20	2107 S 4 <sup>th</sup> St
Sam's Food Mart LLC	1031 Metropolitan Ave
Star Gas	788 Spruce St
Walgreens #12923	2900 S 4 <sup>th</sup> St
Walmart #26	5000 10 <sup>th</sup> Ave

ON-PREMISE CONSUMPTION:

Abe's Place	5101 10 <sup>th</sup> Ave
Ava's Island Café	732 Shawnee St
Little Bar	1431 10 <sup>th</sup> Ave
Towne Pub Restaurant	1001 Ottawa St

Commissioner Hingula moved to approve the Cereal Malt Beverage Licenses for 2024 as presented. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Cancellation of the December 26, 2023 Regular Meeting** – City Manager Paul Kramer presented a request to cancel the December 26, 2023 City Commission Regular meeting. Regular meeting dates and times are set by the City Code of Ordinances and allows for cancellation by the City Commission.

Commissioner Wilson moved to cancel the December 26, 2023 regular meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Update for Unsafe and Dangerous Fire Damaged Structure 805 N 18th Street** – Chief Building Inspector Hal Burdette reviewed the repairs to the structure located at 805 N 18<sup>th</sup> Street that was damaged by fire on January 21, 2023. The City received a check from insurance proceeds for \$33,939.63. A public hearing was held on July 11, 2023 and the City Commission adopted Resolution B-2339 requiring the owner to make repairs. The Commission has given extensions for the repairs to be completed. At this time, the exterior repairs have been completed. The interior work has started, but has not progressed to the point that inspections have been performed and the project has been approved for sheetrock installation. Staff recommends that the Commission allow the owner additional time to make repairs.

Commissioner Pittman:

- Asked if there is a cap on extensions or if multiple extensions can be given

Mr. Kramer:

- The Governing Body can grant as many extensions as they see fit

Commissioner Bauder moved to grant a 60-day extension to 805 N 18<sup>th</sup> Street to allow more time for repairs to be made to the structure. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Public Hearing:**

## Public Hearing for Amending the 2023 Budget:

### Open Public Hearing:

Commissioner Wilson moved to open the public hearing. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

### Staff and Public Comments:

Finance Director Roberta Beier presented the proposed amendments to the 2023 Budget as follows:

- Add \$197,334 spending authority to the Recreation Fund to cover expenditures that may exceed budgeted expenditures
- Add \$10,100 spending authority to the Library Fund to allow for increases to the Library Fund spending authority so that the taxes collected for the Library in December can be remitted to the Library in 2023 without exceeding the Library Fund's spending authority
- Add \$2,192 spending authority to the Library Employee Benefits Fund to allow for increases to the Library Employee Benefit Fund spending authority so that the taxes collected in December can be remitted to the Library in 2023 without exceeding the Library Employee Benefit Fund's spending authority
- Increase the Hotel TIF spending authority by \$438,438 due to increased revenues that need to be distributed according to the terms of the TIF Development Agreements
- Add \$606,963 spending authority to the Storm Water Fund to cover expenditures related to the Storm Water Capital Project expenditures

Mr. Kramer:

- The City isn't levying any new taxes or starting new programs
- Anything that comes in as a revenue has to have an expense tied to it

Mayor Martin opened the floor for public comment. No further comments were made.

### Close Public Hearing:

Commissioner Wilson moved to close the public hearing. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

Commissioner Bauder moved to approve the amendments to the 2023 Budget as presented. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

### Resolutions:

**Resolution B-2353 Planters II Tenant Write-Off Accounts** – Planning & Community Development Director Julie Hurley presented Resolution B-2353 removing five tenant accounts from the rent register at Planters II. Past Due rent or damage assessments are determined to be uncollectible for various reasons. Some tenants are deceased or have been moved to nursing homes and have no ability to repay. Others have moved from the forwarding address provided. Attempts to recover the monies has been unsuccessful. The Resolution deletes the accounts in accordance with the procedures to keep the Housing Authority's rent register current. The process is required by HUD and is included in management policy resolutions adopted for the operation of Planters II.

Commissioner Pittman:

- Asked how do you notify the past tenants that they are delinquent

Ms. Hurley:

- The Housing Manager tries to reach them, but some have passed away or a forwarding address is faulty, but every attempt is made to reach them

Commissioner Wilson moved to adopt Resolution B-2353 deleting uncollectable tenant accounts. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Resolution B-2354 Planters Disposed Assets** – Planning & Community Development Director Julie Hurley presented Resolution B-2354 authorizing the removal of property from the Planters II inventory. A 2001 Chevy Silverado truck has been disposed of. The Resolution deletes the property from the asset inventory in accordance with the procedures established by the U.S. Department of Housing and Urban Development to keep the inventory log current. The process is required by HUD.

Commissioner Bauder moved to adopt Resolution B-2354 removing disposed of property from the Leavenworth Housing Authority's inventory. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Resolution B-2355 Planters II Schedule of Charges** – Planning & Community Development Director Julie Hurley presented for approval Resolution B-2355 amending the Admission and Continued Occupancy Policy (ACOP) schedule of charges for Planters II. The Resolution shall adopt a schedule of charges for the cleaning of apartments and equipment, charges for damage and tenant neglect for apartments, common areas, and equipment at Planters II. The Resolution shall also adopt charges for excessive lockout and for damages caused by motorized scooters, wheelchairs, grocery carts, moving carts, dollies, bicycles, scooters and skateboards.

Commissioner Hingula moved to adopt Resolution B-2355 adopting the ACOP schedule of charges as presented. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Resolutions for Excel Development Group Low Income Housing Tax Credit Project** – City Manager Paul Kramer presented that the City has been working with Excel Development Group on a senior (55+) residential project for consideration under the Low Income Housing Tax Credits program from the Kansas Housing Resources Corp (KHRC). The proposed development would be submitted through KHRC for competitive award in early 2024. A part of the process, Excel Development Group approached the City about providing local support for an application to the State for residential development on 10<sup>th</sup> Avenue. The development would be limited to those 55 years old or older, and include a first phase of 15 duplex housing units. Along with a resolution of support, KHRC requires that the local government waive development fees up to \$40,000 and indicate willingness to issue Industrial Revenue Bonds to exempt the tangible personal property and services purchased in connection with the construction of the project from sales tax.

Connor Menard with Excel Development Group:

- Provided an overview of the proposed project
- 15 duplexes, 30 units total
- Maintenance free community for seniors
- Truly affordable housing, rent would be around \$700-\$750 a month
- The Low Income Housing Tax Credit process is extremely competitive, so the fee waiver and sales tax exemptions are incredibly helpful to our project in scoring

Mayor Martin:

- Asked what other communities have they done this in
- Asked if there was a timeline on this project

Mr. Menard:

- Manhattan, Topeka, Humboldt, Colby, Goddard, and other rural areas as well
- Pre-application is due in January, hope to hear by August if the project was funded
- If funded could be early 2025

Commissioner Pittman:

- Asked who does the scoring for the applications

Mr. Menard:

- Kansas Housing Resource Corp. does the scoring

Commissioner Bauder moved to adopt Resolution B-2356 a Resolution of support of Low Income Housing Tax Credits for Excel Development Group Housing Development at 4714 S 10<sup>th</sup> Avenue, approve the Fee Waiver letter and, adopt Resolution B-2357 a Non-Binding Resolution of intent to Issue Industrial Revenue Bonds for the Excel Development Group Housing Development. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

### **Bids, Contracts and Agreements:**

**Consider City Commercial Insurance Package 2024** – City Clerk Sarah Bodensteiner presented for consideration the insurance renewal for 2024 with Travelers Insurance in the amount of \$568,629.00. This is an increase of \$114,488.00 (roughly 25%). A 5% increase was budgeted for 2024, the remaining balance will be paid from the General Fund Reserves. We are in the middle of a hard market from a rate standpoint and this is reflective in the renewal premium. Provided with the Premium Summary is a lookback at the previous year's premiums. Premiums are now 8.75% higher than they were in 2020/21, which is a blended increase from 2020 to 2024 of roughly 2% per year. From a coverage standpoint, Travelers increased all property values and the Wind/Hail deductibles are going from 1% to 3% with a minimum of \$100,000 per occurrence on property. Additionally, auto deductibles are increasing from \$1,000 to \$2,500 and \$5,000 for large garbage trucks. The City's insurance broker, Mike Reilly reviewed the market conditions, renewal quote and answered questions from the Commission.

Mike Reilly of The Reilly Company:

- Reviewed the market conditions and renewal quote
- The premium increase comes about through a variety of issues:



- Catastrophic losses impacts everyone
- Raising inflation costs
- Reinsurance costs
- Escalating medical costs due to claims, more claims due to distracted drivers
- More legal involvement
- Larger jury awards; umbrella policies are being hit more than previously
- Continuing to work on a comprehensive cyber risk policy to better protect the City

Commissioner Bauder:

- Asked if paying the ransom is the new encouraged practice

Mr. Reilly:

- If the cost is cheaper than the rebuilding costs, paying the ransom would make sense, but not in every situation

Mayor Martin:

- Would like to see more data and breakdown from Travelers when it comes to cost justification

Mr. Reilly:

- These companies do value long term clients, so when we see an opportunity in the market we can go back to our carrier for relief and push back when justified

Commissioner Bauder moved to approve the 2024 commercial insurance package with Travelers in the amount not to exceed \$568,629.00. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Consider Approval to Purchase 2024 Refuse Truck and Compaction Body** – Public Works Director Brian Faust presented for approval the purchase of a 2024 new/used truck cab and chassis with refuse compaction body for the Solid Waste Division. The equipment replacement schedule has one of the six units identified for replacement in 2024. Bid specifications were prepared and options for purchasing the truck were researched. After reviewing available purchase options, department staff felt it advantageous to utilize Sourcwell national pricing under the statutory authority of K.S.A. 12-2901 for the cooperative purchase. This program allows the City to purchase equipment that meets our needs while guaranteeing that standard governmental purchasing practices are followed. Bids include a five-year/100K mile warranty on the engine and a four-year body, cylinder and hydraulic warranty. The City is trading in a 2006 Freightliner Refuse Truck with Heil 5000 compactor. Ordering the vehicle now will ensure that it is delivered and usable in 2024. The 2024 Solid Waste Division’s budget included funding in the amount of \$201,500 for the replacement unit. The cost for the new equipment is \$229,000 while the trade-in value of the 2006 Freightliner is \$27,500. The actual cost after trade-in is \$201,500. To comply with the Kansas Cash Basis Law, there is cash available in 2023 for this purchase even though delivery will not occur until 2024.

Commissioner Bauder:

- Asked about delivery timeframe

Mr. Faust:

- We should receive the truck in early 2024

Commissioner Wilson moved to approve the purchase of a 2024 New/Used Truck Cab and Chassis with Refuse Compaction Body from Elliot Equipment Company, in an amount not to exceed \$229,000.00. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Consider Award of Bid for Planters II Chiller System Replacement Project - Planning & Community Development** Director Julie Hurley presented for approval the bids for the Chiller System Replacement at Planters II. The existing Chiller System is in need of upgrade and replacement due to age and operational issues. Due to the age of the system it has become extremely costly and very difficult to find parts for repairs. The shut off valves also need to be replaced due to leaks and continued maintenance issues. The Leavenworth Housing Authority utilized engineering and architect services to prepare the specifications and drawings for this project. Bids were opened on November 9, 2023 with D'Agostino Mechanical Contractors, Inc., being the low bidder. D'Agostino has worked with the City of Leavenworth on previous projects without any noted performance issues. There are sufficient funds available in the Capital Fund Program grant and Operating Subsidy for Planters II for this project.

Commissioner Wilson moved to award the bid for the Planters II Chiller System Replacement Project to D'Agostino Mechanical Contractors, Inc., in an amount not to exceed \$708,325.00. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

#### **First Consideration Ordinance:**

**First Consideration Ordinance Amend Chapter 10, Article X, Property Maintenance of the Code of Ordinances** – City Attorney David Water presented for first consideration an ordinance amending Article X, Chapter 10 of the City Code, Property Maintenance. The article has been reviewed and updated documents prepared regarding this section of the City Ordinance related to Property Maintenance. There are no major changes to the procedures. The revisions are primarily related to more clearly defining terms and processes, to include cross-referencing other sections of the code to provide consistency and expanded provisions on weeds/thickets, junk and motor vehicles.

There was a consensus by the Commission to place on first consideration.

**First Consideration Ordinance Amend Chapter 10, Article XI, Unsafe or Dangerous Structures of the Code of Ordinances** – City Attorney David Waters presented for first consideration an ordinance amending Article XI, Chapter 10 of the City Code, Unsafe or Dangerous Structures. The article has been reviewed and updated documents prepared regarding this section of the City Ordinance related to Unsafe or Dangerous Structures. There are no major changes to the procedures. The revisions are primarily related to ensuring that State Statutes are appropriately applied and referenced, as well as more clearly defining terms and processes.

There was a consensus by the Commission to place on first consideration.

**Consent Agenda:**

Commissioner Bauder moved to approve claims for November 18, 2023 through December 8, 2023, in the amount of \$2,063,543.89; Net amount for Longevity Pay effective November 24, 2023 in the amount of \$44,808.63; and Payroll #24 effective December 1, 2023, in the amount of \$395,652.90 (No Police & Fire Pension). Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Martin declared the motion carried 5-0.

**Other:**

City Manager Paul Kramer:

- Provided clarity on funds for the Chiller System Replacement project
- Noted that the basketball program has the highest registration numbers they've seen

Commissioner Pittman:

- Congratulated the Christmas Market on a successful event
- Great event for local vendors as well

Commissioner Hingula:

- Echoed Commissioner Pittman's comments on the Christmas Market
- Talked to several vendors and they said they'd be back next year

Commissioner Wilson:

- Congratulated the Christmas Market on a successful event
- Recognized Edna Wagner for holding another successful Christmas Tea Event; it was the last one before she leaves Leavenworth
- Honor and privilege to serve on this Commission

Commissioner Bauder:

- Attended the Christmas Market and saw people walking around to other businesses in the downtown; great event
- Asked about adding a long-term goal, a study on self-sustainability, solar, energy, power, etc.; a focus on environment

Mayor Martin:

- Echoed the other Commissioners sentiments on the Christmas Market
- Thanked the team for the nomination and support for being the Mayor
- Love the different ideas and opinions of the Commission
- Thanked the Lord for the opportunity to serve

**Adjournment:**

Commissioner Hingula moved to adjourn the meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved and the meeting was adjourned.


Time Meeting Adjourned 7:36 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

**POLICY REPORT  
SECOND CONSIDERATION ORDINANCE 8231  
AMENDING ARTICLE X OF CHAPTER 10 OF THE CITY  
OF LEAVENWORTH CODE OF ORDINANCES**

JANUARY 9, 2024

  
\_\_\_\_\_  
Sarah Bodenstener, CMC  
City Clerk

  
\_\_\_\_\_  
Paul Kramer  
City Manager

**BACKGROUND:**

At the December 12, 2023 City Commission regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE AMENDING ARTICLE X (PROPERTY MAINTENANCE) OF CHAPTER 10 (BUILDINGS AND CONSTRUCTION) ADOPTING AND AMENDING THE INTERNATIONAL PROPERTY MAINTENANCE CODE, ADDING NEW AND SUBSTITUTE PROVISIONS THERETO, AND REPEALING THE PREVIOUS SECTIONS SO AMENDED.**

There have been no changes to the ordinance since first introduced. Ordinance No. 8231 is now presented for second consideration and requires a roll call vote.

**ATTACHMENTS:**

- Ordinance No. 8231

(Summary Published in the Leavenworth Times on January 13, 2024)

**ORDINANCE NO. 8231**

**AN ORDINANCE AMENDING ARTICLE X (PROPERTY MAINTENANCE) OF CHAPTER 10 (BUILDINGS AND CONSTRUCTION) ADOPTING AND AMENDING THE INTERNATIONAL PROPERTY MAINTENANCE CODE, ADDING NEW AND SUBSTITUTE PROVISIONS THERETO, AND REPEALING THE PREVIOUS SECTIONS SO AMENDED.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

**Section 1.** Article X of Chapter 10 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**ARTICLE X. PROPERTY MAINTENANCE**

*DIVISION 1. INTERNATIONAL PROPERTY MAINTENANCE CODE*

**Sec. 10-446. International Property Maintenance Code adopted.**

The city has adopted the ICC International Property Maintenance Code, 2018 edition, including appendix A (the "International Property Maintenance Code", the "IPMC", or "code"), which is incorporated by reference as if fully set forth in this article, except such parts or portions thereof as are specifically changed, omitted, or added to in this article. One copy of the adopted code marked or stamped "Official Copy as Incorporated by the Code of Ordinances of Leavenworth, Kansas," with a copy of this article attached and with all amendments established in this article clearly marked, shall be on file in the office of the city clerk and available to the public for inspection.

**Secs. 10-447—10-457. Reserved.**

*DIVISION 2. AMENDMENTS TO ADOPTED PROPERTY MAINTENANCE CODE*

**Sec. 10-458. Amendments to IPMC; generally.**

The amendments to the adopted International Property Maintenance Code are as provided in this division. All references to section and chapter numbers in the text of this division shall be construed as if followed by the words "of the International Property Maintenance Code," unless clearly indicated in the contrary.

**Sec. 10-459. Amendments to IMPC Section 101; general.**

Section [A] 101.1 of the IPMC, as adopted by the city, is hereby amended to read as follows:

**Section [A] 101.1 Title.** These regulations shall be known as the "International Property Maintenance Code" of The City of Leavenworth, hereinafter referred to as "this code".

**Sec. 10-460. Amendments to IMPC Section 103; department of property maintenance inspection.**

Section [A] 103.5 Fees of the IPMC, as adopted by the city, is hereby amended to read as follows:

**Section [A] 103.5 Fees.** The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the city fee schedule.

**Sec. 10-461. Amendments to IMPC Section 109; emergency measures.**

Section 109.1 and Section 109.6 of the IPMC, as adopted by the city, are hereby amended to read as follows:

**109.1 Imminent danger.** See Article XI (Unsafe or Dangerous Structures; Abandoned Property) of Chapter 10 (Buildings and Construction), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**109.6 Hearing.** Any person ordered to take emergency measures shall comply with such order forthwith.

**Sec. 10-462. Amendments to IMPC Section 110; demolition.**

Sections 110.1, 110.2, 110.3, and 110.4 of the IPMC, as adopted by the city, are hereby deleted in their entirety, and Section 110.1 shall be amended to read as follows:

**Section 110.1 General.** See Article XI (Unsafe or Dangerous Structures; Abandoned Property) of Chapter 10 (Buildings and Construction), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**Sec. 10-463. Amendments to IMPC Section 111; means of appeal.**

Section 111 of the IPMC, and all subsections thereunder, as adopted by the city, are hereby deleted in their entirety.

**Sec. 10-464. Amendments to IMPC Section 112; stop work order.**

Section [A] 112.4 of the IPMC, as adopted by the city, is hereby amended to read as follows:

**Section [A] 112.4 Failure to Comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to prosecution in municipal court.

**Sec. 10-465. Amendments to IMPC Section 202; general definitions.**

The definition of the term "code official" in Section 202 of the IPMC, as adopted by the city, is hereby amended to read as follows:

**[A] CODE OFFICIAL.** The department head or other person designated by the city manager to enforce this article. The present designated code official is the zoning administrator, community development department. All officers of the city including code enforcement, law enforcement and building inspection personnel may report violations to this person who shall investigate and determine appropriate action. Citizens are also encouraged to report violations of this code to the designated code official.

**Sec. 10-466. Amendments to IPMC Section 302; exterior property areas.**

Section 302.4 (Weeds) of the IPMC, as adopted by the city, is hereby amended to read as follows:

**302.4 Weeds and thickets.** All premises and exterior property shall be maintained free from weeds or plant growth in excess of twelve (12) inches in height. All noxious weeds and uncontrolled thickets shall be prohibited. Weeds shall be defined as all grasses, annual plants, and vegetation, other than trees or shrubs; provided, however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds and/or uncontrolled thickets after a service of notice of violation, they shall be subject to prosecution in accordance with this code or as may otherwise be provided in Article V (Additional or Alternative Provisions regarding Weeds and other Vegetation) of Chapter 28 (Nuisances), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**302.4.1 Weeds/thickets to be removed.** Property owners are responsible for maintaining property free from weeds and thickets, including the area between the property lines of said property and the centerline of any adjacent street or alley, including, but not specifically limited to, sidewalks, streets, alleys, easements, right-of-way, and all other areas, public or private. All weeds and/or uncontrolled thickets as herein described are hereby declared a nuisance and are subject to abatement as provided in Article V of Chapter 28, as amended, of the Leavenworth Code of Ordinances.

**302.4.2 Notice to remove.** See Article V (Additional or Alternative Provisions regarding Weeds and other Vegetation) of Chapter 28 (Nuisances), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**302.4.3 Abatement; assessment of costs.** See Article V (Additional or Alternative Provisions regarding Weeds and other Vegetation) of Chapter 28 (Nuisances), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**302.4.4 Right of entry.** See Article V (Additional or Alternative Provisions regarding Weeds and other Vegetation) of Chapter 28 (Nuisances), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**302.4.5 Unlawful interference.** See Article V (Additional or Alternative Provisions regarding Weeds and other Vegetation) of Chapter 28 (Nuisances), as amended,

of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference.

**302.4.6 Complaint.** Separate from and independent of any abatement action as provided for in this code or otherwise in city code, the code official, at his or her option, may also file a complaint or complaints in the municipal court of the city against the owner, occupant or agent of the property for any violation of the city weed control ordinance.

Section 302.8 of the IPMC, as adopted by the city, is hereby amended to read as follows:

**302.8 Motor vehicles.** Except as otherwise set forth in this section, it is a violation of this article for any person, partnership, corporation, or other entity, or their agent either as owner, lessee, tenant, or occupant of land within the city to park, store, deposit, or permit to be parked, stored, or deposited on such land or on the public street adjacent thereto a vehicle that is inoperative or unlicensed. No vehicle shall at any time be in a state of major disassembly, disrepair, or in a state of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth designed for the environmentally safe application of the paint. The provisions of this section shall not apply to owners who have temporarily placed their motor vehicle in an inoperable condition while working on the vehicle on their premises, provided that such work is performed inside an enclosed structure designed and approved for such use. In no event shall an owner or person in possession maintain a motor vehicle on his or her premises in an inoperable condition, outside of an enclosed structure, for a period in excess of forty-eight (48) hours. Violation of the provisions of this section shall further be deemed a nuisance.

Nothing in this section shall preclude other enforcement as provided in Chapter 28 (Nuisances) or in Article VI (Abandoned Vehicles) of Chapter 44 (Traffic and Vehicles), as amended, of the Leavenworth Code of Ordinances, or K.S.A. 8-1101 *et seq.*, as amended, the terms of which are incorporated herein by this reference.

**302.8.1 Motor vehicle nuisances unlawful; defined; exceptions.** It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city. Except as otherwise set forth in this section, a motor vehicle nuisance is any motor vehicle which is: not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; parked in violation of city ordinance; incapable of moving under its own power; or in a junked, wrecked, or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked, or inoperable:

1. Absence of a current registration plate upon the vehicle;
2. Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
3. Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.

The provisions of this section shall not apply to:

1. Any motor vehicle which is fully enclosed in a garage or other building;



2. The parking or storage of a vehicle inoperable for a period of forty-eight (48) consecutive hours or less;
3. Any person conducting a business enterprise in compliance with the existing zoning regulations; or
4. To the extent provided elsewhere in this section.

Provided, that nothing in this section shall be construed to authorize the maintenance of a public nuisance. See Chapter 28 (Nuisances), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference, and K.S.A. 8-1101 *et seq.*

**302.8.2 Inoperable vehicles; authorization of code official to order removal.**

Except as otherwise set forth in this section, it is a violation of this article for any person, partnership, corporation, or other entity, or their agent either as owner, lessee, tenant, or occupant of land within the city to park, store, or deposit, or permit to be parked, stored, or deposited on such land or on the public street adjacent thereto, a vehicle that is not in an operating condition. In the event that the code official finds that any such person has parked, stored, or deposited, or permitted to be parked, stored, or deposited on such land or in the streets immediately adjacent thereto such a vehicle in violation of this section, the code official may issue an order to remove such vehicle from such land or the street immediately adjacent thereto. In the event the person to whom the order is directed fails to remove such vehicle within the specified time, the code official may enter an order authorizing the city to remove the vehicle as provided in this code or in Chapter 28 (Nuisances) or in Article VI (Abandoned Vehicles) of Chapter 44 (Traffic and Vehicles), as amended, of the Leavenworth Code of Ordinances, or K.S.A. 8-1101 *et seq.*, as amended, the terms of which are incorporated herein by this reference.

**302.8.3 Parking and storage of inoperable vehicles** Except as otherwise set forth in this section, it is unlawful for the owner or person in possession of any motor vehicle to park or place the vehicle upon a street, driveway, (except in an enclosed structure) while the vehicle is in an inoperable condition. Provided however, that this section 302.8.3 shall not apply to filling stations (or gasoline service stations) operating as special uses or non-conforming uses. The provisions of this section shall not apply to owners who have temporarily placed their motor vehicles in an inoperable condition while working on the vehicles on their premises. In no event shall an owner or person in possession maintain a motor vehicle on his or her premises in an inoperable condition for a period in excess of forty-eight (48) hours unless such vehicle is placed in an enclosed structure.

Prior to issuing a citation, the code official or a police officer of the city shall make a reasonable attempt to notify and inform the owner or person in possession of the vehicle of the ordinance violation. The notification shall state the date and time which it is issued and shall notify the owner or person in possession of the vehicle that in the event the same is not placed in an operating condition, removed from the premises, or placed in an enclosed structure within forty-eight (48) hours of the issuance of the notice, a citation will be filed against the owner or person in possession in municipal court. In no event shall the temporary moving of such

vehicle by the owner or person in possession of the same operate as a defense to a citation alleging violation of this section.

**302.8.4 Parking and storage of motor vehicles accepted for repair by filling stations (or gasoline service stations) operating as special uses or non-conforming uses.** Notwithstanding the foregoing, the regulations set forth in this subsection shall apply to the parking or storing of motor vehicles accepted for repair by filling stations (or gasoline service stations) operating as special or nonconforming uses anywhere in the city.

All such vehicles may be stored or parked only in an enclosed structure or in parking spaces located on the premises of such filling station. Such vehicles shall not be parked on the street. No more than twelve (12) such vehicles shall be stored or parked on the premises of such filling station (other than in an enclosed structure) at any one time. No such vehicles shall be parked or stored on the premises (other than in an enclosed structure) for a period in excess of fourteen (14) consecutive days.

**302.8.5 Complaints; inquiry and inspection.** The code official or designee shall make inquiry and inspection of premises upon receiving a complaint or complaints stating that a motor vehicle nuisance exists and describing the same and where located. The code official or designee may make such inquiry and inspection when he or she observes conditions which appear to constitute a motor vehicle nuisance. Upon making any inquiry and inspection, the code official or designee shall maintain a written report of findings.

**302.8.6 Right of entry.** It shall be a violation of this article to deny the code official or his or her designated agent(s) the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

**302.8.7 Notice; contents; abatement; disposition of vehicle; hearing; costs assessed.** Any person found by the code official to be in violation of this section shall be served a notice of such violation, as provided in Chapter 28 (Nuisances), as amended, of the Leavenworth Code of Ordinances, the terms of which are incorporated herein by this reference, and K.S.A. 8-1101 *et seq.*, as amended, the terms of which are incorporated herein by this reference. Such violations may be abated, and vehicles disposed, in accordance with such Chapter 28. Hearings may be conducted, and costs assessed, in accordance with such Chapter 28.

**Sec. 10-467. Amendments to IPMC Section 304; exterior structure.**

Section 304.14 (Insect Screens) of the IPMC, as adopted by the city, is hereby amended to read as follows:

**Section 304.14 Insect Screens.** During the period from April 1 to October 1, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of minimum 16 mesh per

inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

*Exception:* Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

**Sec. 10-468. Amendments to IPMC Section 602; heating facilities.**

Section 602.3 (Heat Supply) of the IPMC, as adopted by the city, is hereby amended to read as follows:

**Section 602.3 Heat supply.** Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October 1 to April 1 to maintain a minimum temperature of 60°F (20°C) in all habitable rooms, bathrooms and toilet rooms.

*Exceptions:*

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code.
2. In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

Section 602.4 (Occupiable Work Spaces) of the IPMC, as adopted by the city, is hereby amended to read as follows:

**Section 602.4 Occupiable work spaces.** Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to April 1 to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

*Exceptions:*

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

**Sec. 10-469. Purpose.**

The purpose of this article is to provide for enforcement of property maintenance standards which are considered essential to health and sanitation, but their violation would not necessarily make a home unfit for continued occupancy. Each standard enumerated herein is a minimum order of law. Persons are encouraged to maintain their properties to higher standards.

**Secs. 10-470—10-526. Reserved.**

**Section 2.** Article X of Chapter 10 of the Leavenworth Code of Ordinances, including Sections 10-446 through 10-526, inclusive, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

**Section 3.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 9th day of January, 2024.

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Griff Martin, Mayor

{SEAL}

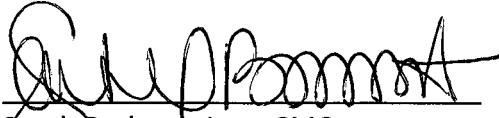
ATTEST:

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Sarah Bodensteiner, CMC, City Clerk

**POLICY REPORT  
SECOND CONSIDERATION ORDINANCE 8232  
AMENDING ARTICLE XI OF CHAPTER 10 OF THE CITY  
OF LEAVENWORTH CODE OF ORDINANCES**

**JANUARY 9, 2024**



Sarah Bodensteiner, CMC  
City Clerk



Paul Kramer  
City Manager

**BACKGROUND:**

At the December 12, 2023 City Commission regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE REGARDING UNSAFE OR DANGEROUS STRUCTURES AND ABANDONED PROPERTY, AMENDING ARTICLE XI (UNSAFE OR DANGEROUS PROPERTIES; ABANDONED PROPERTY) OF CHAPTER 10 (BUILDINGS AND CONSTRUCTION) OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.**

There have been no changes to the ordinance since first introduced. Ordinance No. 8232 is now presented for second consideration and requires a roll call vote.

**ATTACHMENTS:**

- Ordinance No. 8232

(Summary Published in the Leavenworth Times on January 13, 2024)

## ORDINANCE NO. 8232

### AN ORDINANCE REGARDING UNSAFE OR DANGEROUS STRUCTURES AND ABANDONED PROPERTY, AMENDING ARTICLE XI (UNSAFE OR DANGEROUS PROPERTIES; ABANDONED PROPERTY) OF CHAPTER 10 (BUILDINGS AND CONSTRUCTION) OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

**Section 1.** Article XI of Chapter 10 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

#### ARTICLE XI. UNSAFE OR DANGEROUS STRUCTURES; ABANDONED PROPERTY

##### Sec. 10-527. State law adopted; definitions.

Except as specifically set forth herein, the provisions of K.S.A. 12-1750 *et seq.*, as amended, are adopted by reference as though more fully set forth herein. As used in this article, the following terms shall have the meanings indicated in this section.

- (a) *Abandoned property* – means:
  - (1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding ninety (90) days; or
  - (2) commercial real estate for which the taxes are delinquent for the preceding two (2) years and which has a blighting influence on surrounding properties.
  
- (b) *Unfit for human occupancy* – means:
  - (1) any structure that is deemed unfit for human occupancy, as established under the International Property Maintenance Code, as adopted by the city (see Article X of Chapter 10 of the Leavenworth Code of Ordinances); and/or
  - (2) any structure that is deemed unfit for human use or habitation, including conditions that exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have a blighting influence on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness;

overcrowding; inadequate ingress and egress; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements.

- (c) *Unsafe or dangerous structure* – means (i) any structure that is deemed unsafe, unfit for human occupancy, unlawful, or dangerous as established herein or under the International Property Maintenance Code, as adopted by the city, and/or (ii) any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fires, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding, or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts; present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than ninety (90) days; structures which remain unfinished, or without an occupancy permit, after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested within the last ninety (90) days.

**Sec. 10-528. Designation of enforcing officer.**

In addition to those persons identified as the "code official" under the International Property Maintenance Code, as adopted by the city, the director of planning and community development, the building official, building inspector, code enforcement officer, or other designated city official tasked with enforcing property maintenance laws in the city are designated as the enforcing officer(s) charged with the administration of the provisions of this article and K.S.A. 12-1750 *et seq.*, as amended.

**Sec. 10-529. Prohibition.**

It is unlawful to maintain or allow the existence of any unsafe or dangerous structure, or any abandoned property, in the city. It is unlawful for the owner, occupant or custodian of any unsafe or dangerous structure to permit such structure to remain in such an unsafe or dangerous condition or to occupy, permit occupation or otherwise utilize such a structure while it remains in an unsafe or dangerous condition. It is unlawful for the owner or custodian or any abandoned

property to permit such property to remain as abandoned property, whether as the result of unpaid taxes or such property having a blighting influence (as defined in K.S.A. 12-1750, as amended).

**Sec. 10-530. Determination.**

- (a) When the enforcing officer shall file with the city commission a statement in writing that any structure is unsafe or dangerous or is abandoned property, describing the structure and where located, the city commission shall by resolution fix a time and place at which the owner, the owner's agent, any lienholder of record, and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished, or rehabilitated in the case of abandoned property.
- (b) The resolution provided for in subsection (a) of this section shall be published once each week for two consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three days after its first publication to each such owner, agent, lienholder or occupant at their last-known place of residence and shall be marked "deliver to addressee only."
- (c) On the date fixed for hearing under this section or any adjournment thereof, the city commission shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure, as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the city commission finds that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe or secure. If the city commission finds that such structure is abandoned property, the governing body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a, as amended. Such resolution shall be published once in the official city newspaper and a copy thereof mailed to the owners, agents, lienholders of record and occupants in the same manner provided in the notice of hearing. The resolution shall fix a reasonable time within which the repair or the removal of such structure shall be commenced, and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated, or fails to diligently prosecute such repair or removal until the work is completed, the city commission will cause the structure to be repaired or razed and removed in the case of unsafe or dangerous structures, or rehabilitated in the case of abandoned property.

**Sec. 10-531. Posting of notice.**

In addition to the notice provisions established in this article or in the International Property Maintenance Code, as adopted by the city, the enforcing officer may place a notice on the particular structures found by the enforcing officer or the city commission to be unsafe or dangerous, or abandoned, in substantially the following form: "This structure has been found by the City of Leavenworth to



be unsafe or dangerous, or abandoned. This notice is to remain on this structure and shall not be removed until it is repaired or demolished in accordance with the notice which has been given the owner, the owner's agent, any lienholder of record and any occupant of this structure." No person shall deface or remove the placard from any structure which has been condemned as unsafe or dangerous and placarded as such, except as provided in this article or the International Property Maintenance Code. The enforcing officer shall remove such placard when the defect upon which the condemnation and placarding action were based has been eliminated.

**Sec. 10-532. Vacation of premises.**

Any structure condemned as unsafe or dangerous, and so designated by the enforcing officer, shall be vacated within such time period established in the resolution of condemnation described in section 10-530(c) above or, in the absence of a time period, within thirty (30) days after publication and mailing of such resolution as provided in this article. No structure which has been condemned as an unsafe or dangerous structure shall again be used for human habitation until approval is secured from, and any above-described placard is removed by, the enforcing officer or the city commission.

**Sec. 10-533 Excavation fill.**

It shall be the duty of the property owner, representative, or the tenant, upon removal of a structure, to fill any basement, after removing all concrete footings and foundation walls, or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition, including grading and seeding or sodding of the area, removal of dirt or mud from roads, streets, alleys, or sidewalks, to allow for proper drainage of the site, and to remove any and all refuse, trash, debris, brush and limbs, or materials from the site.

**Sec. 10-534. Abatement by city; collection of costs.**

- (a) If the owner of any structure determined to be unsafe or dangerous fails to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute such repair or removal thereafter, the city may proceed to raze and remove the structure, make the premises safe and secure, or let the same to contract. The city shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the costs of removing such structure and making the premises secure. All moneys in excess of that necessary to pay such costs shall, after payment of all costs, be paid to the owner of the premises upon which the structure was located.
- (b) The city shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys

received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full. Whenever any structure is removed from any premises under the provisions of this article, the city clerk shall certify to the county appraiser that such structure, describing the same, has been removed.

- (c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this article the city commission shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the city.

**Sec. 10-535. Casualty insurance proceeds.**

See Article V (Casualty Insurance Proceeds) of Chapter 20 (Fire Prevention and Protection) of the Leavenworth Code of Ordinances, as amended, the terms of which are incorporated herein by this reference.

**Sec. 10-536. Immediate hazard.**

- (a) Notwithstanding anything in this article to the contrary, when, in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay, and such

action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by this article and K.S.A. 12-1755, as amended.

- (b) An immediate hazard may include, but is not limited to, imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life or safety is endangered by the occupation of the structure, or when there is an actual or potential danger to the building occupants or those in proximity thereto because of explosives, fumes, gases, vapors, or operation of defective or dangerous equipment.
- (c) It shall be unlawful for any person to enter a structure that has been deemed an immediate hazard except for the purposes of securing the structure, making the required repairs, removing the hazardous condition, or demolishing the structure.

**Sec. 10-537. Right of entry; unlawful interference.**

Any authorized officer or agent of the city, pursuant to this article, shall be allowed to enter onto any land within the city limits to investigate violations of this article or for the abatement of violations pursuant to this article. It shall be unlawful for any person to interfere with a public officer or agent of the city in performing his or her duties pursuant to this article whether investigating or abating violations. Any person who interferes with an officer or agent of the City pursuant to this article shall be punished as provided in this article.

**Sec. 10-538 Enforcement in municipal court.**

In addition to, or as an alternative to, any enforcement of this article as provided herein, or enforcement of any other portion of the Leavenworth Code of Ordinances that incorporates by reference the enforcement provisions of this article, if an authorized public officer determines that a violation of this article (or other portion of the code that incorporates by reference this article) exists, he or she may issue a notice to appear in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear. The imposition of any removal and abatement action described in this article shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described in this article or otherwise provided by applicable law to remove or abate a nuisance, an unsafe or dangerous structure, abandoned property, or to collect removal and abatement costs.

**Sec. 10-539 Penalties.**

Any person who violates this article shall be punished as provided in section 1-10 of the Leavenworth Code of Ordinances, as amended. Each day the violation continues after notice from the enforcing officer to cease violation shall be deemed a separate and distinct offense and punishable as such.

**Secs. 10-540—10-567. Reserved.**

**Section 2.** Article XI of Chapter 10 of the Leavenworth Code of Ordinances, including Sections 10-527 through 10-567, inclusive, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

**Section 3.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 9th day of January, 2024.

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Griff Martin, Mayor

{SEAL}

ATTEST:

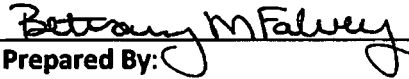
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Sarah Bodensteiner, City Clerk

**POLICY REPORT**

**Public Hearing for Unsafe and Dangerous Structures  
407 Maple Street**

**January 9, 2024**



**Prepared By:**  
Bethany Falvey,  
City Planner



**Reviewed By:**  
Paul Kramer,  
City Manager

**DISCUSSION**

Structures that are assessed to be in an unsafe and dangerous physical condition, abandoned, or that have a blighting influence, pose a threat to the public health, safety and welfare of the City. The City uses its powers under Chapter 10, Article XI (Unsafe or Dangerous Structures) of the Code of Ordinances to address and abate these structures.

The property had a fire in July 2021 that caused damage to the structure. No permit was issued to repair damages until August 2022, after a code violation letter was sent to the owner regarding property maintenance in May 2022. The permit expired due to lack of inspections/progress and another fire in March 2023. A demolition permit was applied for in August 2023, but the permit has not been issued as it was not a complete application.

The Owner of 407 Maple Street was first sent notification on November 9, 2023 of possible demolition. The owner was requested to contact staff to discuss steps to bring the structure into compliance and to sign a Remediation Agreement, with a deadline of January 5, 2024 to have repairs complete.

The Commission passed a Resolution setting the public hearing at the November 14, 2023 City Commission meeting. After that time, notification was again provided to the owner of the property, as required by statute, via certified mail, posting on the structure, and publication in the Leavenworth Times.

Additionally, property owners within 200' of the property were notified of the public hearing date and invited to provide comment.

1. **407 Maple Street** – Single family structure, last water service was 10/26/2022. No change. The property owner called to discuss the remediation agreement. No contact since. There are no active building permits.

**RECOMMENDED ACTION**

1. Adopt Resolution B-2358 declaring the structure presented during the public hearing of January 9, 2024 as eligible for demolition.
2. Remove the structure from the listing for demolition
3. Postpone any consideration for further information and consideration.
4. Reject the listing of the structure for demolition.
5. Other action as deemed necessary by the City Commission.

Good morning City Commission,

Today I am asking for your leniency with time for my resolve of my property at 407 Maple. I am currently suffering from a financial hardship and I'm trying to get back on my feet again here. I was devastated at the beginning of 2023 when my contractor set fire to the house; I have been lied to and cheated out of repair monies for the house on numerous occasions. Please allow me more time and also, please put me on the list for any government grant; if there is any possibility monies can be allocated to me for repair or demo of 407 Maple, that will be a blessing. Thank you for your time, patience and consideration. May this be a happier New Year to all of you!

God Bless!

Ryan Negrette

**A**          Delete  Change  No Activity **NFIRS-1 Basic**

**B Location Type**  Check this box to indicate that the address for this incident is provided on the Wildland Fire Module in Section B, "Alternative Location Specification." Use only for wildland fires.  Census Tract  -

Street address

Intersection  In front of  Rear of  Adjacent to  Directions  U.S. National Grid

Number/Milepost Prefix Street or Highway Street Type Suffix

Apt./Suite/Room City State ZIP Code

-

Cross Street, Directions or National Grid, as applicable

**C Incident Type**

Incident Type

**D Aid Given or Received**  None  None

1  Mutual aid received

2  Auto. aid received

3  Mutual aid given

4  Auto. aid given

5  Other aid given

Their FDID Their State

Their Incident Number

**E1 Dates and Times** Midnight is 0000

Month Day Year Hour Min

ALARM always required

Alarm

ARRIVAL required, unless canceled or did not arrive

Arrival

CONTROLLED optional, except for wildland fires

Controlled

LAST UNIT CLEARED, required except for wildland fires

Last Unit Cleared

**E2 Shifts and Alarms** Local Option

Shift or Platoon Alarms District

**E3 Special Studies** Local Option

Special Study ID# Special Study Value

**F Actions Taken**  Extinguishment by

Primary Action Taken (1)

Additional Action Taken (2)

Additional Action Taken (3)

**G1 Resources**  Check this box and skip this block if an Apparatus or Personnel Module is used.

Apparatus Personnel

Suppression

EMS

Other

Check box if resource counts include aid received resources.

**G2 Estimated Dollar Losses and Values** Required for all fires if known. Optional for non-fires. None

LOSSES: Property \$

Contents \$

PRE-INCIDENT VALUE: Optional

Property \$

Contents \$

**Completed Modules**

Fire-2

Structure Fire-3

Civilian Fire Cas.-4

Fire Service Cas.-5

EMS-6

HazMat-7

Wildland Fire-8

Apparatus-9

Personnel-10

Arson-11

**H1 Casualties**  None

Deaths Injuries

Fire Service

Civilian

**H2 Detector** Required for confined fires.

1  Detector alerted occupants

2  Detector did not alert them

U  Unknown

**H3 Hazardous Materials Release**  None

1  Natural gas: slow leak, no evacuation or HazMat actions

2  Propane gas: <21-lb tank (as in home BBQ grill)

3  Gasoline: vehicle fuel tank or portable container

4  Kerosene: fuel burning equipment or portable storage

5  Diesel fuel/fuel oil: vehicle fuel tank or portable storage

6  Household solvents: home/office spill, cleanup only

7  Motor oil: from engine or portable container

8  Paint: from paint cans totaling <55 gallons

0  Other: special HazMat actions required or spill > 55 gal (Please complete the HazMat form.)

**I Mixed Use Property**  Not mixed

10  Assembly use

20  Education use

33  Medical use

40  Residential use

51  Row of stores

53  Enclosed mall

58  Business & residential

59  Office use

60  Industrial use

63  Military use

65  Farm use

00  Other mixed use

**J Property Use**  None  None

**Structures**

131  Church, place of worship

161  Restaurant or cafeteria

162  Bar/Tavern or nightclub

213  Elementary school, kindergarten

215  High school, junior high

241  College, adult education

311  Nursing home

331  Hospital

341  Clinic, clinic-type infirmary

342  Doctor/Dentist office

361  Prison or jail, not juvenile

419  1- or 2-family dwelling

429  Multifamily dwelling

439  Rooming/Boarding house

449  Commercial hotel or motel

459  Residential, board and care

464  Dormitory/Barracks

519  Food and beverage sales

539  Household goods, sales, repairs

571  Gas or service station

579  Motor vehicle/boat sales/repairs

599  Business office

615  Electric-generating plant

629  Laboratory/Science laboratory

700  Manufacturing plant

819  Livestock/Poultry storage (barn)

882  Non-residential parking garage

891  Warehouse

**Outside**

124  Playground or park

655  Crops or orchard

669  Forest (timberland)

807  Outdoor storage area

919  Dump or sanitary landfill

931  Open land or field

936  Vacant lot

938  Graded/Cared for plot of land

946  Lake, river, stream

951  Railroad right-of-way

960  Other street

961  Highway/Divided highway

962  Residential street/driveway

981  Construction site

984  Industrial plant yard

Look up and enter a Property Use code and description only if you have NOT checked a Property Use box.

Property Use Code

Property Use Description

NFIRS-1 Revision 01/01/05

**K1 Person/Entity Involved**

Local Option  Business Name (if applicable) [REDACTED] Area Code [REDACTED] Phone Number [REDACTED]

Check this box if same address as incident location (Section B). Then skip the three duplicate address lines.

Mr., Ms., Mrs. [REDACTED] First Name [REDACTED] MI [REDACTED] Last Name [REDACTED] Suffix [REDACTED]

Number [REDACTED] Prefix [REDACTED] Street or Highway [REDACTED] Street Type [REDACTED] Suffix [REDACTED]

Post Office Box [REDACTED] Apt./Suite/Room [REDACTED] City [REDACTED]

State [REDACTED] ZIP Code [REDACTED]

More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary.

**K2 Owner**

Local Option  Same as person involved? Then check this box and skip the rest of this block.

Business Name (if applicable) [REDACTED] Area Code [REDACTED] Phone Number [REDACTED]

Check this box if same address as incident location (Section B). Then skip the three duplicate address lines.

Mr., Ms., Mrs. [REDACTED] First Name [REDACTED] MI [REDACTED] Last Name [REDACTED] Suffix [REDACTED]

Number [REDACTED] Prefix [REDACTED] Street or Highway [REDACTED] Street Type [REDACTED] Suffix [REDACTED]

Post Office Box [REDACTED] Apt./Suite/Room [REDACTED] City [REDACTED]

State [REDACTED] ZIP Code [REDACTED]

**L Remarks:**

The incident narrative is printed on the Supplemental Form.

More remarks? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary.

**M Authorization**

Check box if same as Officer in charge. <input type="checkbox"/>	Officer in charge ID	Signature	Position or rank	Assignment	Month	Day	Year
	3106	JUSTIN LACEY	Driver/Ope	A/C	01	13	2023
<input checked="" type="checkbox"/>	Member making report ID	Signature	Position or rank	Assignment	Month	Day	Year
	3106	JUSTIN LACEY	Driver/Ope	A/C	01	13	2023



**A**          Delete  Change **NFIRS-1S Supplemental**

FDID  State  Incident Date  Station  Incident Number  Exposure

**K1 Person/Entity Involved**   -  -

Local Option

Check this box if same address as incident location. Then skip these three duplicate address lines.

-

**K1 Person/Entity Involved**   -  -

Local Option

Check this box if same address as incident location. Then skip these three duplicate address lines.

-

**K1 Person/Entity Involved**   -  -

Local Option

Check this box if same address as incident location. Then skip these three duplicate address lines.

-

**K1 Person/Entity Involved**   -  -

Local Option

Check this box if same address as incident location. Then skip these three duplicate address lines.

-

**K1 Person/Entity Involved**   -  -

Local Option

Check this box if same address as incident location. Then skip these three duplicate address lines.

-

L

## Remarks:

Local Option

**JUSTIN LACEY**

E3 responded to a structure fire. E3 arrived on scene to the home showing heavy smoke. Fire could also be seen from the A Side through a melted vent on the roof. E3 stretched a 1 3/4 handline. Once a 360 was completed E3 and E2A made entry into the home to attempt to locate the fire in what appeared to be the 2nd story/attic. E3 put fire out on the main floor as an attempt was made to find access to the upper level. Unable to find access to the upper floor E3 tried to suppress the fire through several holes in the ceiling where fire could be seen overhead. Making no progress E3 was about to pull out when 101 ordered everyone out of the structure. Suppression transitioned to a defensive mode until fire was under control. Once under control personal was able to get back into the structure to mop up any hot spots and overhaul.

District 1 responded to a mutual aid request and assisted with defensive suppression.

House is on fire; Units Recommended: E3,E2,E1,Q2,101;

Dispatched: E3, E2, E1, Q2, 101; Update reviewed by dispatcher- Baragary, Shana M-1039 ; fire is on the inside cat inside; Update reviewed by dispatcher- Brown, Andrea Nicole-1607 ; nobody is in the house; Ems enrte to stage; Update reviewed by dispatcher- Lanter, Jordyn Renae-1555 ; Rp: 8167822374; TX: LTX5464; e2 on scene laying out to the hydrant ; Update reviewed by dispatcher- Lanter, Jordyn Renae-1555 ; a lotof smoke to the east; Rp called to let us know her house was on fire and then hung up, dispatch called back and she hung up immediately she then called back and wouldn't answer questions and was very angry; Update reviewed by dispatcher- Baragary, Shana M-1039 ; Everyg and kgas notified and enrte; Update reviewed by dispatcher- Lanter, Jordyn Renae-1555 ; New Names Added : Mueller, Guadalupe, Female, White; Caller&#x0D;

; Requested district 1 to assist with fire// lvso notified; Update reviewed by dispatcher- Baragary, Shana M-1039 ; Red cross notified at 0258; Update reviewed by dispatcher- Baragary, Shana M-1039 ; Crew going in on C side; Discontinued time marks

**JUSTIN LACEY - E2**

E2 cleared scene at 0600 to return to station and swapped crews with C shift and returned to scene to relieve E3

**A** LV101 KS 01 13 2023 003 0000099 000  Delete **NFIRS-2 Fire**  
 FDID  State  Incident Date  Station  Incident Number  Exposure  Change

**B Property Details**

**B1** 1  Not Residential  
 Estimated number of residential living units in building of origin whether or not all units became involved.

**B2**       Buildings not involved  
 Number of buildings involved

**B3**       None  Less than one acre  
 Acres burned (outside fires)

**C On-Site Materials or Products**  None Complete if there were any significant amounts of commercial, industrial, energy, or agricultural products or materials on the property, whether or not they became involved.

Enter up to three codes. Check one box for each code entered.

           
On-site material (1)

           
On-site material (2)

           
On-site material (3)

**On-Site Materials Storage Use**

1  Bulk storage or warehousing  
 2  Processing or manufacturing  
 3  Packaged goods for sale  
 4  Repair or service  
 U  Undetermined

**D Ignition**

**D1** UU Undetermined  
 Area of fire origin

**D2** UU Undetermined  
 Heat source

**D3** UU Undetermined  
 Item first ignited  1  Check box if fire spread was confined to object of origin.

**D4**            
 Type of material first ignited Required only if item first ignited code is 00 or <70.

**E1 Cause of Ignition**  Check box if this is an exposure report.

1  Intentional  
 2  Unintentional  
 3  Failure of equipment or heat source  
 4  Act of nature  
 5  Cause under investigation  
 U  Cause undetermined after investigation

**E2 Factors Contributing to Ignition**  None

UU Undetermined  
 Factor contributing to ignition (1)

           
 Factor contributing to ignition (2)

**E3 Human Factors Contributing to Ignition**

Check all applicable boxes  None

1  Asleep  
 2  Possibly impaired by alcohol or drugs  
 3  Unattended person  
 4  Possibly mentally disabled  
 5  Physically disabled  
 6  Multiple persons involved

7  Age was a factor  
 Estimated age of person involved     

1  Male 2  Female

**F1 Equipment Involved in Ignition**  None  If equipment was not involved, skip to Section G.

           
Equipment Involved

Brand       
 Model       
 Serial #       
 Year     

**F2 Equipment Power Source**

           
 Equipment Power Source

**F3 Equipment Portability**

1  Portable  
 2  Stationary

Portable equipment normally can be moved by one or two persons, is designed to be used in multiple locations, and requires no tools to install.

**G Fire Suppression Factors**  None

Enter up to three codes.

           
Fire suppression factor (1)

           
Fire suppression factor (2)

           
Fire suppression factor (3)

**H1 Mobile Property Involved**  None

1  Not involved in ignition, but burned  
 2  Involved in ignition, but did not burn  
 3  Involved in ignition and burned

      
Mobile property model

                
License Plate Number State VIN

**Structure fire? Please be sure to complete the Structure Fire form (NFIRS-3).**

**H2 Mobile Property Type and Make**

           
Mobile property type

           
Mobile property make

           
Year

**Local Use**

Pre-Fire Plan Available  
 Some of the information presented in this report may be based upon reports from other agencies:

Arson report attached  
 Police report attached  
 Coroner report attached  
 Other reports attached

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

NFIRS-2 Revision 01/01/05

<p><b>I1 Structure Type</b> ☆</p> <p>If fire was in an enclosed building or a portable/mobile structure, complete the rest of this form.</p> <p>1 <input checked="" type="checkbox"/> Enclosed building</p> <p>2 <input type="checkbox"/> Portable/Mobile structure</p> <p>3 <input type="checkbox"/> Open structure</p> <p>4 <input type="checkbox"/> Air-supported structure</p> <p>5 <input type="checkbox"/> Tent</p> <p>6 <input type="checkbox"/> Open platform (e.g., piers)</p> <p>7 <input type="checkbox"/> Underground structure (work areas)</p> <p>8 <input type="checkbox"/> Connective structure (e.g., fences)</p> <p>0 <input type="checkbox"/> Other type of structure</p>	<p><b>I2 Building Status</b> ☆</p> <p>1 <input type="checkbox"/> Under construction</p> <p>2 <input type="checkbox"/> In normal use</p> <p>3 <input type="checkbox"/> Idle, not routinely used</p> <p>4 <input type="checkbox"/> Under major renovation</p> <p>5 <input type="checkbox"/> Vacant and secured</p> <p>6 <input type="checkbox"/> Vacant and unsecured</p> <p>7 <input type="checkbox"/> Being demolished</p> <p>0 <input type="checkbox"/> Other</p> <p>U <input checked="" type="checkbox"/> Undetermined</p>	<p><b>I3 Building Height</b> ☆</p> <p>Count the roof as part of the highest story.</p> <p><input type="text" value="002"/></p> <p>Total number of stories at or above grade.</p> <p><input type="text" value="00"/></p> <p>Total number of stories below grade.</p>	<p><b>I4 Main Floor Size</b> ☆</p> <p><input type="text" value="00"/> , <input type="text" value="001"/> , <input type="text" value="300"/></p> <p>Total square feet</p> <p>OR</p> <p><input type="text" value="0"/> , <input type="text" value="065"/> BY <input type="text" value="0"/> , <input type="text" value="020"/></p> <p>Length in feet                      Width in feet</p>	<p><b>NFIRS-3 Structure Fire</b></p>
--	--	---	---	--

<p><b>J1 Fire Origin</b> ☆</p> <p><input type="text" value="000"/> <input type="checkbox"/> Below grade</p> <p>Story of fire origin</p>	<p><b>J3 Number of Stories Damaged by Flame</b></p> <p>Count the roof as part of the highest story.</p> <p><input type="text" value=""/> Number of stories w/minor damage (1 to 24% flame damage)</p> <p><input type="text" value=""/> Number of stories w/significant damage (25 to 49% flame damage)</p> <p><input type="text" value="002"/> Number of stories w/heavy damage (50 to 74% flame damage)</p> <p><input type="text" value=""/> Number of stories w/extreme damage (75 to 100% flame damage)</p>	<p><b>K Type of Material Contributing Most to Flame Spread</b></p> <p><input type="checkbox"/> Check if no flame spread OR if same as Material First Ignited (Block D4, Fire Module) OR if unable to determine. <span style="float: right;">➔ Skip to Section L</span></p> <p><b>K1</b> <input type="text" value=""/> Item contributing most to flame spread</p> <p><b>K2</b> <input type="text" value=""/> Type of material contributing most to flame spread <span style="float: right;">Required only if item contributing code is 00 or &lt;70.</span></p>
<p><b>J2 Fire Spread</b> ☆</p> <p>If fire spread was confined to object of origin, do not check a box (Ref. Block D3, Fire Module).</p> <p>2 <input type="checkbox"/> Confined to room of origin</p> <p>3 <input type="checkbox"/> Confined to floor of origin</p> <p>4 <input checked="" type="checkbox"/> Confined to building of origin</p> <p>5 <input type="checkbox"/> Beyond building of origin</p>		

<p><b>L1 Presence of Detectors</b> ☆</p> <p>(In area of the fire)</p> <p>N <input type="checkbox"/> None Present <span style="float: right;">➔ Skip to Section M</span></p> <p>1 <input type="checkbox"/> Present</p> <p>U <input checked="" type="checkbox"/> Undetermined</p>	<p><b>L3 Detector Power Supply</b></p> <p>1 <input type="checkbox"/> Battery only</p> <p>2 <input type="checkbox"/> Hardwire only</p> <p>3 <input type="checkbox"/> Plug-in</p> <p>4 <input type="checkbox"/> Hardwire with battery</p> <p>5 <input type="checkbox"/> Plug-in with battery</p> <p>6 <input type="checkbox"/> Mechanical</p> <p>7 <input type="checkbox"/> Multiple detectors &amp; power supplies</p> <p>0 <input type="checkbox"/> Other</p> <p>U <input type="checkbox"/> Undetermined</p>	<p><b>L5 Detector Effectiveness</b></p> <p>Required if detector operated.</p> <p>1 <input type="checkbox"/> Alerted occupants, occupants responded</p> <p>2 <input type="checkbox"/> Alerted occupants, occupants failed to respond</p> <p>3 <input type="checkbox"/> There were no occupants</p> <p>4 <input type="checkbox"/> Failed to alert occupants</p> <p>U <input type="checkbox"/> Undetermined</p>
<p><b>L2 Detector Type</b></p> <p>1 <input type="checkbox"/> Smoke</p> <p>2 <input type="checkbox"/> Heat</p> <p>3 <input type="checkbox"/> Combination smoke and heat</p> <p>4 <input type="checkbox"/> Sprinkler, water flow detection</p> <p>5 <input type="checkbox"/> More than one type present</p> <p>0 <input type="checkbox"/> Other</p> <p>U <input type="checkbox"/> Undetermined</p>	<p><b>L4 Detector Operation</b></p> <p>1 <input type="checkbox"/> Fire too small to activate</p> <p>2 <input type="checkbox"/> Operated <span style="float: right;">➔ Complete Block L5</span></p> <p>3 <input type="checkbox"/> Failed to operate <span style="float: right;">➔ Complete Block L6</span></p> <p>U <input type="checkbox"/> Undetermined</p>	<p><b>L6 Detector Failure Reason</b></p> <p>Required if detector failed to operate.</p> <p>1 <input type="checkbox"/> Power failure, shutoff, or disconnect</p> <p>2 <input type="checkbox"/> Improper installation or placement</p> <p>3 <input type="checkbox"/> Defective</p> <p>4 <input type="checkbox"/> Lack of maintenance, includes not cleaning</p> <p>5 <input type="checkbox"/> Battery missing or disconnected</p> <p>6 <input type="checkbox"/> Battery discharged or dead</p> <p>0 <input type="checkbox"/> Other</p> <p>U <input type="checkbox"/> Undetermined</p>

<p><b>M1 Presence of Automatic Extinguishing System</b> ☆</p> <p>N <input type="checkbox"/> None Present <span style="float: right;">➔ Complete rest of Section M</span></p> <p>1 <input type="checkbox"/> Present</p> <p>2 <input type="checkbox"/> Partial System Present</p> <p>U <input checked="" type="checkbox"/> Undetermined</p>	<p><b>M3 Operation of Automatic Extinguishing System</b></p> <p>Required if fire was within designed range.</p> <p>1 <input type="checkbox"/> Operated/effective (go to M4)</p> <p>2 <input type="checkbox"/> Operated/Not effective (go to M4)</p> <p>3 <input type="checkbox"/> Fire too small to activate</p> <p>4 <input type="checkbox"/> Failed to operate (go to M5)</p> <p>0 <input type="checkbox"/> Other</p> <p>U <input type="checkbox"/> Undetermined</p>	<p><b>M5 Reason for Automatic Extinguishing System Failure</b></p> <p>Required if system failed or not effective.</p> <p>1 <input type="checkbox"/> System shut off</p> <p>2 <input type="checkbox"/> Not enough agent discharged</p> <p>3 <input type="checkbox"/> Agent discharged but did not reach fire</p> <p>4 <input type="checkbox"/> Wrong type of system</p> <p>5 <input type="checkbox"/> Fire not in area protected</p> <p>6 <input type="checkbox"/> System components damaged</p> <p>7 <input type="checkbox"/> Lack of maintenance</p> <p>8 <input type="checkbox"/> Manual intervention</p> <p>0 <input type="checkbox"/> Other</p> <p>U <input type="checkbox"/> Undetermined</p>
<p><b>M2 Type of Automatic Extinguishing System</b></p> <p>Required if fire was within designed range of AES.</p> <p>1 <input type="checkbox"/> Wet-pipe sprinkler</p> <p>2 <input type="checkbox"/> Dry-pipe sprinkler</p> <p>3 <input type="checkbox"/> Other sprinkler system</p> <p>4 <input type="checkbox"/> Dry chemical system</p> <p>5 <input type="checkbox"/> Foam system</p> <p>6 <input type="checkbox"/> Halogen-type system</p> <p>7 <input type="checkbox"/> Carbon dioxide (CO<sub>2</sub>) system</p> <p>0 <input type="checkbox"/> Other special hazard system</p> <p>U <input type="checkbox"/> Undetermined</p>	<p><b>M4 Number of Sprinkler Heads Operating</b></p> <p>Required if system operated.</p> <p><input type="text" value=""/></p> <p>Number of sprinkler heads operating</p>	

*(To Be Published in the Leavenworth Times on January 13, 2024)*

**RESOLUTION NO.B-2358**

**A FINDING THAT CERTAIN STRUCTURES HEREIN DESCRIBED ARE UNSAFE OR DANGEROUS AND DIRECTING THE STRUCTURES TO BE REPAIRED OR REMOVED AND THE PREMISES MADE SAFE AND SECURE.**

**WHEREAS**, the enforcing officer of the City of Leavenworth, Kansas, did on the 14<sup>th</sup> day of November, 2023 file with the Governing Body a statement in writing that certain structures hereinafter described are unsafe or dangerous and should be ordered by the Governing Body to be repaired or demolished; and

**WHEREAS**, the Governing Body did adopt Resolution No.B-2350 fixing the time and place of a hearing at which the owners, their agents, any lienholders of record, and occupants of such structures could appear and show cause why such structures should not be condemned and ordered repaired or demolished and providing for giving notice thereof as provided by law; and

**WHEREAS**, Resolution No. B-2350 was published in the official City newspaper on November 18, 2023, and November 25, 2023, and a copy of said Resolution was mailed and served on the owner, agents and/or lienholder of record of such structure as provided by law; and

**WHEREAS**, on January 9, 2024, the Governing Body heard all evidence submitted by the environmental officer of the City and heard any evidence submitted by the owner, agents, or lienholders of record.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1.** That the Governing Body hereby finds that the following structures are unsafe and dangerous structures. The owner of each structure is hereby directed to commence repair or removal of such structure on or before that date which is **ten (10) days** from the date of the publication of this resolution, and if such owner fails to commence such repair or removal within the time stated or fails to diligently prosecute the same until the work is complete, said Governing Body shall cause the structure to be razed and removed and the cost of such razing and removing, less salvage, if any, will be assessed as a special assessment against the lot or parcel of land upon which the structure is located as provided by law.

A one-story wood frame house on a property located at 407 Maple Street, legally described as Lots 3 and 4 in Block 21, in Fackler's Addition, in the City of Leavenworth, Leavenworth County, Kansas. CAMA 0773603036003000

**Section 2.** That the Governing Body hereby finds that the following structures are unsafe and dangerous structures. The owner of each structure is hereby directed to commence repair or removal of such structure on or before that date which is listed below, or within the number of days after publication of this resolution as listed below, and if such owner fails to commence such repair or removal within the time stated or fails to diligently prosecute the same until the work is complete, said Governing Body shall cause the structure to be razed and removed and the cost of such razing and removing, less salvage, if any, will be assessed as a special assessment against the lot or parcel of land upon which the structure is located as provided by law.

The following properties are hereby given an extension for repair or removal at which time the Governing Body will review at their regular meeting to be held on March 12, 2024.

[Will move property given extension to this section]

**Section 3.** That, in the event such structures are not repaired or removed as provided in and within the time periods established in this Resolution, the City Manager, the City Clerk, the Chief of Police, and the Director of Planning and Community Development, and their respective designees are hereby authorized and directed to cause such structures to be razed and removed in accordance with applicable law and without further action by the Governing Body.

**Section 4.** Be it further resolved, that the City Clerk shall cause this Resolution to be published once in the official City newspaper, and that a copy of this Resolution shall be mailed by certified mail within three (3) days after its first publication to each owner, agent, lienholder and occupant, at the last known address and marked "deliver to addressee only."

**Section 5.** This Resolution shall be effective upon its adoption by the City Commission of the City of Leavenworth, Kansas.

**PASSED AND ADOPTED** by the City Commission of the City of Leavenworth, Kansas, this 9<sup>th</sup> day of January, 2024.

\_\_\_\_\_  
Griff Martin, Mayor

{SEAL}

**ATTEST:**

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

## MAYOR'S APPOINTMENTS

January 9, 2023

### Mayor Martin

*"Move to*

*Reappoint to the **Convention & Tourism Committee** Brendan Sheehan, Jordan Throckmorton, Edna Wagner and Lisa Weakley to a term ending January 31, 2027 and Appoint James (Zachary) Light to an unexpired term ending January 31, 2025;*

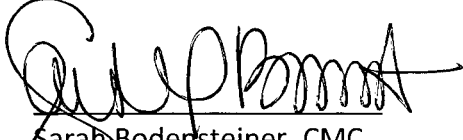
*Reappoint to the **Parks & Community Activities Board** Stephanie Ingels and Jennifer Brenneman Tobey to term ending January 15, 2027"*

**Requires a second and vote by the Governing Body.**

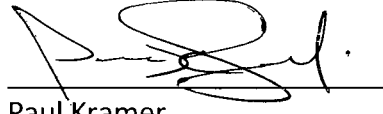
**POLICY REPORT  
CEREAL MALT BEVERAGE LICENSES FOR 2024**

**JANUARY 9, 2024**

Prepared by:

  
Sarah Bodensteiner, CMC  
City Clerk

Reviewed by:

  
Paul Kramer  
City Manager

**ISSUE:**

Request approval to issue Cereal Malt Beverage licenses effective January 10, 2024.

**BACKGROUND:**

The following 2 establishments made application for renewal of their Cereal Malt Beverage license and paid the applicable fee. The Leavenworth Police Department performed a records check and approved the applicants for renewal.

**Establishment**

**Address**

OFF PREMISE CONSUMPTION:

Leavenworth Mart LLC DBA JK Mart

300 N 4<sup>th</sup> Street

ON-PREMISE CONSUMPTION:

Eddie's Grocery

1101 Spruce Street

**STAFF RECOMMENDATION:**

Staff recommends approving the issuance of the 2024 Cereal Malt Beverage Licenses as presented.



**POLICY REPORT PWD NO. 24-04**

**UPDATE FOR UNSAFE STRUCTURE  
805 N 18<sup>TH</sup> STREET**

January 9, 2024

Prepared by:



Harold D. Burdette,  
Chief Building Inspector

Reviewed by:



Brian D. Faust, P.E.,  
Director of Public Works

Reviewed by:



Paul Kramer,  
City Manager

**ISSUE:**

Consider the status of the fire-damaged structure located at 805 N 18<sup>th</sup> Street.

**BACKGROUND:**

This structure was damaged by fire on January 21, 2023. The City received a check from the insurance company for \$33,939.63. A Public Hearing was held on July 11, 2023, regarding the status of the structure. The Commission adopted Resolution No. B-2339, which stated that the owner was given 90 days for repair or removal of the structure. The Commission gave another 60 days on October 10, 2023 and on December 12, 2023.

The exterior repairs have been completed. The interior work has progressed to the point that all rough-in inspections have been approved and the wall finishes have started to be installed. Staff will continue to monitor the project and perform inspections until the repairs have been completed.

When structures are damaged by fire and other hazards and the damage is severe enough that the settlement from the insurance company exceeds 75% of the face value of the policy covering the structure, the insurance company is required to draft a payment to the City of Leavenworth for 15% of the settlement. This money is to be used to either remove the structure if the owner decides not to repair it, or return the money to the property owner once repairs have progressed to a reasonable point or are completed and the structure is ready for occupancy.

The repairs on this structure have progressed to the point that staff is comfortable recommending to the City Commission that releasing the funds is appropriate and consistent with similar projects.

**RECOMMENDATION:**

Staff recommends that the City Commission determine that the structure is no longer considered unsafe or hazardous, and authorizes the return of the insurance proceeds to the owner.

**ATTACHMENT:**

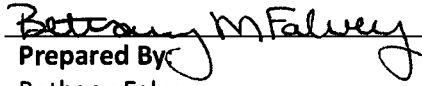
Photos of the property



**POLICY REPORT**

**Review Unsafe and Dangerous Structures**

**January 9, 2024**



**Prepared By:**  
Bethany Falvey,  
City Planner



**Reviewed By:**  
Paul Kramer,  
City Manager

**DISCUSSION**

On April 11, 2023, the City Commission adopted Resolution B-2331 regarding demolition of 10 structures. The two following properties were given an additional 60-day extension at the October 24, 2023 meeting. The status of each property is as follows:

1. **200 Osage Street** – Accessory structure  
Active building permit for removal of the 2<sup>nd</sup> story and rebuild a roof for a 1-story outbuilding. Work is nearing completion. The roof structure is completed, but still needs shingles.
2. **229 Osage Street** – Single family house  
Active building permit for interior and exterior renovations. Work is ongoing and progress has been made since the last update. All items in violation have been abated. We recommend removing this property from the demolition list.

Staff will present current photos and statuses of the properties during the January 9, 2024 City Commission meeting.

**RECOMMENDED ACTION**

- Motion to remove listed properties from demolition list.
- Motion to grant extension to complete repairs to listed properties.
- Motion to proceed with demolition of listed properties.

Policy Report No. FIN-23-08

Request for Authorization to Invest in the State of Kansas Municipal Investment Pool

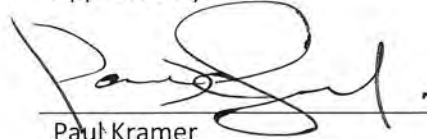
January 9, 2024

Prepared by:



Roberta Beier  
Finance Director

Approved by:



Paul Kramer  
City Manager

**Issue:**

The City currently invests its funds that are not immediately needed for their intended purposes in CDs, Treasury Notes, Treasury Bonds, and a Repurchase Agreement (REPO) Account at Country Club Bank. The City earns competitive interest rates on all of these investments except for the REPO Account, which earns approximately 0.8% annually.

The State of Kansas, through the Pooled Money Investment Board, maintains a Municipal Investment Pool that is available to Kansas Municipalities. The Investment Pool earns significantly higher interest rates than the REPO account. The interest rates for the week ending January 7, 2024 are illustrated in the below table:

Description	Term	Type	Current Rate	Effective Date	Maturities
Omip, Overnight Pool	1	Overnight	4.02%	1/3/2024	Next Business Day
Fx30, 30 Day Pool	30 – 89	Fixed	4.83%	1/3/2024	02/02/2024 – 04/01/2024
Fx90, 90 Day Pool	90 – 179	Fixed	4.78%	1/3/2024	04/02/2024 – 06/28/2024
Fx180, 180 Day Pool	180 – 364	Fixed	4.62%	1/3/2024	07/01/2024 – 12/31/2024
Fx365, 365 Day Pool	365 – 549	Fixed	4.23%	1/3/2024	01/02/2025 – 07/03/2025
Fx550, 550 Day Pool	550 – 723	Fixed	3.97%	1/3/2024	07/07/2025 – 12/24/2025
Fx730, 730 Day Pool	724 - 730	Fixed	3.76%	1/3/2024	12/29/2025 – 01/02/2026

Because of the significantly higher interest rates in the Municipal Investment Pool, Staff recommends moving the funds that are currently in the REPO Account to the State of Kansas Municipal Investment Pool.

**Background:**

Historically, the City has invested in the Municipal Investment Pool, but while interest rates were very low, that practice ceased. As a result, the City's account became inactive as of October 2, 2019. Now that interest rates have improved, it is prudent for the City to begin investing in the Municipal Investment pool again. Interest rates always fluctuate, therefore Staff will continue to monitor the rates

between the investment pool and the REPO account. If it should become advantageous to have excess funds invested in the REPO account, Staff will move the funds accordingly.

Prior to moving the funds to the Investment Pool, Staff will offer the funds to eligible banks, savings and loans, and federally chartered savings banks which have home offices or branches in the City of Leavenworth. If the financial institutions will not match or exceed the rates offered in the Municipal Investment Pool, the City will invest in the pool.

Prior to investing in the Municipal Investment Pool, the Pooled Money Investment Board requires a resolution that approves the establishment of an account in the name of the City of Leavenworth.

**Recommendation:**

Staff recommends that the City Commission approve the establishment of an account in the City of Leavenworth's name in the Municipal Investment Pool and sign Resolution No. B-2359 which will authorize Staff to establish an account.

**STATE OF KANSAS  
MUNICIPAL INVESTMENT POOL**

**Resolution No. B-2359**

WHEREAS, the undersigned is a municipality (the "Depositor"), as defined in K.S.A. 12-1675, as amended, and from time to time has funds on hand in excess of current needs, and

WHEREAS, it is the best interest of the Depositor and its inhabitants to invest funds in investments that yield a favorable rate of return while providing the necessary liquidity and protection of the principal; and

WHEREAS, the Pooled Money Investment Board (the "PMIB"), operates the Municipal Investment Pool (MIP), a public funds investment pool, pursuant to Chapter 254 of the *1996 Session Laws of Kansas*, and amendments thereto

NOW THEREFORE, be it resolved as follows:

1. The municipality designated below approves the establishment of an account in its name in the MIP for the purpose of transmitting funds for investment, subject to the MIP Participation Policy adopted by the Pooled Money Investment Board, and municipality acknowledges it has received a current copy of such Participation Policy. The Depositor's taxpayer identification number assigned by the Internal Revenue Service is 48-6034051 .

2. The following individuals, whose signatures appear directly below, are officers or employees of the Depositor and are each hereby authorized to transfer funds for investment in the MIP and are each authorized to withdraw funds, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of funds:

Name (print or type) Roberta Beier

Name (print or type) Andrew See

Signature

Signature

Title Finance Director

Title Deputy Finance Director

Name (print or type) Karen Parker

Name (print or type)

Signature

Signature

Title Senior Accountant

Title

3. Depositor Contact:

Name (print or type) Karen Parker

Email [kparker@firstcity.org](mailto:kparker@firstcity.org)

Title Senior Accountant

Phone 913-684-0354

Street Address 100 North 5th Street

Fax 913-682-3874

City Leavenworth

State KS

ZIP 66048

4. This Resolution and its authorization shall continue in full force and effect until amended or revoked by the Depositor and until the PMIB receives a copy of any such amendment or revocation, the PMIB is entitled to rely on same.

This resolution is hereby introduced and adopted by the Depositor at its regular/special meeting held on January 9, 2024 (date).

Municipality Name (print or type) City of Leavenworth

Name (print or type) Griff Martin

Signature

Title Mayor

Date 1/9/2024

Attest:

Name (print or type) Sarah Bodensteiner, CMC

Signature

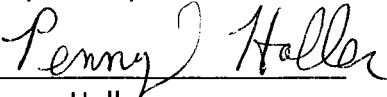
Title City Clerk

Date 1/9/2024

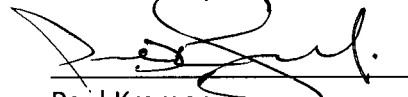
**Note: Original signatures are required.**

**POLICY REPORT**  
**Consider Camp Leavenworth Event Management Contract**  
**January 9, 2024**

Prepared By:

  
Penny Holler  
Assistant City Manager

Reviewed By:

  
Paul Kramer  
City Manager

**ISSUE:**

Consider approving contract with O'Neill Events and Marketing to manage the 2024 Camp Leavenworth festival for \$71,302.

**BACKGROUND:**

The City's signature event, Camp Leavenworth, is scheduled for September 20<sup>th</sup> and 21<sup>st</sup>. This will be the fifth year for the memorable festival that brings thousands of residents and visitors together. Last year's event saw attendees enjoy two days of music, activities, and food. Tourists experienced the First City through local food trucks, two downtown breweries, 20 local craft vendors, LV Arts hosting chalk art activities, a 5k run designed by a local volunteer, and a local dance school performance.

O'Neill Events and Management has been the event organizer for several years. Their team brings experience from events like the 2023 Chiefs Super Bowl Parade and portions of the 2023 NFL Draft to ensure a high quality festival. They have been integral in finding creative ways to highlight the Leavenworth community in ways that make Camp Leavenworth unique from other area events. The proposed contract would utilize O'Neill's knowledge of the City and the festival to facilitate the 2024 event.

The 2024 Scope of Work includes the same \$3,300 financial management fee as last year and the increased festival event management fee of \$68,002 (up from \$64,900 in 2023). Prior to 2024, the fees from O'Neill had been unchanged for several years.

**BUDGET IMPACT:**

Camp Leavenworth is fully funded through use of the City's Transient Guest Tax (TGT) revenues. The festival budget for 2024 is \$257,400 and includes the event manager contract.

**ATTACHMENTS:**

2024 Scope of Work





## **SCOPE OF WORK: Event Management Proposal**

# **CITY OF LEAVENWORTH CAMP LEAVENWORTH FESTIVAL 2024 Contract Number 2024-01**

**January 9, 2024**

*Presented by:*

O'Neill Events & Marketing

1607 Oak Street

Kansas City, MO 64108

## **Overview:**

O’Neill Events and Marketing has put together a plan to execute Camp Leavenworth festival in the City of Leavenworth in 2024. This plan with tasks and costs is outlined below.

## **Summary and Period of Engagement Leavenworth Festival Event Management**

Jan. 1, 2024 – November 30, 2024

O’Neill Events & Marketing has been approached by the city of Leavenworth to provide professional services as outlined below, under the direction and supervision of designated Leavenworth Festival representatives, and understands the Scope of Work as defined:

- Event Director
- Event Producer
- Sponsorship Producer
- Marketing Manager
- Public Relations
- Festival Insurance
- Organization Financial Management & Storage

O’Neill Events & Marketing understands the Period of Engagement for the outlined work as follows:

## **O’Neill Deliverables and Responsibilities**

O’Neill Events & Marketing will serve as the Event Producer for the festival with Keli O’Neill Wenzel and Jessica Rogers as Event Director of Leavenworth Festival. If Keli O’Neill Wenzel or Jessica Rogers is unable to serve as Event Director, any replacement Event Director will be submitted to the Leavenworth Festival City Manager/Office for approval.

The detailed scope of work below, along with the above summary, reflects O’Neill Events & Marketing’s understanding of the project. Please initial by each subhead to confirm Leavenworth Festival’s understanding of each section. If you have questions or notice any conflicts, please contact O’Neill Events & Marketing.

## **General Timeline Requirements & Process**

O'Neill Events & Marketing understands the initial target delivery date for Leavenworth Festival is September 20th and 21st. As such, all work outlined above will reflect said target date and be executed in a timely manner to achieve success. O'Neill Events & Marketing will do all to meet any established deadline, but because of project dependencies beyond O'Neill Events & Marketing's control, O'Neill will not issue a formal project timeline until all defined requirements and approvals are received.

Any changes to Scope of Work or delays in approvals will potentially affect the general timeline and cost of the project. Missed deadlines relating to services, contracts, or information on the part of the client or third party will result in O'Neill Events & Marketing adjusting the general project timeline.

If actions by the client or any other third party creates project delays, the overall project timeline will be reevaluated to account for lost time, and a Change Order may be issued for any additional time required of the O'Neill Events & Marketing team. Any such Change Order issued on behalf of the project is subject to additional fees associated with those changes.

## **Event Director**

- Create annual festival operations budget with input from Leavenworth Festival Executive Committee and/or City Manager's Office
- Oversee festival financial systems with inclusion of City Manager
- Manage budget and spending, updating City Manager/Office monthly
- Meet with Leavenworth Festival City Manager/Office on a monthly basis to discuss organization strategy and business plans
- Meet with Leavenworth Festival City Manager/Office on a monthly basis to discuss festival operations planning
- Assist Leavenworth Festival City Manager/Office with necessary organization structure development and business documentation
- Provide historical data to the City Manager/Office
- Co-manage event identity and oversee brand management
- Oversee marketing and public relations
- Based upon approved budget numbers, Event Director will communicate, negotiate and send necessary festival agreements to City Manager's office for approval with tenants, venue owners and stakeholders within and surrounding the festival footprint

- Attend and participate in any meetings and conferences with any entities or government agencies as are necessary for developing, implementing and sustaining the event
- Provide consultation throughout the year
- Provide onsite consultation and recommendations for weather, emergency situations, threats and problems that arise
- Provide production oversight
- Be onsite during all festival hours (through tear down and setup)

## **Event Producer**

### **LOGISTICS PLANNING**

- Manage and maintain all festival operations costs, ensuring budget accountability
- Maintain a general operating timeline
- Meet with Leavenworth Festival City Manager/Office and provide updates on a monthly basis to discuss festival operations and planning
- Attend and participate in any meetings and conferences with any entities or government agencies as are necessary for developing, implementing and sustaining the event
- Create and develop a festival layout
- Manage and oversee all festival signage needs
- Coordinate, order and fulfill all-related area logistical needs
- Oversee on-site sponsorship logistics, including footprint, power, and site access
- Hire and manage additional on-site labor for festival
- Coordinate and order all festival deliverables and supplies
  - Establish list of festival area needs
  - Supply graphic design team with timelines, content and creative guidelines
  - Designate and distribute credential and festival access list
  - Distribute hospitality packages, including drink tickets, food vouchers and backstage meal tickets
  - Create festival communications plan, including radio assignments, radio order and on-site equipment setup

### **STAFFING, COMMITTEE & VOLUNTEER MANAGEMENT**

- Develop committee needs and roles and coordinate tasks with City Manager/Office, Executive Committee and staff
- Coordinate Executive Committee Chairs and Weekend Chairs, overseeing their job descriptions and meeting regularly with each to ensure all tasks are being implemented
- Identify and create volunteer staffing plan
  - Shift development
  - Training

- Communications and system management

## **ENTERTAINMENT**

- Work with designated entertainment booking agents to create, recommend and manage Leavenworth Festival entertainers, to be approved by the Leavenworth Festival City Manager/Office
- Work with designated entertainment booking agents to solidify entertainer contracts, payments and tax requirements

## **HOSPITALITY MANAGEMENT**

- Facilitate all festival and sponsor hospitality needs and requests
- Develop guest rooming list and coordinate hotel accommodations for entertainers, various staff and VIPs
- Manage transportation plans to and from festival for entertainers, including airport and hotel needs as contracted, as well as co-manage on-site runner
- Coordinate backstage/green room needs according to entertainer riders and festival budget

## **PERMITTING & LICENSING**

- Work with city representatives for all necessary permits for festival
  - Fire, Noise, Carnival
  - Street Closure
  - Health
  - City and State Liquor
- Obtain and coordinate all permit support documentation including permission letters, tax documents, appropriate fees and all other paperwork

## **TICKETING, BOX OFFICE & POINT OF SALE (TBD – if VIP/special experience tickets added)**

- Negotiate, select and contract festival and event ticket provider
- Develop ticketing packages, prices and system execution
- Provide content and all information necessary for online ticket sales
- Ticket fulfillment for all festival partners, attendees, and sponsors
- Manage all onsite box office and ticketing operations and equipment
- Oversee festival Point of Sale systems/operations

## **EMERGENCY PREPAREDNESS**

- Update a public safety plan to include all festival related security and medical needs and coordinate all related entities responsible for executing this plan
- Manage Emergency Incident Coordinator and on-site preparedness plans
- Emergency Action Plan development and distribution in advance and on-site

## **TRANSPORTATION & PARKING**

- Manage a festival parking and traffic plan and work with all contracted vendors, city, police, etc., to execute and communicate properly
- Manage road closures and communications related to all festival transportation and parking

## **BAR & BEVERAGE OPERATIONS**

- Oversee all bar and beverage operations
- Create bar layouts and serving operations
- Product orders including soda, water, ice, and cups and distribution of product on-site
- Work with local liquor store to coordinate liquor needs, equipment, and logistics on-site

## **VENDOR RELATIONS**

- Coordinate, manage and contract with ALL Leavenworth Festival vendors
  - Cash and Carry: Food vendors + Makers Market vendors
  - Decor: Fabrication, Installations, Lighting
  - Hospitality: Transportation, Hotels, Green Room, Backstage
  - Parking and Transportation
  - Power: Generators, Equipment, Distribution
  - Production: Sound, Stage, Lighting
  - Public Safety: Security, Medical, Crowd Control, Weather
  - Site: Fencing, Tents

## **ON-SITE MANAGEMENT**

- Full on-site event management from setup to tear down
  - \*\*O'Neill Events & Marketing has 2-3 dedicated staff that will oversee the festival. This includes on-site setup on the Thursday before the festival and post-festival on the day after the event. All other staff and volunteer needs will be the responsibility of the festival's budget. As indicated above, O'Neill will oversee and manage these additional positions.*

## Sponsorship Producer

- Develop target sponsor list and festival financial goals for fundraising
- Create general festival sponsorship package and festival overview
- Provide update on prospective sponsor contacts to the Leavenworth Festival City Manager/Office for final approval before solicitation
- Develop, facilitate, and maintain relationship(s) with prospective sponsors
- Create custom festival sponsorship packages based on client needs
- Manage all sponsor contracts and invoicing
- Create a sponsorship wrap up report to distribute to City of Leavenworth and sponsors
- Fulfill all sponsor requirements as established in final contract
  - Marketing materials
  - Signage
  - Logistical needs: Permits, power, etc.
- On-site management for all sponsors, including advance communications, load-in, site needs, load-out

## Marketing Manager

- Develop and manage a festival marketing plan that aligns with budget and brand
  - Yard Signs
  - Billboards
  - Radio & Television
  - Digital
- Work with all marketing vendors (Graphic designers, city communications, etc. – fees not included in O’Neill’s scope)
- Establish and manage media partnerships and media buys
- Write media scripts and commercial scripts as needed
- Provide creative direction and content guidelines with unified marketing team
- Work with unified marketing teams to create coordinated festival content calendar that aligns PR, digital and marketing efforts
  - Eblasts
  - Website
  - Mobile App
  - Media Releases
- Update website ongoing with new content, graphics, photos etc.
- Manage and oversee social media for the festival
  - Content creation

- o Advertising campaigns
- o Work with the city communications contact to respond to social media inquiries in a timely manner

## **Organization Financial Management (Annually)**

- Manage festival daily accounting needs
- Manage all receivables and payables
- Provide monthly updates on budget to City Manager to
- Assist with sales tax filing
- Manage all festival financial documents to keep organization compliant
- Compile all financial records and supporting documentation for required NPO audits if needed

## **Project Fee and Compensation**

O’Neill Events & Marketing will be compensated in the following manner:

### **Festival Event Management**

- o \$6,182 per month (11 months)
- TOTAL: \$68,002**

### **Financial Management**

- o \$300 per month (11 months)
- TOTAL: \$3,300**

### **Sponsorship Bonus Compensation**

- o City of Leavenworth will pay O’Neill Events & Marketing a 10% bonus on any cash sponsorships.
- o City of Leavenworth will pay all commissions on any sponsorship agreements secured by O’Neill Events & Marketing regarding Camp Leavenworth
- o O’Neill Events & Marketing will bill sponsorship commissions separately from monthly management fee, two weeks after the festival

***This concludes the Scope of Works, which is incorporated into the Camp Leavenworth – O’Neill Events & Marketing Contract for Services executed on \_\_\_\_\_.***

***Please sign below to indicate an understanding of this Scope of Work. Any changes to this Scope of Work must be agreed upon by both parties in writing.***

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MAYOR, CITY OF LEAVENWORTH

DATE

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CITY CLERK, CITY OF LEAVENWORTH

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DATE

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O'NEILL EVENTS & MARKETING, Keli Wenzel, President

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DATE

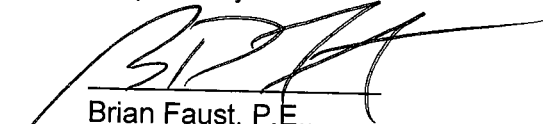
POLICY REPORT PWD NO. 24-01

CONSIDER APPROVAL OF EASEMENT AND RIGHT-OF-WAY ACQUISITION SERVICES  
FOR THE VILAS STREET AND SIDEWALK PROJECT

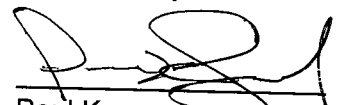
City Project 2022-997  
(KDOT No. 052-TE-0524-01)

January 9, 2024

Prepared by:

  
Brian Faust, P.E.,  
Director of Public Works

Reviewed by:

  
Paul Kramer,  
City Manager

**ISSUE:**

Consider the proposal received from Orrick & Erskine LLP for Easement and ROW Acquisition Services associated with the Vilas Street and Sidewalk Project between 10<sup>th</sup> and 22<sup>nd</sup>.

**BACKGROUND:**

The City of Leavenworth initially submitted two Transportation Alternatives (TA) grants to KDOT on March 1, 2022, and during the review process, KDOT asked that the two projects be combined into one grant application. The City was notified that the project was selected to receive federal funds from the TA Program on July 29, 2002, and on October 26th 2022, the City formally accepted the KDOT TA grant for the Vilas Street ADA and Sidewalk Upgrades Project. The total estimated cost for the construction of the project is \$1,582,300, and the Federal TA award was for \$1,265,840 (80%) and the local share will be \$316,460 (20%). The Federal TA funding is only available for construction and construction inspection. Therefore, the City is financially responsible for the preliminary engineering, design, right-of-way and utility relocation along with the 20% local construction match.

Project Information:

- Sidewalks will be installed between 10th and 15th (south side). This will result in several driveways being replaced and regrading of some front yards.
- Sections of the existing sidewalks on the north side (10th to 20th) and the south side from 15th to 20th will be replaced if damaged or not meeting current ADA guidelines.
- Intersections between 10th and 20th will have ADA ramps meeting ADA PROWAG (Public Right-of-Way Accessibility Guidelines) installed.
- Improvements between 20th and 22nd include curb and gutter along with enclosed storm sewer.
- Sidewalks on the north side between 20th and 22nd.
- A marked crosswalk with a Rectangular Rapid Flashing Beacon (RRFB) directly in front of Henry Leavenworth Elementary School.

There will be easements and right-of-way required to construct the improvements and reshape a number of yards. Staff worked with Bartlett & West to tighten the construction limits so as to reduce the number of easements originally shown. The initial plans showed 54 easement needed however we have been able to reduce the number to 34. Acquisition of these areas will begin this month.

**BUDGET IMPACT:**

Easement acquisition services following KDOT and Federal requirements will cost between \$1195 and \$1395 per tract. This is in addition to the amount each property owner will be compensated for the taking. Currently there are 34 tracts that need easements. Cost for the acquisition service will be approximately \$41,000. These funds are available in the General Fund. The 2024 Budget includes a transfer from the General Fund to the Grant Matching Fund.

**RECOMMENDATION:**

Staff recommends that the City Commission approve the proposal from Orrick & Erskine LLP for easement and ROW acquisition services for the Vilas ADA and Sidewalk Improvement Project for a not-to-exceed amount of \$41,000.

**ATTACHMENT:**

Proposal from Orrick & Erskine LLP

ORRICK & ERSKINE, L.L.P.  
ATTORNEYS AT LAW

Timothy P. Orrick  
Joseph J. Erskine

11900 College Boulevard  
Suite 203  
Overland Park, Kansas 66210

Licensed in Kansas and Missouri

913-888-1777  
913-888-1794 (fax)  
www.OrrickLawGroup.com

November 15, 2023

Mr. Brian D. Faust, P.E.  
Public Works Director  
City of Leavenworth  
100 N. 5<sup>th</sup> Street  
Leavenworth, Kansas 66048

*via electronic communication to: brian.faust@firstcity.org*

Re: Vilas Street Improvements from 10<sup>th</sup> to 22<sup>nd</sup> Easement Acquisition  
City of Leavenworth Project Number 2022-997  
KDOT No. 052-TE-0524-01

Dear Brian:

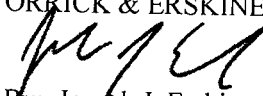
Please accept this proposal to perform acquisition services of the necessary easements for the above referenced project. We are prepared to perform all necessary acquisition and documentation pursuant to both KDOT procedures and federal regulations.

We are generally provided with title work, legal descriptions, exhibits, and tract ownership information by the City. From there, we will prepare all documents necessary to effectuate the valuation, negotiation and acquisition with the landowners in good faith. We are also prepared to file final conveyance documents on behalf of the City with the Leavenworth County Register of Deeds office. We will simply pass those filing fees directly to the City with receipts. We propose to perform this work for the City on a "per tract" fee basis as follows:

Partial Takings:	\$1,195.00
Total Takings:	\$1,395.00

We will invoice the City for an initial 50% progress payment upon the mailing of the offer packages. We will then invoice an additional 25% after thirty (30) days of negotiations, and a final 25% upon closing or impasse with each owner. Our invoices are on net thirty (30) day payment terms. If you would like to discuss his proposal or any other aspect of the project with me, I'm available at your convenience.

Best Regards,  
ORRICK & ERSKINE, LLP

  
By: Joseph J. Erskine

**POLICY REPORT PWD NO. 24-03**

**CONSIDER APPROVAL OF LOW BID FOR THE  
CITY HALL HVAC HYDRONIC & MECHANICAL  
CONDENSATE PIPING REPLACEMENT**

**City Project 2023-010**

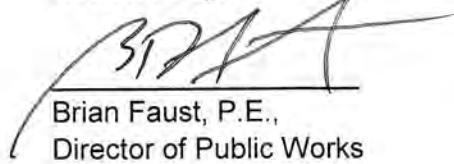
**January 9, 2024**

Prepared by:



Hal Burdette,  
Chief Building Inspector

Reviewed by:



Brian Faust, P.E.,  
Director of Public Works



Paul Kramer,  
City Manager

**ISSUE:**

Consider bids received and possible award of the HVAC Hydronic & Mechanical Condensate Piping Replacement Project at City Hall.

**BACKGROUND:**

The piping that is being replaced dates back to the 1970s. It has deteriorated over time and there have been numerous leaks in the last few years. Most of the piping on the first and second floors was replaced during the renovation of 2003, but there are six locations where 1970-era piping will be replaced in the walls of finished office spaces that will require the removal and replacement of some wall and ceiling finishes as well.

The City hired BG Consultants to create the drawings along with the bidding documents for this project. A pre-bid meeting was held on December 5th with bid opening on December 19th.

The project was advertised for bid in the Leavenworth Times and at Drexel Technologies. Three bids were received; however, one bidder did not submit the required paperwork and was considered non-responsive.

<b>Company</b>	<b>City</b>	<b>Base Total Bid</b>
Rand Construction	Kansas City, MO	\$176,320.00
D'Agostino	Kansas City, KS	\$271,460.00
PM Construction	N/A	Incomplete

Rand Construction was the low bidder and met all bidding requirements. Rand Construction has been working with the Fire Department on boiler and A/C issues over the last year and they are very satisfied with the quality of work from Rand. The company has the experience to satisfactorily perform this work for the City of Leavenworth.

Inspection will be by City Staff.

**POLICY:**

The City Commission generally awards a contract to the lowest bidder. The bid from Rand Construction was under the budget.

**BUDGET IMPACT:**

ARPA funds will be used to cover project expenses. The low bid was \$176,320 with a project budget of \$318,910 shown in the 2024 CIP. As the project will be tearing into walls from the basement thru the 2nd floor of a 100-year old structure, it is likely that unplanned issues will be encountered. It is probable that these unplanned conditions will result in project change orders.

**RECOMMENDATION:**

Staff recommends that the City Commission approve the low bid submitted by Rand Construction for the City Hall HVAC Hydronic & Mechanical Condensate Piping Project in the amount of \$176,320 and authorize the City Manager to approve change orders, if needed, for an additional \$44,000 (25%).

**ATTACHMENTS:**

Bid Tab  
CIP Sheet



**CITY OF LEAVENWORTH**  
 Project No. 2023-010  
**CITY HALL HVAC PIPING REPLACEMENT**  
 December 19, 2023

BASE BID				Engineer's Estimate		RAND CONSTRUCTION		D'AGISTINO		PM CONTRACTING	
Item	Description	Unit	Quantity	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	HVAC Piping Replacement	LS	1		\$0.00	\$176,320.00	\$176,320.00	\$271,460.00	\$271,460.00		\$0.00
2	Alternative #1 (Add)(Deduct)	LS	1		\$0.00		\$0.00		\$0.00		\$0.00
3	Alternative #2 (Add)(Deduct)	LS	1		\$0.00		\$0.00		\$0.00		\$0.00
4	Alternative #3 (Add)(Deduct)	LS	1		\$0.00		\$0.00		\$0.00		\$0.00
5	Alternative #4 (Add)(Deduct)	LS	1		\$0.00		\$0.00		\$0.00		\$0.00
				<b>TOTAL BASE BID:</b>	<b>\$0.00</b>		<b>\$176,320.00</b>		<b>\$271,460.00</b>		<b>"Incomplete Bid"</b>

**Capital Improvements Program  
2024 - 2028  
Buildings & Grounds - City Hall Improvements**

**Purpose:**

This allocation provides funding to make renovations to City Hall. The Aeon outside air/space unit and the global plasma air scrubbers meet health and safety guidelines. The safety enhancements provide locked doors to ensure visitors stay in public areas.

Source	Comments	Year	Requested	Projected
Sales tax	Replacement of HVAC hydronic & mechanical condensate piping	2024	\$ 318,910	\$ 318,910
		2025	-	-
		2026	-	-
		2027	-	-
		2028	-	-
			<b>\$ 318,910</b>	<b>\$ 318,910</b>

Uses	Comments	Year	Requested	Projected
Building Improvement	Replacement of HVAC hydronic & mechanical condensate piping <i>BID PRICE: \$176,320.00</i>	2024	\$ 318,910	\$ 318,910
		2025	-	-
		2026	-	-
		2027	-	-
		2028	-	-
			<b>\$ 318,910</b>	<b>\$ 318,910</b>



Condensate piping system



Global Plasma Solutions air scrubber



Replacement of the Aeon outside air/space tempering rooftop unit




**POLICY REPORT NO. 2024-05**  
**WATER POLLUTION CONTROL – 2024 CHEMICAL PURCHASE**

**BID NO. #62WW-2023-14**

**January 9th, 2024**

Prepared by:

  
Tim Guardado,  
WPC Superintendent

Review by:

  
Brian Faust  
Public Works Director

  
Paul Kramer,  
City Manager

**ISSUE:**

Consider approval of bids for the purchase of chemicals used in the operation and maintenance of the Wastewater Treatment Plant.

**BACKGROUND:**

These chemicals are used for a variety of processes in the treatment of wastewater. A summary of the uses is shown below.

- **Hydrogen Peroxide** is injected into the raw sludge line before the belt press to control the release of hydrogen sulfide gas in the pressroom.
  - Projected year usage 24 - 55 gallon drums
- **Sodium Hypochlorite and Sodium Hydroxide** are used in the wet air scrubber to control odors from the dewatering operation.
  - Projected year usage 8 - 55 gallon drums. 4 Sodium Hypochlorite/ 4 Sodium Hydroxide
- **Ferrous chloride** is added to the influent to control odors from the plant processes.
  - Previous year usage was 42,190.09 gallons (extra used to neutralize high H2S levels)
  - Projected usage for 2024: 33,000 gallons
- **Polymer** is a coagulating agent used in the sludge dewatering process.
  - Previous year usage was 11,000 pounds
  - Projected usage for 2024 is 11,000 pounds

**BUDGET IMPACT:**

The 2024 Budget includes \$75,500 for the purchase of chemicals for the WWTP. There are sufficient funds in the budget to cover the anticipated difference of \$16,418.

**STAFF RECOMMENDATION:**

Staff recommends approval by the City Commission of the low bids that meet the specifications for the following chemicals as shown not to exceed \$91,918.00.

<b>Chemical</b>	<b>Price in 2022</b>	<b>Price in 2023</b>	<b>Cost for 2024</b>	<b>Vendors for 2024</b>
Ferrous Chloride	\$0.95/lb. Fe	\$1.29/lb. Fe	\$1.69/lb Fe	Pencco, Inc.
Hydrogen Peroxide	\$0.35/lb.	\$0.39/lb	\$0.45/lb	Brenntag Mid-South
Sodium Hypochlorite	\$1.66/gal	\$3.30gal	\$3.42/gal	Edwards Chemicals
Sodium Hydroxide	\$0.32/lb.	\$0.64/lb	\$0.335/lb	Edwards Chemicals
Polymer	\$2.53/lb.	\$2.77/lb.	\$2.64/lb	Atlantic Coast Polymers

**ATTACHMENT:**

Bidder Spreadsheet

## City of Leavenworth Bid Tabulation

**Project or Purchase:** Chemical Bid 01WW-2022-07  
**Bid Opening Date:** December 28, 2022  
**Bid Opening Time:** 1:00 PM

Bidder	Address (City/State)	Hydrogen Peroxide	Ferrous Chloride	Polymer
Atlantic Coast Polymers	Lauderdale-By-The-Sea, FL	No Bid	No Bid	\$2.64/ \$29,040.00
Edward's Chemicals	Elwood, KS	\$375 / \$9,000	No Bid	No Bid
Brenntag Mid-South, INC	Kansas City, Mo	\$0.45lb / \$594.00	No Bid	No Bid
Pennco, INC	San Felipe, TX	No Bid	\$1.69 / \$55,770.00	No Bid
Harcos Chemicals INC	Kansas City, KS	Not Read	Not Read	Not Read
Quotes		<b>Sodium Hypochlorite/ 55 gallon</b>	<b>Sodium Hydroxide/564lbs</b>	
Edwards Chemicals	Elwood, KS			
		\$188.00/ drum		
			\$189.00	
Harcos Chemicals Inc	Kansas City, KS			
		\$203.50		
			\$198.90	

All bids are subject to review and approval by City Staff and/or the City Commission



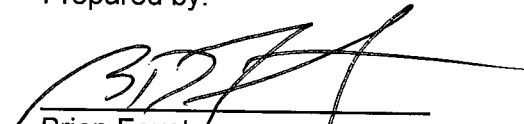
POLICY REPORT PWD NO. 24-02

CONSIDER CONTRACT WITH BRUNGARDT HONOMICHL & COMPANY  
FOR THE REDESIGN OF THE 4<sup>th</sup> STREET IMPROVEMENTS  
FROM CHOCTAW STREET TO SENECA STREET

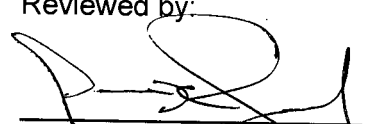
CITY PROJECT NO. 2020-939

January 9<sup>th</sup>, 2024

Prepared by:

  
Brian Faust  
Director of Public Works

Reviewed by:

  
Paul Kramer  
City Manager

**ISSUE:**

Consider authorizing City Staff to work with Brungardt Honomichl & Company (BHC) on the redesign of the 4th Street Improvements (US-73 from Choctaw to Seneca).

**BACKGROUND:**

In March of 2019, the City submitted two City Connection Link Improvement Program (CCLIP) applications to KDOT for projects along 4th Street. The first project was from Choctaw to Delaware and the second was from Delaware to Seneca. KDOT notified the City in July of 2020 that our project between Choctaw and Delaware was selected. While the section between Delaware and Seneca was not selected, the City felt it was important to include in a larger project to improve our downtown.

The City entered an agreement with BHC and KDOT in September 2021 for the design of the improvements to 4<sup>th</sup> Street. With KDOT's participation in the project, there were a number of additional steps and paperwork required before the project was bid. Many of these items are above and beyond what is required if the project was funded using only city funds.

KDOT opened bids for the project on December 13<sup>th</sup>, 2023. Bids received were higher than the budget and engineer's estimate. In addition to the bid cost, project inspection, anticipated change orders and future landscaping that would push the project to nearly \$2 million per block. Based on direction received during the December 19<sup>th</sup> Commission work session, the city notified KDOT that we would not be moving forward with the project as designed.

City staffed worked with the design consultant (BHC) to arrive at a modified design scope for a project that will still provide the needed upgrades to the street while limiting the needed subsurface replacement of the sanitary and storm lines. The design will focus on reducing all construction related costs to the existing budget of \$4.2M or less.

**REVISED DESIGN:**

The revised design will leave the street at its current width but will provide for a mill and overlay of the pavement from Choctaw to Seneca along with reconstruction of the Cherokee, Delaware and Shawnee intersections. The four blocks will have ADA upgrades and the pavement will be striped for 3 lanes as per the original design. Streetscape improvements will be incorporated into the project.

It is anticipated that the project will be ready for bidding in late spring with construction starting during the summer.

The design costs for a road construction project typically range from 10% to 15% of the estimated construction value. The smaller the project, the higher the design cost. For our project (\$4.2M) a design cost of 10%, or \$420,000, is reasonable. For 4<sup>th</sup> Street with the survey work completed and with a portion of the previous design being reusable, BHC is looking to complete the design, including new drawings and bidding documents for \$202,844. This is 4.8% of the estimated construction related costs.

**RECOMMENDATION:**

Staff recommends that the City Commission authorize the Mayor to sign a contract with BHC for the redesign of the 4<sup>th</sup> Street Improvement between Choctaw and Seneca in an amount not to exceed \$202,844.00.

**ATTACHMENT:**

Contract with BHC for 4<sup>th</sup> Street Redesign

**CITY OF LEAVENWORTH  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DIVISION**

**STANDARD AGREEMENT  
FOR  
ENGINEERING SERVICES**

THIS AGREEMENT, is between the City of Leavenworth, Kansas (Owner) and Brungardt Honomichl & Company (Engineer);

**WITNESSETH:**

WHEREAS, the Owner wishes to employ the Engineer to perform professional engineering services on the original work and desired re-design of roadway improvements to Fourth Street from Choctaw to Shawnee to adjust the complexity of the project. These services include providing engineering design and construction documents for the initial design work and also the Fourth Street Revised Design Project (the Project); and,

WHEREAS, the Owner requires certain engineering services in connection with the Project (the Services); and,

WHEREAS, the Engineer is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, the Owner and Engineer. agree to the following:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be \_\_\_\_\_

**ARTICLE 2 - GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Kansas and the codes of the City of Leavenworth

**ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER**

Engineer shall perform the Services described in Attachment A, Scope of Services, in accordance with applicable sections of the City of Leavenworth Design Criteria and Drafting Standards of latest revision.

**ARTICLE 4 - COMPENSATION**

Owner shall pay Engineer in accordance with the Attachment B, Compensation.

**ARTICLE 5 – OWNER’S RESPONSIBILITIES**

Owner shall be responsible for all matters described in Attachment C, Owner's Responsibilities.

**ARTICLE 6 - SUPPLEMENTAL AGREEMENTS**

The provisions set forth in Attachment D, Supplemental Agreements shall be incorporated into this Agreement.

**ARTICLE 7 - PROJECT SCHEDULE**

The provisions set forth in the Attachment E, Project Schedule shall be incorporated into this Agreement.

**ARTICLE 8 - STANDARD OF CARE**

Engineer shall exercise the same degree of care, skill, and diligence in the performance of Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances.

**ARTICLE 9 - INDEMNIFICATION AND INSURANCE**

Engineer hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including attorneys’ fees and other expenses of litigation incurred by or on behalf of the Owner and any of its officers, employees or elected officials arising out of Engineer's negligent performance of Services under this Agreement.

Engineer specifically agrees that this duty to indemnify and hold harmless will apply to the following:

- a. Claims, suits, or action of every kind and description when such suits or actions arise from the alleged negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

- b. Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

Engineer shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure him against claims and liabilities which arise because of the execution of this Agreement.

The insurance coverages are as follows:

- (1) Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- (2) Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- (3) Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

Prior to issuance of the Notice to Proceed by Owner, Engineer shall have on file with Owner certificates of insurance acceptable to Owner. Said certificates of insurance shall be filed with Owner in January of each year or may be submitted with each agreement.

Engineer shall also maintain valuable papers insurance to assure the restoration of any plans, drawings, field notes or other similar data relating to the work covered by this agreement, in the event of their loss or destruction, until such time as the work has been delivered to the Owner.

Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article shall survive.

**ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY**

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project, (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

**ARTICLE 11 - OPINIONS OF COST AND SCHEDULE**

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project construction schedules, Engineer's opinion of probable construction costs and of construction schedules shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project construction costs will not vary from Engineer's cost estimates or that actual construction schedules will not vary from Engineer's projected schedules.

**ARTICLE 12 - REUSE OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to the Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Any verification or adaptation requested by Owner shall entitle Engineer to compensation at rates to be agreed upon by Owner and Engineer.



**ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the sole property of Owner, however, that both Owner and Engineer shall have the unrestricted right to their use. Engineer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of Engineer. Owner shall have the unlimited right to the use of intellectual property developed, utilized, or modified in the performance of the Services at no additional cost to the Owner.

**ARTICLE 14 - TERMINATION**

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all Services performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to Owner and Engineer shall be made to Engineer's compensation.

**ARTICLE 15 - DELAY IN PERFORMANCE**

Neither Owner nor Engineer shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage, judicial restraint, and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.

Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

For delays in performance by Engineer, as set forth in Attachment E, Project Schedule, which are caused by circumstances which are within its control, such delays shall be documented on the Engineer's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects.

In the event Engineer is delayed in the performance of Services because of delays caused by Owner, Engineer shall have no claim against Owner for damages or contract adjustment other than an extension of time.

#### **ARTICLE 16 - COMMUNICATIONS**

Any communication required by this Agreement shall be made in writing to the address specified below:

Engineer: Randy Gorton  
BHC  
7101 College Blvd, Suite 400  
Overland Park, KS 66210  
(913) 663-1900

Owner: City of Leavenworth Engineering Division  
100 N. 5<sup>th</sup> Street  
Leavenworth, KS 66048  
(913)-684-0375

Nothing contained in the Article shall be construed to restrict the transmission of routine communications between representatives of Engineer and Owner.

**ARTICLE 17 - WAIVER**

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**ARTICLE 18 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**ARTICLE 19 - INTEGRATION**

This Agreement represents the entire and integrated agreement between Owner and Engineer. All prior and contemporaneous communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of this Agreement, as set forth in Attachment D, Supplemental Agreements are hereby incorporated into and shall become a part of this Agreement

**ARTICLE 20 - SUCCESSORS AND ASSIGNS**

Owner and Engineer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

**ARTICLE 21 - ASSIGNMENT**

Neither Owner nor Engineer shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Engineer employs independent consultants, associates, and subcontractors to assist in performance of the Services, Engineer shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

**ARTICLE 22 - THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

**ARTICLE 23 – RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

Contract No. \_\_\_\_\_

Project No. \_\_\_\_\_

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement.

CITY OF LEAVENWORTH

Owner

By: Griff Martin

Mayor

Title

Date:

Attest:

City Clerk, Sarah Bodensteiner

BRUNGARDT HONOMICHL & COMPANY

Engineer

By: Randall J. Gorton, P.E., PTOE

Vice-President

Title

Date:

Attest:

Project Manager, Chris Leaver

**ATTACHMENT A  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas  
Engineer: Brungardt Honomichl & Company  
Project Number & Name: Fourth Street Revised Design

**SCOPE OF SERVICES**

**BASIC SERVICES**

The project is specifically defined below:

Added design elements related to the original KDOT-related effort that incorporated sanitary sewer and drainage improvements into the initial project scope as well as structural details, ROW and easement acquisition, and vacuum excavating. Also, complete a revised design of roadway improvements to Fourth Street from Choctaw to Seneca to replace curb & gutter and sidewalk in their current location and maintain the existing pavement width. Limited reconstruction of intersections are expected in order to reduce the crown of the intersecting streets and associated bumps for vehicles traveling along Fourth Street. Some limited storm sewer improvement may be required as part of the intersection improvements. Traffic signals and sidewalk ramps will be improved to meet ADA requirements and the re-striping of the roadway to a 3-lane configuration. Some landscape improvements may be included as part of the project (whether as part of base bid or bid alternates).

The Engineer agrees to provide the following services.

Additional work already performed that is associated with design of sanitary sewer and drainage system improvements, additional structural design, vacuum excavation for traffic signals, and right-of-way and easement acquisition-related services already performed as part of the initial KDOT design effort. See attached listing of key tasks for the revised design work.

SUPPLEMENTAL SERVICES

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following.

- Construction inspection
- Additional structural design beyond what was included in the original design project
- Environmental permitting
- Sewer, water, or other utility improvements
- More complicated design of storm sewer improvements beyond the intersections
- Additional surveying
- Utility investigations
- Retaining wall design

<p><b>Exhibit "A"</b>  <b>Scope of Services</b>  Revised Project Design (non-KDOT)  Fourth Street - Choctaw to Seneca  Leavenworth, Kansas  Prepared By: BHC RHODES (Dec 20, 2023)</p>	
Task No.	Task (Dates: Start to Finish)
<b>1.</b>	<b>Data Collection</b>
A.	Attend a pre-design/kickoff meeting to establish the City's design criteria for the project.
B.	Develop design criteria for the project and prepare a design memorandum that is to be submitted to the City.
C.	Develop a detailed design schedule. Submit a copy to the City and provide digital updates at scheduled progress meetings. The schedule should include the following milestones: Data Collection, Survey and Basemapping, Field Check Plans to the City, Approximate Utility Coordination Meeting Dates, Right-of-way / Easements to the City, Approximate Public Meeting / Individual Stakeholder Meeting Dates, Final Plans to the City.
D.	Contact utility companies to determine the location of existing facilities, collect as-built plans and determine location of planned improvements.
E.	Calculate the total area of disturbance to determine whether a Stormwater Pollution Prevention Plan (SWPPP) is required. A total area of disturbance of over one (1) acre triggers the NPDES permit requirement.
	<b>Task 1 Subtotal</b>



<b>Exhibit "A"</b> <b>Scope of Services</b> Revised Project Design (non-KDOT) Fourth Street - Choctaw to Seneca Leavenworth, Kansas Prepared By: BHC RHODES (Dec 20, 2023)	
Task No.	Task (Dates: Start to Finish)
1.	<b>Data Collection</b>
A.	Attend a pre-design/kickoff meeting to establish the City's design criteria for the project.
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C.	Develop a detailed design schedule. Submit a copy to the City and provide digital updates at scheduled progress meetings. The schedule should include the following milestones: Data Collection, Survey and Basemapping, Field Check Plans to the City, Approximate Utility Coordination Meeting Dates, Right-of-way / Easements to the City, Approximate Public Meeting / Individual Stakeholder Meeting Dates, Final Plans to the City.
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	<b>Task 1 Subtotal</b>

	<p><b>Exhibit "A"</b></p> <p><b>Scope of Services</b></p> <p>Revised Project Design (non-KDOT)  Fourth Street - Choctaw to Seneca  Leavenworth, Kansas  Prepared By: BHC RHODES (Dec 20, 2023)</p>
Task No.	Task (Dates: Start to Finish)
<b>3.</b>	<b>Revised Design Field Check Plans</b>
A.	Prepare the following field check plan sheets.
	Title Sheet.
	General Notes and Legend.
	Quantities.
	General Layout and Survey Data Sheet.
	Typical Sections.
	Plan & Profiles (NO PROFILES FOR STREET)
	Intersection Details.
	Roadway Details.
	Storm Sewer Profiles & Details.
	Erosion Control Plan & Details.
	Street Lighting Plan & Details.
	Traffic Signal Plan & Details.
	Pavement Marking and Signing Plan & Details. (Designated Bike Lanes)
	Construction Phasing Plan.
	Traffic Control Details.
	Drainage Area Map and Calculations.
	Cross Sections.
B.	Submit ELECTRONIC field check plans to the City for review and comment. (NO HARD COPIES)
C.	Prepare a cost estimate.
D.	Meet with City staff and perform a field check of the site to confirm design.
E.	Revise the field check plans as per City plan review comments and field check comments.
F.	Submit an ELECTRONIC field check plan set to each utility company along with a list identifying potential conflicts. Also included in the submittal to the utility companies will be a notification indicating a tentative project letting date which has been established by the Project Manager.
G.	Field Check Plans status meeting with the City. The consultant shall prepare and submit meeting minutes to the City within two days following the meeting.
H.	Conduct a utility coordination meeting.
I.	Provide Quality Assurance and Quality Control.
	Task 3 Subtotal

<b>Exhibit "A"</b> <b>Scope of Services</b> Revised Project Design (non-KDOT) Fourth Street - Choctaw to Seneca Leavenworth, Kansas Prepared By: BHC RHODES (Dec 20, 2023)	
Task No.	Task (Dates: Start to Finish)
<b>5.</b>	<b>Revised Design Final Plans</b>
A.	Prepare the following final plan sheets.
	Title Sheet.
	General Notes and Legend.
	Quantities.
	General Layout and Survey Data Sheet.
	Typical Sections.
	Plan & Profiles.
	Intersection Details.
	Roadway Details.
	Storm Sewer Profiles & Details.
	Erosion Control Plan & Details.
	Street Lighting Plan & Details.
	Traffic Signal Plan & Details.
	Pavement Marking and Signing Plan & Details.
	Construction Phasing Plan.
	Traffic Control Details.
	Drainage Area Map and Calculations.
	Cross Sections.
B.	Submit ELECTRONIC set of final plans to the City for review and comment.
C.	Revise plans as per City plan review comments.
D.	Prepare a revised cost estimate.
E.	Submit Final Plans to the City. Once all comments have been addressed and the plans have been finalized, submit a copy of the final plans to the City. In addition, submit a copy of the final plans to the City in electronic format. The PDF document shall be bookmarked to reflect the index of the cover/title sheet.
F.	<del>Prepare exhibits, storyboards, plans and attend one (1) Public Meeting</del>
G.	Develop project specification manual utilizing City's front end documents
H.	Bidding services such as attending the pre-bid conference, answering contractor questions during advertisement, preparing written addenda to the bidding documents, attending the bid opening and evaluating the bids.
I.	Final Plans status meeting with the City. The consultant shall prepare and submit meeting minutes to the City within two days following the meeting.
J.	Conduct a utility coordination meeting.
K.	Provide Quality Assurance and Quality Control.
L.	<del>Project Design Contingency</del>
	Task 5 Subtotal

<b>Exhibit "A"</b>	
<b>Scope of Services</b>	
Revised Project Design (non-KDOT) Fourth Street - Choctaw to Seneca Leavenworth, Kansas Prepared By: BHC RHODES (Dec 20, 2023)	
Task No.	Task (Dates: Start to Finish)
<b>6.</b>	<b>Construction Administration</b>
A.	Provide technical assistance during construction. Technical assistance includes but is not limited to answering questions during the bidding process and/or during construction, reviewing shop drawings and catalog cuts, attending a preconstruction meeting if requested by the Project Manager.
B.	Transfer plan modifications from the contractor/inspector and provide project AS-BUILTS upon project completion
<b>Task 6 Subtotal</b>	
<b>Project Total</b>	

## Additional Services

The services provided for this project are limited to those listed in the Scope of Services. Any service. Additional services may include but are not limited to the following:

1. Concept Study.
2. Right-of-Way Plans as the project is expected to stay within existing ROW and easen
3. "Open House" Public Meetings.
4. Provide a two-person survey team to survey new utility locations (horizontal and ver
5. Specifications, other than Special Provisions not already written by the City.
6. Utility Design.
7. Waterline Design.
8. Environmental Studies / Reports / Mitigation.
9. Geotechnical Analysis / Reports.
10. Construction Staking.
11. Inspection - Construction Observation & Documentation.
12. Testing Services.
13. Boundary survey to establish existing Right-of-Way

**ATTACHMENT B  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas  
Engineer: Brungardt Honomichl & Company  
Project Number & Name: Fourth Street Revised Design

**COMPENSATION**

For the services covered by this Agreement, the Owner agrees to pay the Engineer as follows:

- A. For the Basic Services described in Attachment A,
  - a. on a time and expense basis with a total amount not to exceed \$202,844.00 for the prior additional work and revised design work. Payments for this portion of work shall be made monthly in amounts which are consistent with the amount of engineering services provided, as determined by the Engineer.

- B. Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional service shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

Hourly rates for each classification as defined by the Engineer's rate schedule, see Attachment F. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 1.5 times the rates listed (non-engineer time only).

Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charges, mileage, toll telephone calls, reproduction and similar project related expenses.

- D. The entire amount of each statement shall be due and payable upon receipt by the Owner.
- E. It is understood and agreed:
  - 1. That the Engineer shall start the performance of Services within 10 days of receipt of a notice to proceed and shall complete the work in accordance with the contract times set forth in Attachment E, Project Schedule.
  - 2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

**ATTACHMENT C  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas  
Engineer: Brungardt Honomichl & Company  
Project Number & Name: Fourth Street Revised Design

**OWNER'S RESPONSIBILITIES**

The Owner will furnish, as required by the work and not at the expense of the Engineer, the following items:

1. Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this contract.
2. Examine all plans, specifications and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.
3. Designate one City of Leavenworth employee as the Owner representative with respect to all services to be rendered under this agreement. This individual shall have the authority to transmit instructions, receive information and to interpret and define the Owner's policies and decisions pertinent to the Engineer's services.
4. Issue notices to proceed to the Engineer for each phase of the design services.

**ATTACHMENT D  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas  
Engineer: Brungardt Honomichl & Company  
Project Number & Name: Fourth Street Revised Design

**SUPPLEMENTAL AGREEMENTS**

Owner and Engineer agree that the following communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of the Agreement are hereby incorporated into and shall become a part of the Agreement as set forth in ARTICLE 19 - INTEGRATION.

**ATTACHMENT E  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas  
Engineer: Brungardt Honomichl & Company  
Project Number & Name: Fourth Street Revised Design

**PROJECT SCHEDULE**

Owner and Engineer recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the work is not completed within the times stipulated herein, plus any extensions thereof. Accordingly, Engineer has established time intervals, in calendar days, for submittals at various stages of the project as detailed below. As each actual submittal date occurs, Engineer shall meet with Owner to discuss the progress of the work and the actual submittal date shall be documented. If project is behind schedule, the reason shall be recorded. Engineer shall not be responsible for the time required by Owner's representative to review Engineer's submittal. When review is complete, Owner shall, in writing, authorize Engineer to proceed to the next submittal date. After final submittal date, Engineer and Owner shall meet to evaluate Engineer's performance with regard to design schedule. An Engineer's Project Performance Evaluation form shall be completed and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects. Past performance shall be accounted for on the evaluation sheet used to rank consultants during the interview process.

1. Schedule: Engineer will make plan submittals to Owner based on the following schedule:
  - a. Concept Drawings - Engineer will submit concept drawings within 15 calendar days after Notice to Proceed by Owner.
  - b. Field Check - Engineer will submit field check drawings within 45 calendar days after Notice to Proceed by Owner.
  - c. Right-of-Way Drawings – **NOT REQUIRED**
  - d. Office Check - Engineer will submit office check drawings and specifications within 30 calendar days after the Notice to Resume Work is given by Owner following Field Check.
  - e. Bid Documents - Engineer will submit bid documents within 21 calendar days after the Notice to Resume Work is given by Owner following Office Check.
  - f. As-Built Plans – Engineer will submit as-built plans within 30 calendar days after marked-up plans are returned to the Engineer, from the Owner or within 30 calendar days after all punch list items have been completed if the Engineer's firm provided construction inspection services for the project.



**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2023-28 SUP  
1913 CHOCTAW STREET**

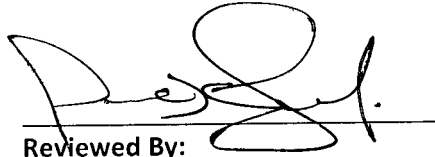
**JANUARY 9, 2024**

**SUBJECT:**

Place on first consideration an ordinance to approve 2023-28-SUP to allow the operation of a Child Care Center at 1913 Choctaw Street.



**Prepared By:**  
Julie Hurley,  
Director of Planning and  
Community Development



**Reviewed By:**  
Paul Kramer,  
City Manager

**NATURE OF REQUEST**

The applicants, Gerald and Vanessa Jackson, are requesting a Special Use Permit to allow the operation of Child Care Center in their home located at 1913 Choctaw Street. The property is currently zoned R1-9 (Medium Density Single Family Residential). Child Care Centers are allowed in the R1-9 zoning district with issuance of a Special Use Permit. The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care, and has indicated that she currently has a total of 8 children enrolled.

The applicant previously operated a home daycare since 2020 at their prior residence in Leavenworth. There was no Special Use Permit applied for at the previous location, as the applicant has indicated that she was unaware of the City requirement to obtain a Special Use Permit in addition to being licensed by the State. Staff was notified in August by a neighbor that the applicant was operating her daycare at 1913 Choctaw, and contacted the Leavenworth County Health Department to see if the applicant was licensed. County staff contacted the applicant, and she contacted City staff the following day to inquire about steps needed in order to obtain a Special Use Permit, before staff had the opportunity to send a notice of violation.

This item was first considered at the November 6<sup>th</sup> Planning Commission meeting. During the November 6<sup>th</sup> Planning Commission meeting, staff was asked by the board members to provide data generated by a speed survey that was currently being undertaken by the Leavenworth Police Department, as well as information regarding property values near existing home daycares and potential signage or other traffic calming measures for the area. The request for additional information was made based upon concerns raised by neighbors during the meeting. The item was again considered at the December 4, 2023 Planning Commission meeting, where the requested additional information was presented.

**SPEED SURVEYS**

At the request of neighbors, the Leavenworth Police Department installed a stealth radar device at the intersection of 19<sup>th</sup> & Choctaw to record vehicle count and speed for a two-week period. Data was collected from 11/1/23 through 11/15/23. The results are as follows:

Posted Speed Limit: 30 mph  
Vehicles Counted: 2,722  
Vehicles Under Speed Limit: 96.88%  
Average Speed: 21.46 mph  
Average Speed Violation: 33.99 mph

During the December 4, 2023 Planning Commission meeting, concerns were raised by Planning Commissioners and a neighbor regarding the validity of the speed survey results. Based upon the concerns raised, Leavenworth PD conducted a second speed survey at the same location from 12/6/23 through 12/22/23. The results of the second speed survey are as follows:

Vehicles Counted: 3,278  
Vehicles Under Speed Limit: 98.44%  
Average Speed: 20.65 mph  
Average Speed Violation: 33.27 mph

Given that the available data does not suggest any speeding or traffic volume issues, no traffic calming measures for the area are indicated.

#### **EXISTING HOME DAYCARES/PROPERTY VALUES**

There are currently 15 active Special Use Permits for home daycares in the City of Leavenworth. Staff surveyed the 2022-2023 property value increase for the immediately surrounding 8-10 properties of a random sample of 9 of those existing daycares. The average property value increase was 15.36%. The average property value increase for Leavenworth County during the same period was 14.85%, per the Leavenworth County Appraiser's Office.

#### **CONDITIONS OF DETERMINATION**

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

*The subject property is located along Choctaw, which is classified as a Residential street.*

2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.

*The back yard area of the property is completely enclosed by an approximately 4' high chain link fence, with a 4' high wooden fence having been installed to divide the yard into two areas, one of which is for exclusive use of the daycare. The portion of the yard established for use by the daycare clients is approximately 2,000 sqft. Upon inspection by staff, portions of the chain link fence, which existed prior*

*to the applicants purchasing the property, appear to be slightly lower than 4' by up to 4". The wooden portion of the fence, which was installed by the applicant, meets or exceeds 4'.*

3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

*The subject property includes a driveway capable of accommodating 4 cars.*

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.

*The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment (KDHE). KDHE staff has visited and inspected the daycare for all areas of compliance.*

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

*The home functions as the only residence of the operator/owner.*

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides or one non-illuminated sign affixed to the main structure of 3 square feet.

*No signage is currently displayed on the property. Any signage displayed in the future will conform to this requirement.*

#### **COMMISSION FINDINGS**

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

*Staff believes that this application complies, or will comply, with all provisions of City of Leavenworth Development Regulations, based upon review of all available materials.*

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

*Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.*

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

*Staff has no indication that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood, based upon available data.*

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

*No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure. The daycare could account for an increase in up to 48 car trips per day on the street, when at full capacity of 12 children.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. After notifications were mailed, staff received one inquiry from notified property owners, who indicated that they were not in favor of the Special Use Permit. During the November 6<sup>th</sup> Planning Commission meeting, multiple individuals spoke both in favor of, and opposition to, the Special Use Permit. During the meeting, a packet of information was given to the Planning Commission by Mike Ingram, who spoke in opposition to the request. After the November 6<sup>th</sup> Planning Commission meeting, staff received 4 letters in support of the Special Use Permit. During the December 4<sup>th</sup> Planning Commission meeting, two individuals spoke in opposition to the Special Use Permit, and two individuals spoke in favor of the Special Use Permit. During the meeting, a packet of information was given to the Planning Commission by Dr. Rebekah Varvel, who spoke in favor of the request.

The Planning Commission took action on this item at their December 4, 2023 meeting and voted 5-1 to recommend approval of the Special Use Permit.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.
2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

**ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the Special Use Permit request to allow a Child Care Center at 1913 Choctaw.
- Deny the Special Use Permit request to allow a Child Care Center at 1913 Choctaw.
- Remand the Special Use Permit request to allow a Child Care Center at 1913 Choctaw to the Planning Commission for further consideration.

**ATTACHMENTS:**

- SUP Application materials
- Location maps
- LVPD Speed Survey summary results: 11/1/23 – 11/15/23
- LVPD Speed Survey summary results: 12/6/23 – 12/22/23
- Information provided by Mike Ingram during 11/6/23 Planning Commission meeting
- Letters provided to staff after 11/6/23 Planning Commission meeting
- Information provided by Dr. Rebekah Varvel during 12/4/23 Planning Commission meeting
- 11/6/23 Planning Commission minutes
- 12/4/23 Planning Commission minutes

(Summary Published in the Leavenworth Times on \_\_\_\_\_)

**ORDINANCE NO. XXXX**

**AN ORDINANCE ALLOWING A SPECIAL USE FOR A CHILD CARE CENTER TO BE LOCATED AT 1913 CHOCTAW STREET IN THE CITY OF LEAVENWORTH, KANSAS.**

**WHEREAS**, under Appendix A of the City of Leavenworth Code of Ordinances, Development Regulations of the City of Leavenworth, Kansas, Sec 2.04, the Governing Body of the City of Leavenworth is given the power to locate special uses in each zoning district by ordinance within said City; and

**WHEREAS**, the City Planning Commission, after fully complying with the requirements of the Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 6<sup>th</sup> day of November, 2023 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 11<sup>th</sup> day of October, 2023 and mailed to all property owners within 200 feet of the said property were given notice of the public hearing; and

**WHEREAS**, upon a motion made, duly seconded, and passed, the City Planning Commission adopted findings of fact and recommended approval of the request for a child care center at 1913 Choctaw Street, Leavenworth, Kansas.

**WHEREAS**, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to allow special use for a child care center for the property described herein.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1.** That a special use permit be issued for a child care center on the following described property:

Lot 4, Cune-White Replat II, City of Leavenworth, Leavenworth County, Kansas. And more commonly referred to as 1913 Choctaw Street, Leavenworth, Kansas.

**Section 2.** That this special use permit is subject to the following:

- a.) A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition;
- b.) A copy of the permanent Group Day Care Home License shall be provided annually upon renewal by the State of Kansas;
- c.) The operation shall be limited to a maximum of twelve (12) children; and
- d.) No additional home occupations may be carried out at the residence.

**Section 3:** That this Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its summary publication once in the official City newspaper.

**PASSED AND APPROVED** by the Leavenworth City Commission of the City of Leavenworth, Kansas on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

---

Griff Martin, Mayor

{Seal}

ATTEST:

---

Sarah Bodensteiner, CMC, City Clerk



**RECEIVED**  
 SEP 11 2023  
 Leavenworth Planning & Community Development

**SPECIAL USE PERMIT**  
 CITY OF LEAVENWORTH, KANSAS

**OFFICE USE ONLY**

CASE NO.: 2023-28 SUP

Application No.	14218
Fee (non-refundable)	\$350.00
Filing Date	9/11/2023
Received By	Bmf
Hearing Date	11/6/2023
Publication Date	10/11/23

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: Family Home Daycare  
MS. Nessa's Kaleidoscope

in accordance with the attached site plan on the following described property:

Subject Property:	1913 Choctaw St. Leavenworth, KS. 66048		
Legal Description:	(Attach a full legal description provided by the Register of Deeds Office)		
Real Estate PID #:	052-078-34-0-20-05-043.00-0		
Zoning:	R1-9	Historic District:	n/a

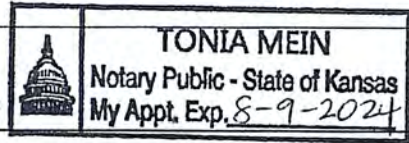
I/We, the undersigned, depose and state we are the owners of the above described property:

Name(s) of Owner (print):	Gerald + Vanessa Jackson		
Owner Address:	1913 Choctaw St. Leavenworth, KS. 66048		
Contact No.	913-240-6090	Email:	Vanessasmilesalot@yahoo.com

Signature of Owner(s):  
 Vanessa Jackson  
 Ger Jackson

State of Kansas  
 County of Leavenworth

(SEAL)



Signed or attested before me on: 9-11-2023

Notary Public: Tonia Mein

My Appointment Expires: 08-09-2024

If business is operated by someone other than the owner, provide name and address of operator(s).

Name of Lessee:	
Address:	
Contact No.	
Email:	

**NOTE:** All signatures must be in ink. Signature of owner(s) must be secured and notarized.

**Check list below...**

<input checked="" type="checkbox"/>	Non-Refundable Fee of \$350.00 is due at time of application
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property
<input checked="" type="checkbox"/>	Attach <b>full</b> legal description obtained through the Register of Deeds Office
<input checked="" type="checkbox"/>	Site Plan drawn to scale (See General Instructions)
<input checked="" type="checkbox"/>	Supporting documentation (See General Instructions)

**Kansas Department of Health and Environment**  
**License**

Group Day Care Home  
License No. 0061125-013

Licensee: Gerald Floyd Jackson and Vanessa Kay Jackson

Facility: Ms Nessas Kaleidoscope

Located at: 1913 Choctaw St  
Leavenworth, KS 66048

Place sticker here

08/31/2024

In the county of: Leavenworth

Having complied with the laws and regulations of the State of Kansas governing Group Day Care Homes, Gerald Floyd Jackson and Vanessa Kay Jackson is hereby authorized to care for a maximum of 12 children, under one of the following options:

**MAXIMUM LICENSED CAPACITY IF ONE ADULT IS PRESENT WITH THE CHILDREN:**

- 9 children, at least 2 ½ years but under 11 years of age\*; or
- 10 children, at least 3 years but under 11 years of age\*; or
- 12 children, at least 5 years but under 11 years of age; or refer to Table I in K.A.R. 28-4-114(e) if children under 2 ½ years of age are in attendance.

**MAXIMUM LICENSED CAPACITY IF TWO ADULTS ARE PRESENT WITH THE CHILDREN:**

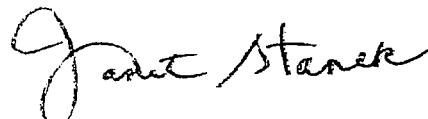
- 12 children, infancy to 11 years of age\*, with not more than 9 children under 5 years of age, 3 of whom may be under 18 months of age; or
- 10 children, infancy to 11 years of age\*, with not more than 8 children under 5 years of age, 4 of whom may be under 18 months of age; or
- 12 children, at least 18 months but under 11 years of age\*, with not more than 5 children, 18 months to 2½ years of age.

\*Children five years of age and over may be substituted for younger children in the license capacity. Children under 11 years of age who are related to the applicant with a temporary permit, the licensee, or any other provider shall be included in the maximum number of children in each age group. Children at least 11 years of age but under 16 years of age who are unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.

This License is effective 08/27/2023 and remains in effect until the expiration date noted by the above sticker unless invalidated by a change of owner, operator, location or it is administratively closed.

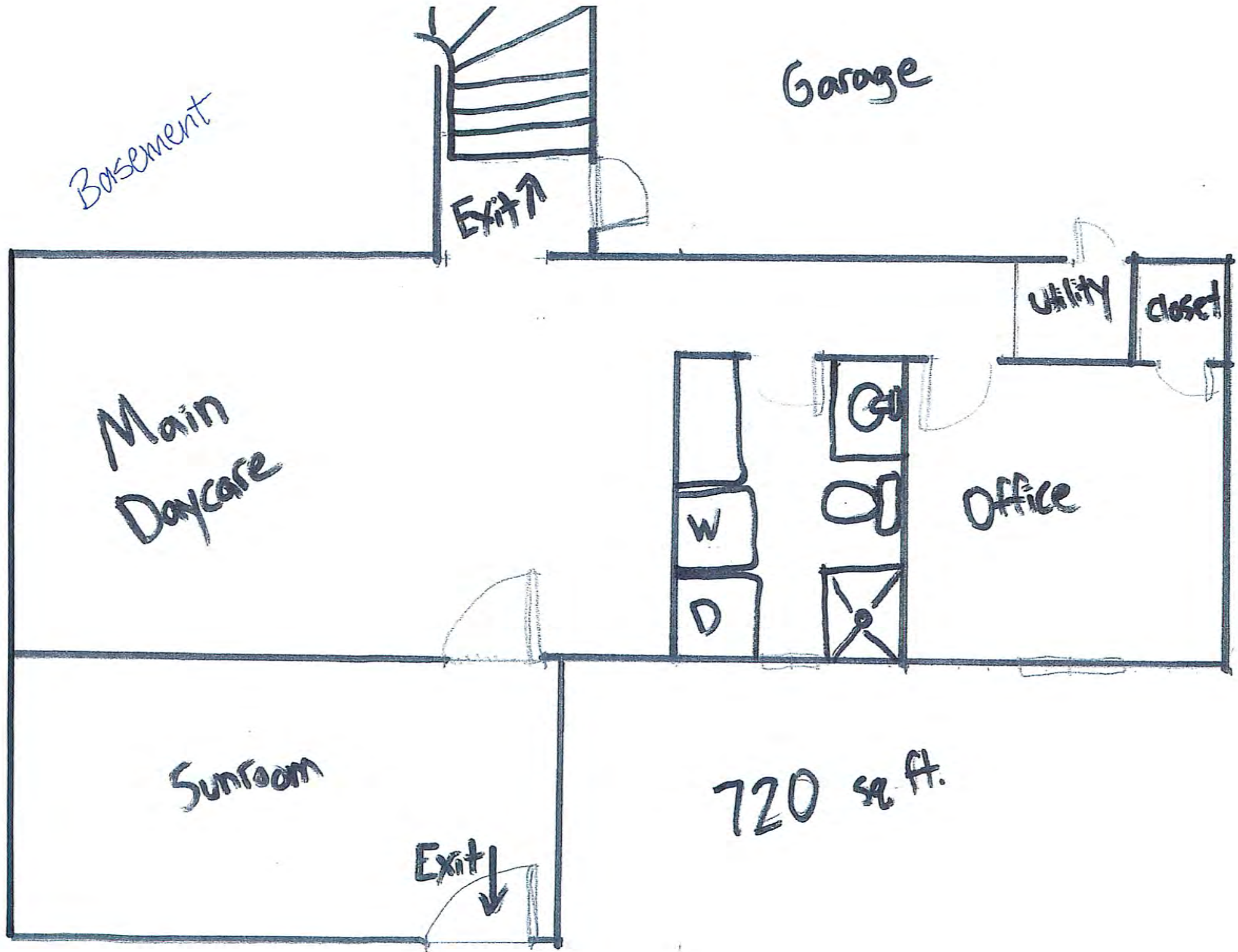
Smoking is prohibited inside the day care home during hours of operation.

\*\* Local codes and ordinances may prescribe other requirements for the legal operation of this facility.



\_\_\_\_\_  
Janet Stanek, Secretary  
Kansas Department of Health and Environment

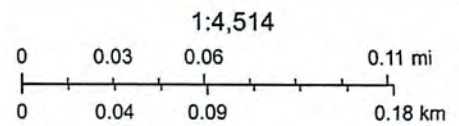




# 2023-28-SUP 1913 Choctaw



11/29/2023, 4:49:30 PM

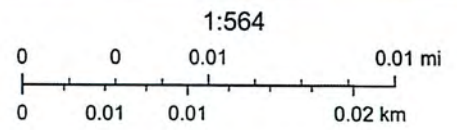


Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

# Daycare Yard Area



11/29/2023, 4:45:39 PM



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

### Survey Summary

#### Survey Description

<b>Survey Location</b>	Choctaw & S 19th St, Leavenworth, Ks	
<b>Survey GPS Coordinates</b>		
<b>Survey Dates</b>	<b>Start</b>	<b>Stop</b>
	Wednesday, 11/1/2023 10:21 AM	Wednesday, 11/15/2023 9:35 AM
<b>Posted Speed Limit</b>	30 mph	
<b>Traffic Zone</b>	None	

#### Survey Result

<b>Total Vehicle Count</b>			2722	
	<b>Traffic Direction</b>	<b>Closing</b>	<b>Away</b>	<b>Combined</b>
		<b>Undefined</b>	<b>Undefined</b>	
	<b>Vehicle Count</b>	1206	1516	2722
<b>Posted Speed Limit</b>			30 mph	
	<i>Vehicles Under the Speed Limit Count</i>	1185	1452	2637
	<i>Vehicles Under the Speed Limit Percentage</i>	98.26%	95.78%	96.88%
	<i>Vehicles Over the Speed Limit Count</i>	21	64	85
	<i>Vehicles Over the Speed Limit Percentage</i>	1.74%	4.22%	3.12%
<b>Excessive Speed Threshold</b>			55 mph	
	<i>Vehicles Over the Excessive Speed Count</i>	0	1	1
	<i>Vehicles Over the Excessive Speed Percentage</i>	0	0.07%	0.04%
	<i>Average Violation Speed</i>	32.71 mph	34.41 mph	33.99 mph
<b>Speed Profile</b>				
	<b>Average Speed</b>	20.48 mph	22.24 mph	21.46 mph
	<b>Minimum Speed</b>	6 mph	6 mph	6 mph
	<b>Maximum Speed</b>	37 mph	55 mph	55 mph
	<b>85th Percentile Speed</b>	25 mph	27 mph	26 mph
	<b>Standard Deviation</b>	4 mph	5 mph	4 mph
	<b>10 mph Pace</b>	16-25 mph	18-27 mph	17-26 mph
	<b>In Pace Count</b>	817	1017	1829
<b>Data Recording Limits</b>				
	<b>Highest Speed Allowed</b>		120 mph	
	<b>Lowest Speed Allowed</b>		10 mph	
	<b>Minimum Following Time</b>		0 Second(s)	

### Survey Summary

#### Survey Description

**Survey Location** Choctaw & S 19th St, Leavenworth, Ks  
**Survey GPS Coordinates**  
**Survey Dates** **Start** Wednesday, 12/6/2023 8:55 AM **Stop** Friday, 12/22/2023 8:52 AM  
**Posted Speed Limit** 30 mph  
**Traffic Zone**

#### Survey Result

<b>Total Vehicle Count</b>			3278	
	<b>Traffic Direction</b>	<b>Closing</b>	<b>Away</b>	<b>Combined</b>
		<b>Undefined</b>	<b>Undefined</b>	
	<b>Vehicle Count</b>	1390	1888	3278
<b>Posted Speed Limit</b>			30 mph	
	<i>Vehicles Under the Speed Limit Count</i>	1383	1844	3227
	<i>Vehicles Under the Speed Limit Percentage</i>	99.5%	97.67%	98.44%
	<i>Vehicles Over the Speed Limit Count</i>	7	44	51
	<i>Vehicles Over the Speed Limit Percentage</i>	0.5%	2.33%	1.56%
<b>Excessive Speed Threshold</b>			55 mph	
	<i>Vehicles Over the Excessive Speed Count</i>	0	0	0
	<i>Vehicles Over the Excessive Speed Percentage</i>	0	0	0
	<i>Average Violation Speed</i>	31.29 mph	33.59 mph	33.27 mph
<b>Speed Profile</b>				
	<b>Average Speed</b>	19.19 mph	21.73 mph	20.65 mph
	<b>Minimum Speed</b>	4 mph	4 mph	4 mph
	<b>Maximum Speed</b>	33 mph	54 mph	54 mph
	<b>85th Percentile Speed</b>	24 mph	26 mph	25 mph
	<b>Standard Deviation</b>	4 mph	4 mph	5 mph
	<b>10 mph Pace</b>	15-24 mph	17-26 mph	16-25 mph
	<b>In Pace Count</b>	910	1324	2191
<b>Data Recording Limits</b>				
	<b>Highest Speed Allowed</b>		120 mph	
	<b>Lowest Speed Allowed</b>		10 mph	
	<b>Minimum Following Time</b>		0 Second(s)	

To: Leavenworth City Planning Commission

6 November, 2023

RE: Public Hearing of Special Use Permit Case, No. 2023-28 SUP

I represent and speak for 11 owner-occupied households (shown in red). We all oppose the application for a Special Use Permit (SUP) to allow for the operation of a childcare center for seven or more children at 1913 Choctaw Street.





### **Our Issues:**

- 1) *adverse effects on the neighborhood***
- 2) *overall startup process***
- 3) *legalities***

### **Our Neighborhood**

- 404 - 610 S. 19<sup>th</sup> Street and 1812 - 1917 Choctaw Street
- An enclosed Neighborhood
- A No Outlet street leading to cul-de-sac resulted in a nice, quiet neighborhood.
- Micro-neighborhood comprises 31 detached single family homes
- Primarily owner-occupied
- Now mostly retirees, at home through the day

### **Adverse Effects on our Neighborhood**

#### **Traffic increase.**

Since 14 August a ***significant increase in vehicular traffic.*** Every client means 4 passes per day all the way to the end of the cul-de-sac and back.

This alone greatly ***diminishes the traffic minimizing quality of the cul-de-sac*** and connecting No Outlet street, ***and hence values of the properties.***

#### **Driver behavior.**

***Some of this traffic*** has been ***out of compliance with traffic laws.***

- Neighbors have observed speeding, driving impatiently and recklessly (especially at the T intersection), and also observed repeatedly parking wrongly in the cul-de-sac.
- Has changed our driving, walking, walking dogs, playing, and bicycle riding in neighborhood.
- ***These vehicle based nuisances have disturbed neighbors seeing them.***

#### **Neighborhood mitigating actions.**

- New, large No Outlet sign installed at 19<sup>th</sup> and High Streets in early September.
- Currently data are being collected for a LVN PD traffic study.
- Several neighbors have confronted drivers regarding parking and speeding.



## Process Issues

**Municipal Code.** From the Code:

*“Accessory uses permitted by special use permit. The following accessory uses shall only be permitted upon approval of a special use application by the City commission: c. Child care centers for seven or more children.”*

**City Bias.** Pattern of bias by the City toward Child Care. A **review of all cases** before the Planning and City Commissions **since January 2020** suggests a strong bias.

- 3 Current City Commissioners are on record as simply that “We need day care.”
- Demand for / supply of day care in Leavenworth has not been established. “We need day care” is inadequate to address the issue regarding when, where and how much is correct. What are the methodologies, data, and analyses to support this declaration?

**Planning Director Policy.** Planning Department Policy contrary to Municipal Code to allow day care centers to operate once the SUP application is filed with Planning.

- There is **no apparent authorization** for this policy.

**Boilerplate language.** Planning input to support Special Use Permit cases suggests a bias toward these uses and against homeowners in neighborhoods.

“The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

*Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.”*

- Patently biased against this particular neighborhood, which receives none of the benefit and incurs all the costs of this public good. Not addressed in the packet.
- Age discriminatory in this neighborhood.

“The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

*Staff does not feel that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood.”*

- How does staff come to **feel** about property values? What are the methodologies, data, and analysis to support their findings?

### **Planning Director Bias.**

**On 16 October we reviewed the application.** An obviously displeased Director came out to confront us. This was not a friendly or helpful meeting of the public.

She spoke to us in a brusque, condescending, and rude manner. She seemed angry when her authority was questioned. The Planning Director clearly indicated a bias toward day care businesses, and without suggesting any interest for legitimate homeowner opposition, concerns, or input.

**We asked the following questions and received the responses shown.**

1. Are you really running a process to allow these businesses to open prior to permit approval contrary to city code? *"We need day care — we're going to help these businesses get started. We're not going to shut down a business. People need to make a living."*

2. Do you have a written policy, can we get a copy? *No reply.*

3. Does Joy Bogart coordinate with Planning when a Kansas License is granted? *"That's not a requirement."* I re-asked to clarify if it ever occurs with same answer.

4. Did this day care business ever have a special use permit at their prior location? *"I don't know, We don't have that information, We can't tell you, You will have to do an Open Records Request if you want that."*

5. You must know who has permits. You talked about 17 active permits in the city, were they on it? *"I don't know what you're talking about - I never said that."*

*"Ms. Hurley stated she is unaware of a child care center in this particular neighborhood but there are 17 active special use permits for home-based child care centers in the city." From Minutes of Planning Commission Meeting 3 May 2021.*

**The Planning Commission Agenda Item packet.** Bias is even reflected in the packet you have been provided. The material is inaccurate, incomplete, and misleading.

- The **package is not complete** without the documentation that reflects this application had to be **compelled by a violation notice**, germane to the application.
- The **packet is misleading** as it states “No concerns or complaints were received by the City regarding the operation of a Child Care Center at their previous home.” **I informed Planning staff on 7 September 2023 that the day care may not have had a special use permit, given they had not applied at the current location.** A quick search did not reveal one. **I again inquired if they had a SUP prior on 15 September. On 16 October that was my primary question to the Planning Director.** So, the City had received concerns three times about the operation of the day care at the previous home. The City did not even know they were operating.
- The **package is inaccurate.** It states : *The subject property includes a back yard area of approximately 5,800 sq. ft., enclosed by a 4' chain link fence.* **How was the fence height determined?** Again, boilerplate and bias toward pushing these cases has resulted in an error in fact casting doubt on the process.
  - The actual operational area is now reduced, but adequate in size, and partially enclosed by a new 4' board fence, with the remainder still a 42" high chain link fence.

### Legalities

- A check of the *Kansas Child Care Licensing Program Online Facility Compliance Search* showed a Group Day Care Home License with maximum capacity of 12 since September 2020. The Initial Survey for this location was 24 August 2023, with 27 August License Effective Date. They had begun operating 14 August.
- An **Open Records Request** found no record of SUP at the prior location during the time operating, indicating a prolonged and repeated violation of Municipal Code.
- Special Use Permit application filed 11 September 2023 for this location. This was not a voluntary filing of the application, but **compelled by a violation notice**.

### State Role.

In licensing and regulating day care KDHE plays a dominant role in these businesses being established. However, the State does not usurp local government rights to set additional requirements by local codes.

- Kansas License Application states:

*//We understand that //we are **responsible for meeting and maintaining compliance with all applicable child care licensing laws and regulations at all times.***

*//We attest, **under penalty of perjury**, that to the best of my (our) knowledge, that the information provided in this application is true and correct.*

- Joy Bogart (State Surveyor) indicated to me that **she tells her clients** upon their being Licensed to take the required steps in Leavenworth city. i.e. file for SUP.
- KDHE requires an orientation to process the application.

From Kansas Department for Children and Families (KDCF) in the section Required Orientation there is stated unequivocally:

**Note: You may also need to verify that you can open a licensed facility with HOA, city, or county building codes office.**

- The License, a copy of which is in the application packet, states:
  - **\*\* Local codes and ordinances may prescribe other requirements for the legal operation of this facility.**
- And, **17 other active permit holders complied** with the law.

## **Summary**

Increased and noncompliant traffic has changed the nature of this neighborhood, disturbing and endangering neighbors and adversely affecting property values.

A process contrary to the Municipal Code is being run that favors day care businesses over Leavenworth citizens and neighborhoods, without regard to all specific location characteristics or substantive neighborhood input.

The city ignored a prolonged and repeated violation of the Municipal Code. From opening at the prior location, a records search indicated there were 3 years or 1,099 days before the city compelled this day care to file the SUP application.

There were 4 Kansas Applications that had to be signed during this period with what now appear to be false attestations.

## **Recommendations**

That the Planning Commission table the issue:

- to complete and correct the packet
- to address the unique qualities of this specific location to make an informed decision
- to substantively address value and how you have a better understanding and sense of our property than we do
- to determine effects on property value with a documented methodology, data and analysis that stands up to outside scrutiny
- to propose and enact reasonable mitigations to the traffic problem that has been created, beyond those that we have done or have authority to do.

To whom it may concern:

I am writing to express the invaluable importance of high-quality daycare facilities within our community, specifically highlighting the exceptional experience I have had working alongside Vanessa at Nessa's daycare.

My professional engagement with Vanessa has been truly enlightening. Her dedication, passion, and commitment to creating a positive environment for children have been nothing short of remarkable. Her nurturing approach and ability to foster a safe and stimulating space for young minds to grow and learn are commendable.

It is crucial to underscore the significance of quality daycares to the overall well-being and advancement of our community. They serve as essential pillars supporting working families, enabling parents to contribute to the workforce with peace of mind, knowing their children are in a safe and nurturing environment. Quality early childhood education provided by daycares has a profound impact on a child's cognitive, social, and emotional development, laying the foundation for future success.

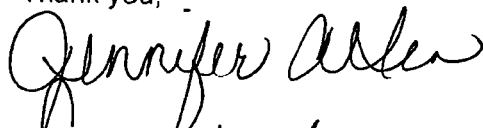
Vanessa's collaborative spirit and willingness to collaborate with USD 453 to support students and families have been exemplary. Her proactive efforts to bridge the gap between childcare and education have been instrumental in ensuring a seamless experience for both parents and students.

The absence of a daycare facility, such as the one Vanessa operates, would not only impose undue hardships on the families within our community but also directly affect USD 453 employees. Currently, the absence of this service impacts dedicated employees within the district, making it challenging for them to balance work commitments and childcare responsibilities.

Recent county statistics indicate a concerning reality: over 1,500 children under the age of 6 lack access to daycare due to the limited number of available spots. This shortage highlights the urgent need to expand and support daycare facilities like Vanessa's, which are crucial in providing access to quality early childhood education and relieving the burden on working families.

In conclusion, I strongly advocate for the support and expansion of quality daycare facilities like Nessa's led by Vanessa. Their impact on our community's well-being, educational advancement, and the support they provide to both families and employees within USD 453 cannot be overstated.

Thank you,

  
Jennifer Allen  
ECSE teacher  
USD #453

November 19, 2023

To Whom It May Concern:

I would like to offer my professional observation and my support for Ms. Nessa's Kaleidoscope Daycare in Leavenworth, KS. I am a nationally certified Speech-Language Pathologist with licenses to practice in three states. My professional focus is pediatric speech service delivery, ages 3-6 years. I am also an Army spouse of 30 years who has observed childcare practices across the United States, South Korea, and Germany.

I have had the pleasure of working with Ms. Vanessa during opportunities to evaluate children who participate in her childcare program. Vanessa has been a strong advocate for the children she serves and has provided invaluable feedback on their overall development. She has developed a cooperative relationship with USD 453, Leavenworth Public School District and has allowed practitioners to come to her childcare business to observe and evaluate children in potential need of special education services through the school district. She has been professional during all interactions with me. The children in her care participate in structured learning activities as well as times of play.

I frequently hear from families I work with about the great difficulty they experience in finding quality child care in Leavenworth. Recent information about Leavenworth County indicated that over 1,500 children under the age of 6 do not have access to quality child care due to a limited number of available openings. Ms. Nessa's Kaleidoscope Daycare fills a void for many families who are seeking childcare services. Her program directly impacts USD 453 students in another way as she provides childcare for five USD 453 employees. These employees are able to focus their attention on the children of our community because they know that their own children are being cared for by Ms. Vanessa.

I urge you to carefully consider Ms. Vanessa's business as an asset to our community which meets a growing demand for child care. I may be reached at (804)920-7092 if you have any questions or concerns about my recommendation for Ms. Vanessa.

Most respectfully,

*Marde Mott, M.A., CCC-SLP*

Marde Mott, M.A., M.S., CCC-SLP

To whom it may concern,

My name is Meredith Medley and I am a School Psychologist at USD 453 at the Earl Lawson Education Center and Nettie Hartnett. I have been a School Psychologist in the district since the 2021-2022 school year. In my experience, working with the students who attend Earl Lawson and Ms. Nessa's daycare, I have seen great success through those children. Ms. Nessa is always more than willing to work with the school and families of the students who attend both centers. Ms. Nessa is always more than willing to let school staff come in to observe children, share her lesson plans, and report successes displayed everyday at her daycare.

In the city of Leavenworth there are a rising number of children who go without daycare providers due to the small number of daycare providers who still have spots available for children. Research shows us that children who are not able to socialize with their peers before attending a public school setting, for Kindergarten or First Grade, will historically struggle more academically, socially, and with behavior than those able to appropriately socialize with peers. The day care that Ms. Nessa currently operates, allows children the opportunity to appropriately socialize with their peers to develop essential social skills that children going into Kindergarten or First grade need to possess in order to be successful in an educational environment.

It should be noted that there are over five employees who currently work in the USD 453 district that would be negatively impacted should something happen to Ms. Nessa's daycare. This along with the negative social impact this could have on those children as well as others should be taken heavily into consideration. Ms. Nessa's daycare has always shown USD 453 employees and students the utmost dedication to providing children a safe and friendly learning environment and has my highest recommendation.

Sincerely,  
Meredith Medley  
School Psychologist E.d.s.



November 24, 2023

To Whom It May Concern,

My name is Linda DeMoss, and I am writing to you as a concerned resident and grandmother in our beloved community. I recently learned about the impending decision regarding the granting of a special permit for Ms.Nessa's Daycare, and I felt compelled to express my deep concern and urge your favorable consideration of this request.

I understand the weight of the responsibilities that come with your role in overseeing zoning matters, and I appreciate the importance of maintaining a balanced and harmonious community. However, I believe it is crucial to consider the significant positive impact that our local daycare has on the lives of our families and the overall well-being of our community.

As a grandmother, I have had the privilege of witnessing firsthand the positive impact that Ms.Nessa's daycare has had on children. The daycare provides a safe and nurturing environment where our little ones can learn, play, and grow. Vanessa's dedication not only ensures the physical safety of the children but also contributes significantly to their emotional and cognitive development. My granddaughter has been attending Ms.Nessa's Daycare since she was approximately 10 weeks old. Since attending daycare with Vanessa, she has met numerous milestones and has become part of their family. She truly cares for each child as if they were her own.

Moreover, the daycare serves as a support system for working parents who rely on its services to maintain employment and provide for their families. The closure of such a vital facility would undoubtedly create a substantial burden on these parents, forcing them to make difficult choices between their careers and the well-being of their children. Additionally, many of the families at the daycare serve as employees of USD 453, which is already suffering from a significant staff shortage. By not allowing daycare to obtain a special permit, these families will

be forced to potentially find new employment, furthering the burden on the local school district and tax payers.

I am aware that special permit decisions are complex and multifaceted, but I urge you to consider the long-term consequences of denying this special permit for our local daycare. The positive contributions it makes to our community, both socially and economically, are undeniable. It is essential to recognize the indispensable contribution that daycares make to the lives of our families and the overall health of our community. With the ongoing shortage in our county, with little relief in sight, it is important to ensure we are not creating barriers for our established daycares and those willing to start a business in our community.

In closing, I appreciate your dedication to the well-being of our community and the careful considerations you make in matters of zoning. I trust that, with thoughtful deliberation and community involvement, we can find a solution that ensures the continued strength of our community and the well-being of our children.

Thank you for your time and attention to this matter. I look forward to a positive outcome that will benefit all members of our community.

A handwritten signature in black ink, appearing to read "Linda DeMoss", with a date "12/11/20" written below it.

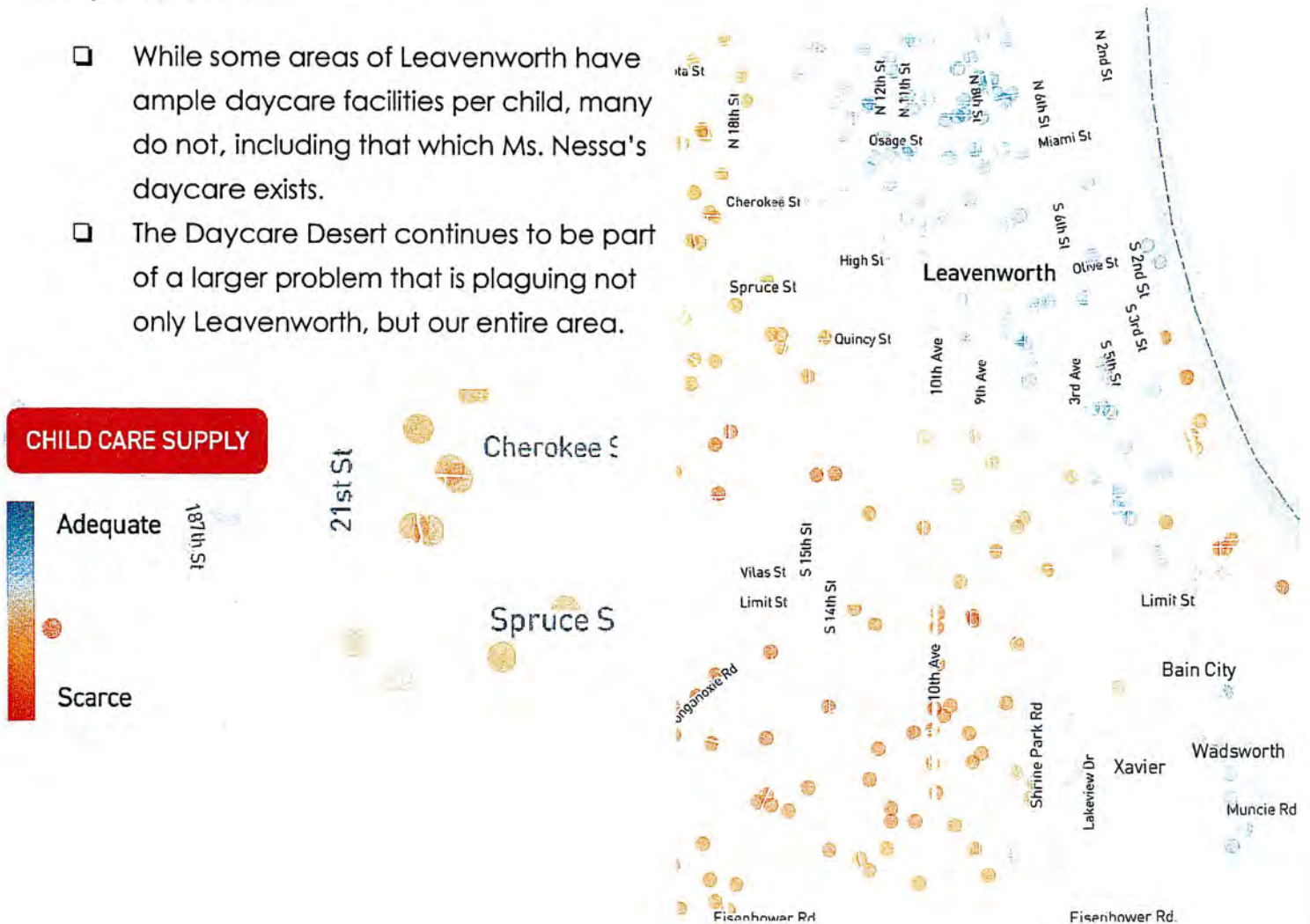
Linda DeMoss

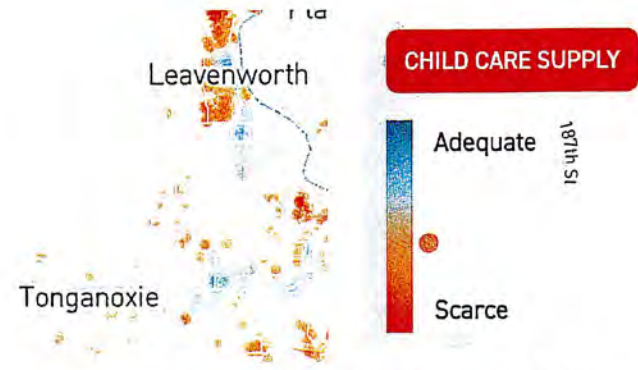
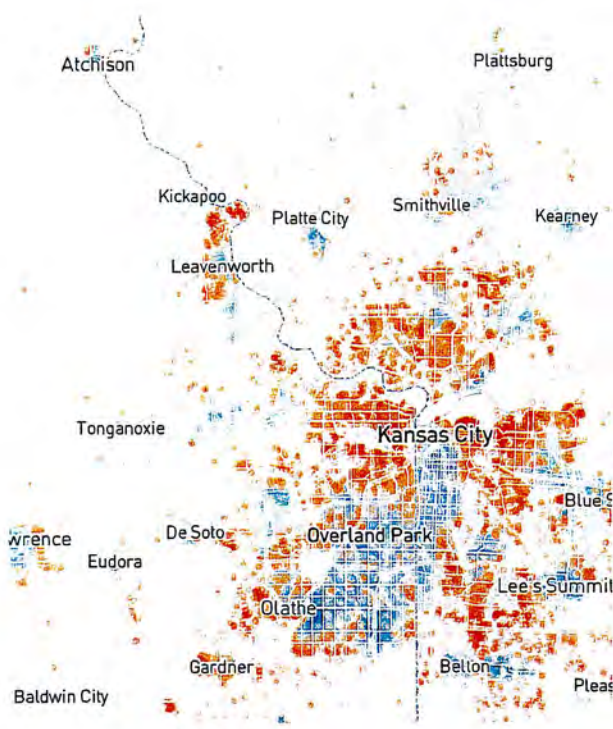
## Importance of Ms.Nessa's Daycare

- ❑ Provides ongoing support to children and families in the Leavenworth community
- ❑ Works to help support all levels of child development through weekly lesson plans. These lesson plans align with early learning standards to prepare students to be successful in school and life
- ❑ Works closely with USD 453 to support students who are also attending school
- ❑ Currently 5 parents who work for USD 453 have children at Ms.Nessa's.
- ❑ Provides care for children in an area that is currently a 'daycare desert.'

### Daycare Desert

- ❑ While some areas of Leavenworth have ample daycare facilities per child, many do not, including that which Ms. Nessa's daycare exists.
- ❑ The Daycare Desert continues to be part of a larger problem that is plaguing not only Leavenworth, but our entire area.

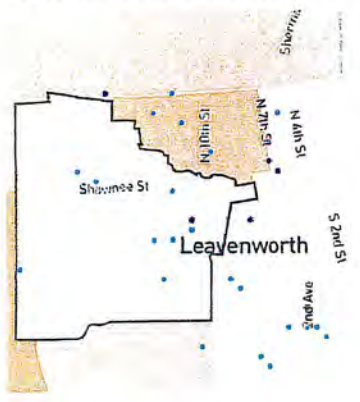




- ❑ Ms.Nessa's house exists in an area where there are 444 children under the age of 5; however, there are only 184 slots available.
- ❑ In July 2023, Kansas City Star indicated that Kansas lacks over 84,000 slots for children.
- ❑ According to ChildCare Aware of Kansas, there is potentially 1,799 children under the age of 6 needing

daycare.

rent version of this interactive is available at [childcaredeserts.org](http://childcaredeserts.org)



Census Tract 703 Leavenworth County
Licensed child care providers: 10
Family child care homes: 9
Total child care capacity: 184
Total population: 5657
Population under age 5: 444
Median family income: \$44,485
Percent of children with all parents in the labor force: 80%
Maternal labor force participation: 78%
Percent non-Hispanic, white: 80%
Percent non-Hispanic, black/African American: 10%
Percent Hispanic/Latino: 5%
Children per licensed child care slot: 2.41

# Kansas lacks licensed child care for 84,000 kids. The shortage may get even worse

BY KATIE BERNARD  
JULY 16, 2023 5:30 AM





## LEAVENWORTH County Point-In-Time Child Care Data

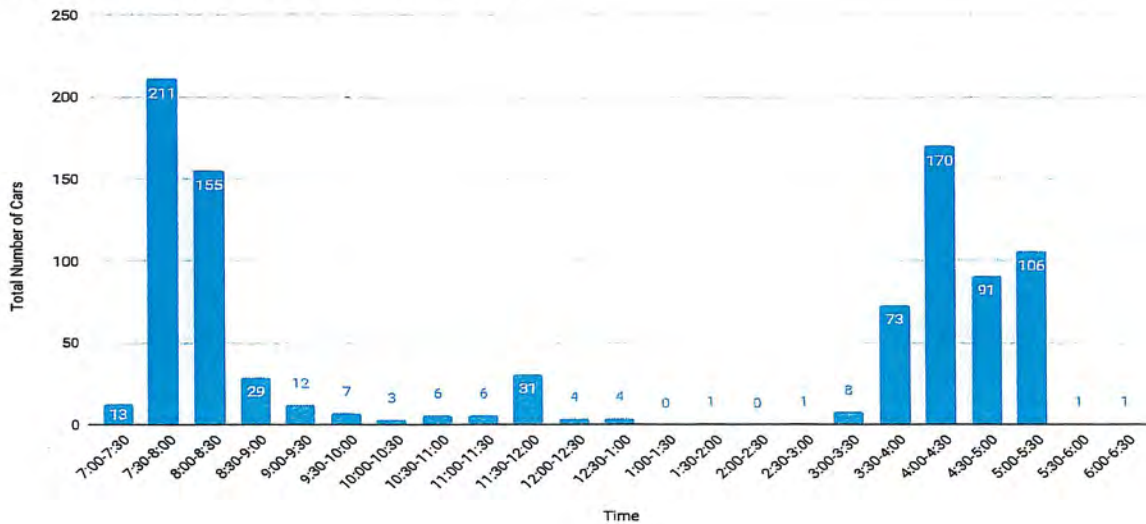
Generated on 11/25/2023

Census Data	
Total Number of Residents <sup>1</sup>	81,601
Total Number of Residents under 6 years <sup>1</sup>	5,957
Children under 6 years with all parents in family in labor force <sup>1</sup>	3,591
Median Household Income <sup>1</sup>	\$80,853
2023 (Current): Extent Desired Capacity Meets Potential Demand	50%
Potential Number of Child Care Slots Needed	1,799

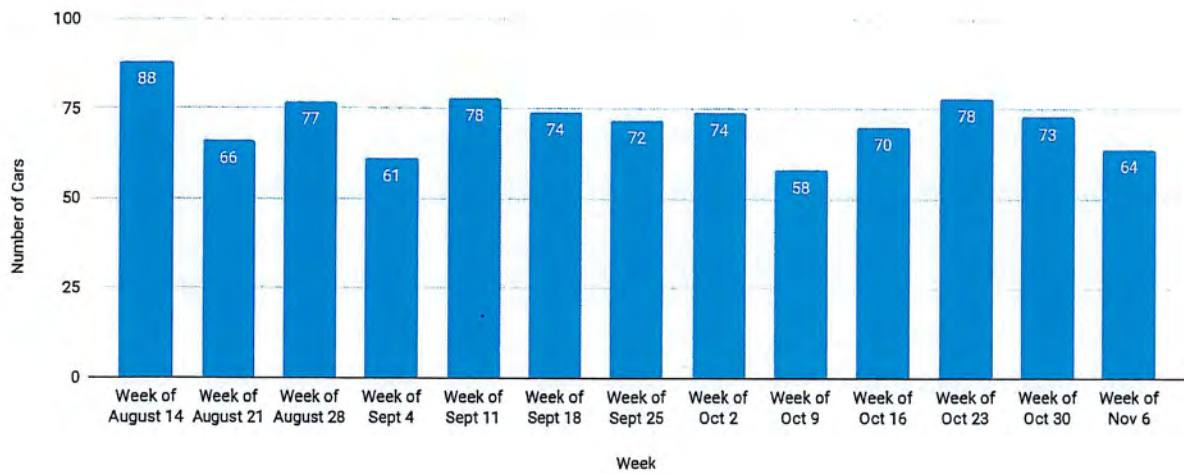
### Impact To The Neighborhood

- ❑ A 13-Week time study shows that a majority of traffic arrives between the hours of 7:30-8:30 [arrival] and 4:00-5:30 [pick-up]
- ❑ A 13-Week time study shows that the most cars in a one-week time period was 88 [when there were 9 children]. Since this time, there are currently 8 children attending.

Total Number of Cars [13 Week Time Span]



## Number of Cars Total Each Week



## Sources

- <https://childcaredeserts.org/>
- <https://www.kansascity.com/news/politics-government/article277034078.html>
- <https://stage.worklivesystems.com/Kansas?county=Leavenworth>
- <https://ks.childcareaware.org/data-research/>

**CITY OF LEAVENWORTH PLANNING COMMISSION**  
**COMMISSION CHAMBERS, CITY HALL**  
100 N 5<sup>th</sup> Street, Leavenworth, Kansas 66048  
**REGULAR SESSION**  
**Monday, November 6, 2023**  
6:00 PM

---

**CALL TO ORDER:**

**Commissioners Present**

Don Homan  
Sherry Hines Whitson  
Brian Stephens  
Maryann Neeland

**Commissioners Absent**

Bill Waugh  
James Diggs  
Kathy Kem

**City Staff Present**

Julie Hurley  
Michelle Baragary  
Bethany Falvey

Chairman Homan called the meeting to order at 6:00 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES:** September 11, 2023

Chairman Homan asked for questions, comments or a motion on the minutes presented for approval: September 11, 2023. Commissioner Stephens moved to approve the minutes as presented, seconded by Commissioner Whitson and approved by a vote of 4-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. 2023-28 SUP – 1913 CHOCTAW STREET**

Conduct a public hearing for Case No. 2023-28 SUP – 1913 Choctaw Street. The applicants/owners are requesting a Special Use Permit to allow for the operation of a Child Care Center for seven or more children in their home located at 1913 Choctaw Street. The property is currently zoned R1-9, Medium Density Single Family Residential District. Child Care Centers are allowed in the R1-9 zoning district with the issuance of a Special Use Permit.

Chairman Homan called for the staff report.

City Planner Bethan Falvey stated the applicants, Gerald and Vanessa Jackson, are requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 1913 Choctaw Street. The property is currently zoned R1-9 (Medium Density Single Family Residential District). Child Care Centers are allowed in the R1-9 zoning district with the issuance of a Special Use Permit. No concerns

or complaints were received by the City regarding the operation of the Child Care Center at their previous home.

The applicants are licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care.

### **CONDITIONS OF DETERMINATION**

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

*The subject property is located along Choctaw Street, which is classified as a Residential street.*

2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.

*The subject property includes a back yard area of approximately 5,800 sqft., enclosed by a 4' chain link fence.*

3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

*The subject property includes a driveway capable of accommodating 4 cars.*

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.

*The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment.*

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

*The home functions as the only residence of the operator/owner.*

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of two sides or one non-illuminated sign affixed to the main structure of 3 square feet.

*Any signage displayed will conform to this requirement.*

### **COMMISSION FINDINGS**

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

*Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.*



2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

*Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.*

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

*Staff does not feel that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood.*

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

*No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statute. Since notifications were mailed, staff received one inquiry from notified property owners, who are against the Special Use Permit.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.
2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

**ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Homan asked for questions from the commissioners about the staff report.

Commissioner Stephens asked if the one inquiry from the neighboring property gave specifics on why they are in opposition of the special use permit.

Ms. Hurley stated that property owner is in attendance, and probably plans to speak.

Vanessa and Gerald Jackson, applicants/owners, stated she opened her daycare in 2020 at a previous location in Leavenworth. They purchased the subject property in August 2023 because they outgrew their home.

Commissioner Stephens asked if there has been a change in the amount of children they care for or a change in their business model.

Mrs. Jackson responded in the negative.

Commissioner Stephens asked the applicants if they have talked with the neighborhood, and laid out how they are doing pickup and drop-off.

Mrs. Jackson responded that when they first moved into their new home everybody was nice, came over to meet them, and Mrs. Jackson told them that they run a family daycare at home. Mrs. Jackson stated she knows there has been a little bit of an issue with parking because the way the cul-de-sac is. There was one car that blocked a neighbor's driveway. Mrs. Jackson spoke with the parent and the issue has been resolved. Mrs. Jackson further stated her daycare families are a very tight-knit group and respectful of neighboring properties.

Commissioner Stephens asked if the pickup and drop-off are usually around the same times or do they vary.

Mrs. Jackson responded they are usually the same times. The daycare opens at 7:00 am but there are several families that do not drop-off until 7:30 am. Typical pickup times are between 4:00-5:30 pm, with 4:00 pm being the busiest time for pickup.

Commissioner Stephens asked if the maximum number of kids is 12.

Mrs. Jackson responded in the affirmative further stating they currently have 8 kids enrolled in their home daycare.

Commissioner Stephens asked if both Mr. and Mrs. Jackson are the only employees.

Mr. and Mrs. Jackson both responded in the affirmative.

With no further questions of the applicant, Chairman Homan opened the public hearing.

Ms. Hurley asked that any members of the public here to speak to sign-in on the sheet at the podium with their name and home address.

David Sedgwick, 405 S 19<sup>th</sup> St., stated the issues he has with the daycare is that he was never talked to about the daycare, and cars speeding. Stated a little boy was almost hit by a car the other week. Mr. Sedgwick stated cars speed down S 19<sup>th</sup> Street, and cut across part of the yard located at 1901 Choctaw St. Stated one day he saw a car going 50 mph down S 19<sup>th</sup> Street.

Commissioner Stephens asked if cars speeding occurred prior to the daycare.

Mr. Sedgwick responded in the negative.

Commissioner Stephens asked how long Mr. Sedgwick has lived at his current location.

Mr. Sedgwick responded 28-years (questionable audio).

Ms. Hurley stated the public needs to stay at the microphone when speaking or it will not pick-up for the recording.

Chairman Homan asked that there has never been 50 mph traffic down S 19<sup>th</sup> Street since the daycare started.

Mr. Sedgwick responded no, further stating that before the daycare, occasionally someone crazy may drive through there but there is a dead end sign because there is a cul-de-sac at both ends of Choctaw St. On occasion, someone may drive through, turn around and then fly out but most of the time there are no issues.

Linda Bohnsack, 1912 Choctaw St., stated she was a little concerned when the owner mentioned she had a daycare with only six to eight kids but many times people do not realize that watching six to eight child means 12-16 trips at drop-off, and another 12-16 trips at pickup. The first day the daycare opened was total chaos, with people trying to find somewhere to park and double parking. Ms. Bohnsack further stated she could tell the owner spoke with the parents, and the parents got into a good rhythm. Ms. Bohnsack stated she does not really notice the drop-offs and pickups a whole lot now. Ms. Bohnsack stated there is still a little bit of parking issues. They have what is called lazy back curbs on their driveways. Most small cars cannot get over those curbs without dragging so you have to angle-in to get in and out of the driveways. Even if a car is blocked on the street and is not actually in front of the driveway, it still can be blocking the driveway and the ability for the person to get in and out. Ms. Bohnsack further stated there are a lot of retired people living on this block, and there are three homes that have young children in this area. There are always cars parked along S 19<sup>th</sup> Street so you have to kind of thread your way through. Ms. Bohnsack said this area could use some traffic calming with speed limit signs or something of the sort to slow people down. This is a very quiet neighborhood on a cul-de-sac so it shows when there are extra people in the area. This neighborhood is fortunate to have sidewalks so a lot of people come into this neighborhood to walk their dogs.

Mike Ingram, 1908 Choctaw St., stated he has a story to tell, and proceeded to provide the commission a handout he prepared. Mr. Ingram stated he is speaking for 11 owner occupied households, and they all oppose the childcare center. This is an enclosed micro- neighborhood with 31 single-family homes that are primarily owner occupied. Most people in this neighborhood are retired and at home through the day. There are also a few people who work from home during the day. Mr. Ingram stated there are three issues: 1) adverse effects on the neighborhood, 2) overall startup process, and 3) legalities.

Mr. Ingram stated adverse effects revolves around traffic increase, and proceeded to state that on August 14<sup>th</sup>, the Jackson's dropped into the neighborhood running hot with an unpermitted daycare. He was not informed a daycare was coming into the neighborhood but figured it out throughout the first week with the play equipment and traffic. There is a significant increase in vehicular traffic. Every one of these potentially 12 clients means it could be 48 vehicle passes in addition to the existing traffic. This diminishes the traffic minimizing quality of the cul-de-sac, and that connects to the values of the properties. Mr. Ingram further stated neighbors have come to him about speeding, impatient and reckless driving, and wrongly parking in the cul-de-sac. The daycare vehicles have changed the neighborhood's driving, walking, dog walking, playing and bicycle riding habits. Mr. Ingram stated he was surprised about how unhappy and disturbed some people are by this view getting in their face of this non-compliance with traffic laws, the danger that it presents, and this daycare being popped on them out of the blue.

Mr. Ingram stated on September 1, 2023, he went to City Hall, and requested through proper authority a sign for S 19<sup>th</sup> Street and High Street, to which the City provided a large NO OUTLET sign that has helped some with the speeding. On September 5, 2023, Mr. Ingram spoke with SGT Mance at the Police Department, at which time Mr. Ingram learned the speed limit in that area is 30 mph and not 20 mpg. Residents in this neighborhood always drive slowly but they're (motions to audience) not going 30, we saw cars and they are going more than 30 mph. The Police Department is currently collecting traffic data at Choctaw and South 19<sup>th</sup> Street. Mr. Ingram stated he emailed SGT Mance and a piggyback complaint has come on from the traffic study from someone who lives on South 19<sup>th</sup> Street but Mr. Ingram does not know who it is. Mr. Ingram further stated several neighbors have confronted drivers regarding parking and speeding, which he said the commissioners have already heard about from a previous speaker tonight. Mr. Ingram stated it was a little more of a confrontation as he heard it in the different cases. Mr. Ingram stated he will not confront anybody in this day and age. He recently attended The Leavenworth County Sheriff's Office Citizens Academy, where he learned about weird laws in Kansas regarding conceal and carry, and he doesn't know who's carrying or not. Mr. Ingram further stated that last year with young people and people being impatient, there was a young man killed at the Leavenworth Local Hotel about a year ago. Somebody got excited and someone died as a result. Mr. Ingram said that he hopes the commissioners remember that. The young man who died was going to graduate and that just shows you that you cannot confront people. So if it comes back that we need to do something with our neighbors about a calming and this and that, they're not in control, they may be responsible (inaudible) but you can't control these people, and you can't control the next new client.

Mr. Ingram stated he is the reason we're here tonight, if anyone wants to thank me or hate me for it, and will now discuss "process issues". Mr. Ingram stated he went to the Planning Department on September 1, 2023, and asked what the policy is for a home daycare that is operating without a Special Use Permit. Staff explained the daycare is allowed to operate during the application process. Mr. Ingram asked if there is an application for the daycare at 1913 Choctaw, and staff responded an application had not been submitted at that time. Mr. Ingram went back to the Planning Department on September 7<sup>th</sup>, and asked if the daycare had submitted an application for a Special Use Permit. Staff still had not received an application, which prompted a violation notice.

Mr. Ingram cited from the Municipal Code "Accessory uses permitted by special use permit. The following accessory uses shall only be permitted upon approval of a special use permit application by the City Commission". Mr. Ingram further stated the daycare was not permitted by this policy because it was already running. Mr. Ingram looked at all the City Commission and Planning Commission minutes since January 2020, and stated there seems to be a bias toward daycare and even against neighborhoods where there may be some legitimate substantive reasons for pause. Three City Commissioners on record stating we need daycare. Mr. Ingram asked what is the demand for and supply of daycare in Leavenworth, and would like to see an analysis of this. There has been no demand for a daycare in this neighborhood.

Mr. Ingram stated the Planning Director is running a policy contrary to Municipal Code. There is no apparent authorization for this policy.

Mr. Ingram stated he will now go over the Boilerplate language.

Commissioner Stephens stated the board cannot address the language of what's typed in our laws. All we can do right now is hear the pros and cons for this case, and hear everybody's concerns. From there this board will make a recommendation to either approve the Special Use Permit to the City Commission or not.

Mr. Ingram stated this is about the process and them being cut out of the process that is a historic thing here, and it's written firmly in the code in Kansas law. The open hearing should have been before any of this.

Commissioner Stephens responded that he and staff would be happy to speak with Mr. Ingram about this but that is not something that makes sense to discuss here.

Mr. Ingram stated he wants to talk about the boilerplate language and the biases of what has been going through these packets. There is a lot of language that does not bring in a lot of substance, like their essential service, this and this, and convenience to the public. Relative to us there is nothing addressing our particular neighborhood. We are incurring all the cost and none of the benefit of this public good. Then there are things like the value of property, and how it comes in almost every time precisely this way that staff does not feel that the proposed childcare center will cause any substantial injury to the value of other property in the neighborhood. How does staff come to *feel* about property values? What are the methodologies, data, and analysis? Mr. Ingram proceeded to state that they have two kinds of feelings. Intrinsic is what we value our property as, as we live in it and experience it over time. This value has been diminished by the traffic and by the fact this happened without us having proper say at the proper time. The market price at any given time now that we have diminished the value of the cul-de-sac is less valuable because we have lost some of the traffic minimization quality.

Commissioner Stephens stated property taxes are through the county not the city.

Mr. Ingram responded that he said it is about value and how staff feels our value is not going to be affected or injured. Mr. Ingram stated how we sit and enjoy our property certainly has been damaged.

Commissioner Stephens stated if no evidence is brought to this board showing the value of a property has decreased by a certain amount because of this daycare, there is not a lot this board can do. With this matter before us, all we are hearing are the problems that are associated with the daycare along with the benefits. Commissioner Stephens stated he wants to keep things moving along, and asked what other problems Mr. Ingram has with the daycare.

Mr. Ingram stated he wants to discuss the Planning Director bias. On September 16, 2023, he and his wife reviewed the application in the Planning Department. He asked staff if there was a Special Use Permit at the daycare's prior location. A displeased Planning Director spoke in a condescending and rude manner throughout the visit. While the Ingram's were questioning this whole process, they really did not get to say anything. Mr. Ingram continued by stating he asked a couple questions. Are you running a process to allow these businesses to open contrary to City code? Staff response was that we need daycares, we're going to help these businesses get started, we are not going to shut down a business, and people need to make a living. Do you have a written policy, and can we get a copy? Stated staff did not reply. Does Joy Bogart coordinate with Planning when a Kansas license is granted? Staff response was that is not a requirement. Did this daycare business ever have a Special Use Permit at their prior location? Staff response was that I do not know, we do not have that information, we cannot tell you, you will have to do an Open Records Request if you want that. Mr. Ingram continued stating he told staff that they must know who has permits because staff talked about 17 active permits in the City, and asked if the daycares prior location was on it? Staff response was I don't know what you're talking about; I never said that. Mr. Ingram stated he checked the meeting minutes from May 3, 2021, and stated that Ms. Hurley said she is unaware of a childcare center in this particular neighborhood but there are 17 active special use permits for home-based childcare centers in the City.

Mr. Ingram proceeded to state that the agenda packet is inaccurate, incomplete, and misleading. It is not complete without the documentation that reflects this application had to be compelled by a violation. The packet is misleading as it states no concerns or complaints were received by the City regarding the operation of a childcare center at their previous home. Mr. Ingram stated he visited the Planning Department on three separate occasions, the last time being October 16, 2023, asking if the daycare owners had a special use permit for their prior location. The City had received concerns three times about the operation of the daycare at the previous home that the City did not even know they were operating. The agenda packet is inaccurate because the packet states the subject property includes a backyard area of approximately 5,800 sqft, enclosed by a 4' chain link fence. Mr. Ingram asked how the fence height is determined. He then proceeded to grab a four-foot ruler and stated that he measured the height of the subject property fence where it meets the neighboring fence, and it measured at 42 inches. He does not care if the fence is 2 feet or 5 feet or if a fence is a requirement or not but the fence requirement has been addressed and factually misstated.

Commissioner Whitson stated that it is listed under Staff Recommendation in the policy report that the fence needs to be 4 feet in height (inaudible as Mr. Ingram spoke over Commissioner Whitson).

Mr. Ingram said that it is stated earlier that it is enclosed by that right now. Mr. Ingram further stated he may drive around town to check the height on all the other fences that have special use permits.

Mr. Ingram stated his next topic of concern are the legalities. He and his wife checked the State's online compliance search, and found that the applicants were listed as operating a daycare at their prior address of 823 Dakota since September 2020. On August 14, 2023, they began operating their daycare at 1913 Choctaw; they closed on a Thursday and came in hot on Monday. Mr. Ingram stated he filed an open records request for any special use permit issues for 823 Dakota for dates between June 1, 2020 through August 31, 2023. Staff emailed Mr. Ingram stating no records found. At a previous visit to the Planning Department, Mr. Ingram stated a staff member did a quick search for a special use permit at 823 Dakota and did not find any records. He further stated the applicants went 1,099 days without a special use permit because they operated a daycare at a previous location.

Mr. Ingram stated State laws have a role in childcare centers. Kansas License Application states they are responsible for meeting and maintaining compliance with all applicable childcare licensing laws and regulations at all times, and is under penalty of perjury. Furthermore, Joy Bogart at the County reminds daycare applicants to contact the City, and KDHE requires an orientation to process the application. The license from the State states that local codes and ordinances may prescribe other requirements for the legal operation of this facility.

Mr. Ingram stated that in summary the increased and noncompliant traffic has changed the nature of the neighborhood, disturbing and endangering neighbors and adversely affecting property values because they have lost that traffic minimizing quality. Mr. Ingram then stated he has two degrees in agricultural economics and a PhD in economic geography from the University of Kansas. Has worked in analysis and has led analysis, managed analysis, and directed analysis his entire career; 30 years in the government, 20 plus years in the Army Reserves, and 12-year teaching economics at KCK.

Mr. Ingram continued by stating a process contrary to codes being run that favors daycare businesses over Leavenworth citizens and neighborhoods, without regard to all specific location characteristics or substantive neighborhood input. If they received input prior, they may not be at this point; may have been able to mitigate things. Speaking directly to Ms. Jackson, applicant, Mr. Ingram stated that she talked to everyone but when he came over and talked to the Jacksons, not once was daycare mentioned to him, and he didn't ask the Jackson's about the daycare because he knew what was going on. Even after the permit dropped so expeditiously, there was no engendering of goodwill. And how

does Mr. Ingram know all these things, because the Jacksons have been open about everything on Facebook.

Mr. Ingram stated he is here to offer the commissioners some help. Speaking for himself and the neighbors he came to the meeting with, he recommends the Planning Commission table this issue in order to:

- complete and correct the packet
- address the unique qualities of this specific location to make an informed decision
- substantively address value and how you have a better understanding and sense of our property than we do
- determine effects on property value with a documented methodology, data and analysis that stands up to outside scrutiny
- propose and enact reasonable mitigations to the traffic problem that has been created, beyond those that we have done or have authority to do

Ashliegh Baker, 813 Cottonwood Dr., Lansing, stated the applicant has taken care of her three children when they went to A Deere Place Daycare. Ms. Baker further stated she is a nurse at the Veterans Administration but knows that two or three of the parents that use the Jackson's daycare work for the school district. When talking about how this daycare benefits the neighborhood in any capacity, Ms. Baker takes care of the veterans that live in the subject neighborhood. The teachers that use this daycare educate the children that live in this neighborhood. This daycare very much affects the neighborhood, just as much as it affects the Jackson's livelihood. Ms. Baker does not know why a speed limit sign is not posted but believes one should be.

Gordon Mein, 1101 S 2<sup>nd</sup> St., stated he has been a realtor in this area for 25 years. The Jackson's prior house at 823 Dakota sold for well above the listing price. They spent over \$15,000 on interior renovations on their new home at 1913 Choctaw. This idea that property values are going to suffer because of a daycare in the neighborhood does not hold water. Mr. Mein further stated there is empirical data out there called MLS. He could provide numbers from 10 years ago to today.

Chairman Homan stated MLS is for listings not sales.

Mr. Mein stated it is for both.

As an appraiser, Chairman Homan stated there is also age depreciation and functional obsolescence. Chairman Homan is more concerned with economic obsolescence, which means something outside the property that is causing loss in value to the property. Mr. Ingram is trying to say a daycare center in his neighborhood is going to cause a loss in value to his property.

Mr. Mein stated that did not happen at the prior daycare location.

Chairman Homan stated it may not have affected the daycare property but what about if the property next door sold with a daycare center next to it. You need to compare apples to apples not apples to pears. (Inaudible: Chairman Homan and Mr. Mein were speaking over each other).

Ms. Hurley asked that the commissioners not debate with any of the public speakers.

Mr. Mein restated no one knows what the market will do in 10 years. He further stated that speeding is not just a problem on main streets but is also a problem in cul-de-sacs, and accidents can happen anywhere. Believes that the special use permit is just so the City knows that there is a daycare at that location, and is not supposed to be an election type process where the Jacksons are voted out of the

village because they want to run a daycare, which is their livelihood. Mr. Mein proceeded asking that if there is something in the paperwork that does not quite meet the requirement of a special use permit for a daycare that the commissioners will allow the applicants time to correct whatever they need to.

Joyce Finley, 409 S 19<sup>th</sup> St., stated she does not know the applicants but they look like very nice people. Her complaint is with traffic. Feels unsafe walking her dog down the street. People are in a big hurry to get to their jobs. Need to be more considerate of people who live in that area.

Commissioner Stephens asked if the traffic problem is for several hours in the morning and in the afternoon, or is it like 30 minutes where it is really busy.

Ms. Finley responded that she used to walk somewhere between 7:30 a.m. and 8:30 a.m. but no longer walks during that time anymore. She continued stating that after 8:30 a.m. the traffic is fine.

Chairman Homan asked if there is a sidewalk for walking her dog.

Ms. Finley responded there is a sidewalk that is uneven but she does use the sidewalk.

Janai Johnson, 110 Western St., stated she is one of the families that uses the daycare, and wants to speak to the value of the daycare being in the neighborhood. Her son goes to David Brewer, and daughter to the daycare. She is an educator at David Brewer and it is very convenient for all to be in a central location. The Jacksons are wonderful people, and good caretakers. If the main concern is traffic, maybe some traffic signs can be installed. Ms. Johnson further stated she had to postpone returning to work for three months because she could not find daycare. This daycare is greatly valued by all the parents using the daycare.

Commissioner Stephens asked what time she drops her daughter off at the daycare.

Ms. Johnson responded between 7:00 a.m. to 7:30 a.m.

Commissioner Stephens asked if she pulls into the driveway or parking in the cul-de-sac.

Ms. Johnson stated she typically pulls into the driveway.

Commissioner Stephens asked how many cars are typically there at this time.

Ms. Johnson said one, maybe two.

Commissioner Stephens asked if the other vehicles pull into the driveway or park on the cul-de-sac.

Ms. Johnson responded that they pull into the driveway where there is room. If the one additional vehicle is there, they try to pull along the curb so they are not blocking anybody trying to leave or come in.

Commissioner Stephens asked if it becomes kind of tetris when there are three or four cars there.

Ms. Johnson stated she has not experienced that.

Becky Ritchey, 1817 Choctaw St., stated she has nothing against the Jacksons or the families using their daycare. Her issue is the traffic, and speeding being the major issue. This is a dead-end street



in a small community. She is very alarmed about people speeding with kids in the car. In the nine years she has lived in this area, there has not been one accident on South 19<sup>th</sup> Street or Choctaw Street.

Commissioner Stephens asked if it is a constant fear of cars driving through that area too fast, or if it is predictable on when that occurs.

Ms. Ritchey responded it is not constant, and occurs during drop-off and pick-up times for about 1 to 2 hours. She does not hate kids but thinks people need to comply with the law. She stated she drove down that street going too fast, and a couple neighbors unhappily looked at her. Since then she does not speed in that area. If speeding is going to be an issue maybe the speed limit can be lowered or install some sort of traffic calming device.

Clayton Darby, 1901 Choctaw, stated he is the corner house on the southwest side, and gets a firsthand view on what goes on at that intersection, which includes people crossing through his front yard, which he has taken measures to prevent cars driving through the corner of his yard. He knew a daycare was moving into the neighborhood when he saw a truckload of children's equipment. There has been changing in the traffic, to include hotspots during the pickup and drop-off times. Another concern is that the road is not plowed in the winter because it is not an emergency route. Will this be an issue come wintertime? Mr. Darby further stated he supports the Jackson's on whatever they choose to do for a living but wants to point out they have a mutual problem in this small neighborhood with an uptick in traffic. Right now, the daycare is new but Mr. Darby believes somewhere there is a mutual benefit where everyone can make this work.

Commissioner Stephens asked about the possible damage to Mr. Darby's property.

Mr. Darby responded that if he does not park his truck close to the corner, then he gets a lot people speeding around that corner and driving through his yard.

Erica Johnson, 1309 Ottawa St., stated she is a family of the daycare, with her 3-year old son going there since he was two months old. The Jackson's are great caretakers. Ms. Johnson agrees that people speed, and people speed everywhere. She believes more signage would be wonderful. With that said, other people's choices in speeding should not affect the Jackson's business. Typically, there are not issues with parking. The daycare families are very close and communicate with each other so if need be, parents will park behind each other in the Jackson's driveway rather than blocking a neighbor's driveway. There has been rare times where she had to park a little bit in front of somebody's driveway, and in those rare cases, they try to be very quick and move out of the way. Ms. Johnson also mentioned people walking their dogs in the streets even though there are sidewalks to walk on.

Bonnie Ingram, 1908 Choctaw, stated traffic has been a big problem. Daycare parents will leave their vehicles running for 5-15 minutes. Ms. Ingram is angry because this business just popped in without notification this was going to happen. Traffic is still her number one concern but the Special Use Permit process has been turned on its head. The Code requires that this happened before now. We should not be here tonight discussing there is a traffic issue. What has happened is that the Planning Department has decided to issue a de facto zoning change by allowing people to operate contrary to code. The residents of this micro community feel like they have been cut out of this whole process. Ms. Ingram further stated it is the daycare parents who are driving recklessly on their streets, and don't seem to have any regard for the neighborhood children. Retirees have older knees, and do not walk on concrete without risking damage. A lot of the neighbors do walk on the streets because it has been historically safe to do so. Walking in the street is not against the law, and it should be safe

to do so in this neighborhood. The whole idea of this zoning is to be sure that there is not a negative effect on the neighborhood. The negative effect for them has been that the daycare parent's cars coming into their neighborhood has made it less safe. Ms. Ingram stated she understands there is a two week period after this meeting to protest this board's decision, and there will be a lot of stuff that comes in.

With no one else from the public wishing to speak, Chairman Homan closed the public hearing, and called for discussion among the commissioners.

Ms. Hurley stated to address a few issues, in terms of procedures, as with any code violation that our staff becomes aware of, whether it is through code enforcement activities, a property maintenance violation or a use issue where something is operating where it should not be, we do give property owners a chance to remedy the violation. Staff notifies the property owners once we become aware of the violation, giving a certain timeframe in which remediation steps need to be taken. As long as those steps are taken within that time, staff will continue to work with those property owners. This has happened before, and there are probably home daycares operating that staff is unaware of. Staff works closely with the county office that does the licensing for the State, and we certainly ask that they direct their daycare operators to come to the City because we do have the Special Use Permit requirement; however, that does not always happen. The county office usually direct folks to our department but genuinely there are a number of daycare operators who do not know there is an additional requirement on top of the State requirements. Unless staff becomes aware of that either by our code enforcement officers seeing it or a neighbor notifying us, we are not going to know. Typically what has happened when we have been informed by someone, is that we will go out to take a look and cannot even tell that there is a daycare operating just by visibly inspecting. However, we will always send a letter to the property owners informing them of what has been reported, and request the property owners to contact us to talk about next steps. That is what happened in this case, and the Jacksons contacted our office immediately. Ms. Hurley further stated it is not the policy of the City to shut down someone's business, their livelihood, as long as they are taking steps to remedy a situation. If something were to come in, go through the process, and ultimately get denied by the City Commission, at that point there would be enforcement actions taken.

Ms. Hurley further stated in terms of the Jackson's previous location, obviously the City was unaware that a daycare had been operating there, and the Jacksons had apparently never been informed by the county or the State that they needed to contact the City to get a Special Use Permit. This speaks to neighbors at the daycare's previous location never had a complaint, and never contacted the City with any concerns. So again, the City would not know a daycare was operating at the prior location on Dakota Street.

Ms. Hurley stated in terms of individuals requesting information about a property that is not theirs, and does not have a public application on it currently, that is an open records request per State Statute. Property owners cannot get private information about another property that they do not own, which is why the gentleman who spoke earlier was directed to our City Clerk's Office to make the Open Records Request about the separate property on Dakota Street.

Ms. Hurley further stated it sounds like most of the concerns heard tonight are with traffic. Staff had not heard anything from our Police Department but it sounds like someone has been in contact with the Police Department, and the PD may have a speed trailer or something of the sort set up in the neighborhood.

Commissioner Stephens asked if there is an official traffic study being conducted in the neighborhood.

Ms. Hurley responded that she will have to check on this because this is the first she has heard about it. The Ingram's had come in to our department to speak with us. We have received no other communication, calls, letters, emails, etc. from any other residents. Before tonight, we were unaware of any concerns other than what the Ingram's had expressed to us. If staff had heard any of these concerns, we would have checked with the Police Department. Anything about additional signage or traffic calming are strictly decisions for the Police Department and Public Works Department. All signage has to go through the Police Department, and they are very specific in their requirements as to what signage can be placed where and under what conditions. That is not for the Planning Department or this body to decide. In terms of any physical traffic calming, like a speed table or something of the sort, would be a Public Works decision.

Commissioner Neeland stated she feels like quality of life should be added to what the neighbor's main concerns were. They feel like their quality of life is diminished.

Commissioner Whitson stated more information needs to be provided about the traffic study, and how a home is valued because there are so many interpretations with that.

Ms. Hurley responded that nationwide research has shown that home daycare businesses do not overall decrease the value of property in neighborhoods. This is well established research-based information. Staff has no indication that property values have declined in other neighborhoods where there are home daycares or other home occupations.

Commissioner Whitson stated it sounds like a process of elimination. The applicants were not aware of some codes but now that they are aware, they are working on fixing them. There are statistics showing that possibly home values are not affected, and then there is quality of life and the traffic concern. Maybe this needs to be tabled to find out if it goes to Public Works on the signage, and to look at the data from the traffic report.

Commissioner Neeland asked what should have happened because she has been approached at her own house by letter and by people about someone wanting to operate a daycare in her neighborhood, and they went through this exact process. Everyone in the neighborhood came to the public hearing and said their peace, and there is not a daycare there.

Ms. Hurley responded that there is no State or City requirement that a property owner preemptively approach neighbors about their plans to open a daycare. The statutory requirement is that once the application is made that the City provide notification to property owners within 200 feet of the subject property, which was done.

Commissioner Stephens asked if the daycare owners would have applied for the Special Use Permit before starting their daycare, would anything have changed in terms of the process.

Ms. Hurley responded in the negative, stating the owners of the daycare would have been told they need to apply for the Special Use Permit, they would have made application, staff would have provided notice to property owners within 200 feet, and the request would have come before this board. It would have been the same process.

Commissioner Neeland stated that she agrees with Mr. Ingram in that some of the language wasn't exact, and maybe slightly misleading. She agrees that the issue should be tabled.

Commissioner Whitson stated she feels there is some unfinished business.

Commissioner Stephens stated that now that it has been brought up that the applicants are operating without a Special Use Permit, and if this board tables this item until the next meeting, that means essentially this board is forcing them to operate without a Special Use Permit, which is an issue that has been brought up by the neighbors.

Ms. Hurley responded it is the City's process that if a property owner, for whatever the violation is, is taking steps to remediate that violation that the City is not going to shut down their business or take them to court. If it is the decision of the Planning Commission to table the issue to the December meeting, staff asks for very specific information that the board wants to be provided at the December meeting.

With no further questions from the commissioners, Commissioner Stephens moved to table the issue to the December Planning Commission meeting for additional information from the Police Department on the traffic study and from Public Works on potential signage and traffic calming measures, seconded by Commissioner Whitson, and passed by a vote of 4-0.

Commissioner Neeland would like someone of authority to measure the fence since that was also an issue that was brought up.

Ms. Hurley responded 4 feet is a standard fence height. When a fence application is made and the fence is installed, staff does not go on private property to measure a fence after it has been installed. It is highly likely that fences are going to be a few inches off when they are installed just due to changes in grade.

Commissioner Stephens asked if a special use permit changes the characteristics of a neighborhood.

Ms. Hurley responded that the purpose of a special use permit is that it could. With any zoning district and any use there are uses that are permitted by right in a zoning district, whether it is single-family, commercial, office, etc., and there are a number of uses that are permitted with issuance of a special use permit. Those will be uses that could be compatible in a certain zoning district depending on the specific use or operation, or it may not be. Those are uses that warrant a little bit of extra consideration. With a single-family zoning district, the recognition is that a homebased occupation is a business whether it is a daycare or some other homebased occupation, such as small engine repair, which requires a special use permit. There are uses that may be appropriate for certain locations or they may not be appropriate, and that is why a special use permit is required to get that extra level of review by staff, the Planning Commission, and the City Commission, instead of just allowing the use by right.

## **2. 2023-29 SUP – 2805 2<sup>ND</sup> AVENUE**

Conduct a public hearing for Case No. 2023-29 SUP – 2805 2<sup>nd</sup> Avenue. The applicant is requesting a Special Use Permit to allow a government facility (Fire Station) to operate in the R-MF, Multiple Family Residential District, zoning district, located at 2805 2<sup>nd</sup> Avenue. Government facilities are allowed in the R-MF zoning district with the issuance of a Special Use Permit.

Chairman Homan called for the staff report.

Planning Director Julie Hurley stated the applicant, City of Leavenworth, is requesting a Special Use Permit to allow a government facility in the R-MF (Multiple Family Residential District) zoning district, located at 2805 2<sup>nd</sup> Avenue. The property is occupied by Fire Station 3, which was constructed in the 1960's and is currently scheduled to be replaced with a new Fire Station facility on the same site in 2024. Government facilities are allowed in the R-MF district with approval of a Special Use Permit.

Planning Director Julie Hurley stated this item is being continued to the January 8, 2024 Planning Commission meeting at the request of staff to provide additional time to make the amendments.

**OLD BUSINESS:**

**1. 2023-28 SUP – 1913 CHOCTAW STREET**

The public hearing for Case No. 2023-28 SUP – 1913 Choctaw Street was conducted at the November 6, 2023 Planning Commission meeting, and the vote was tabled to the December 4, 2023 Planning Commission meeting for requested additional information. The applicants/owners are requesting a Special Use Permit to allow for the operation of a Child Care Center for seven or more children in their home located at 1913 Choctaw Street. The property is currently zoned R1-9, Medium Density Single Family Residential District. Child Care Centers are allowed in the R1-9 zoning district with the issuance of a Special Use Permit.

Chairman Homan called for the staff report.

Planning Director Julie Hurley stated this item was previously considered at the November 6, 2023 Planning Commission meeting and was tabled in order for staff to provide additional information.

The applicants, Gerald and Vanessa Jackson, are requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 1913 Choctaw Street. The property is currently zoned R1-9 (Medium Density Single Family Residential). Child Care Centers are allowed in the R1-9 zoning district with issuance of a Special Use Permit. The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care, and has indicated that she currently has a total of 8 children enrolled.

The applicant previously operated a home daycare since 2020 at their prior residence in Leavenworth. There was no Special Use Permit applied for at the previous location, as the applicant has indicated that she was unaware of the City requirement to obtain a Special Use Permit in addition to being licensed by the State. Staff was notified in August by a neighbor that the applicant was operating her daycare at 1913 Choctaw, and contacted the Leavenworth County Health Department to see if the applicant was licensed. County staff contacted the applicant, and she contacted City staff the following day to inquire about steps needed in order to obtain a Special Use Permit, before staff had the opportunity to send a notice of violation.

During the November 6<sup>th</sup> Planning Commission meeting, staff was asked by the board members to provide data generated by a speed survey that was currently being undertaken by the Leavenworth Police Department, as well as information regarding property values near existing home daycares and potential signage or other traffic calming measures for the area. The request for additional information was made based upon concerns raised by neighbors during the meeting.

**SPEED SURVEY**

At the request of neighbors, the Leavenworth Policy Department installed a stealth radar device at the intersection of 19<sup>th</sup> & Choctaw Street to record vehicle count and speed for a two-week period. Data was collected from 11/1/23 through 11/15/23. The results are as follows:

Posted Speed Limit:	30 mph
Vehicles Counted:	2,722
Vehicles Under Speed Limit:	96.88%

Average Speed: 21.46 mph  
Average Speed Violation: 33.99 mph

During the speed survey, 1 vehicle was registered going over the designated Excessive Speed threshold of 55 mph. The time of that recording was between 6pm & 7pm. This timeframe falls outside of the normal business hours of the daycare. The owner of the daycare provided sign in/sign out sheets for the duration of the speed survey, which indicated that no children were picked up between the hours of 6pm and 7pm on any day.

Given the lack of data suggesting speeding or traffic volume issues, no traffic calming measures for the area are indicated.

#### **EXISTING HOME DAYCARES/PROPERTY VALUES**

There are currently 15 active Special Use Permits for home daycares in the City of Leavenworth. Staff surveyed the 2022-2023 property value increase for the immediately surrounding 8-10 properties of a random sample of 9 of those existing daycares. The average property value increase was 15.36%. The average property value increase for Leavenworth County during the same period was 14.85%, per the Leavenworth County Appraiser's Office.

#### **CONDITIONS OF DETERMINATION**

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

*The subject property is located along Choctaw Street, which is classified as a Residential street.*

2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.

*The back yard area of the property is completely enclosed by an approximately 4' high chain link fence, with a 4' high wooden fence having been installed to divide the yard into two areas, one of which is for exclusive use of the daycare. The portion of the yard established for use by the daycare clients is approximately 2,000 sqft. Upon inspection by staff, portions of the chain link fence, which existed prior to the applicants purchasing the property, appear to be slightly lower than 4' by up to 4". The wooden portion of the fence, which was installed by the applicant, meets or exceeds 4'.*

3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

*The subject property includes a driveway capable of accommodating 4 cars.*

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.

*The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment (KDHE). KDHE staff has visited and inspected the daycare for all areas of compliance.*

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

*The home functions as the only residence of the operator/owner.*

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of two sides or one non-illuminated sign affixed to the main structure of 3 square feet.

*No signage is currently displayed on the property. Any signage displayed in the future will conform to this requirement.*

### **COMMISSION FINDINGS**

The Commission may recommend issuance of a Special Use Permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

*Staff believes that this application complies, or will comply, with all provisions of City of Leavenworth Development Regulations, based upon review of all available materials.*

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

*Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.*

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

*Staff has no indication that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood, based upon available data.*

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

*No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure. The daycare could account for an increase in up to 48 car trips per day on the street, when at full capacity of 12 children.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statue. After notifications were mailed, staff received one inquiry from notified property owners, who indicated that they were not in favor of the Special Use Permit. During the November 6<sup>th</sup> Planning Commission meeting, multiple individuals spoke both in favor of, and opposition of, the Special Use Permit. Since the November 6<sup>th</sup> Planning Commission meeting, staff has received 4 letters in support of the Special Use Permit.

### **STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.

2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

**ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Homan asked for questions from the commissioners about the staff report. With no questions, Chairman Homan asked Police Chief Pat Kitchens to go over the data from the speed study.

Police Chief Pat Kitchens stated from his understanding, the basic question asked of the Police Department related to this item was is there a speeding problem in this particular neighborhood. One particular neighbor has had quite a bit of contact with the Traffic Supervisor Sgt. Brandon Mance about traffic concerns. When this question arises, there is a very specific process used to evaluate it that has 3 components.

Chief Kitchens stated first, there is a Kansas State Statute that requires the Police Department to conduct a traffic investigation and engineering study if they are going to consider making changes to the speed limit. As part of this entire process, the Police Department also has the ability to answer our questions from the community about this because this is a common practice that the Police Department gets so they use their technology to make a decision. One particular part is very important, which is the percentage of people that were measured. 97% of the people that were measured in the speed study were traveling at or below the speed limit. This is important because the criteria established to make any changes would be 85%. That means in order for the Police Department to consider making some kind of change or modification they would need to have less than 85% of the people traveling in that roadway to be speeding. In this case, 97%, almost 100%, of the people are at or below the speed limit, and the people that were above are at a very small range. So this component would not allow the Police Department to move forward with changes or modifications.

Chief Kitchens further stated the second part of that component is traffic accidents. From January 1, 2022 to today, there have been zero traffic accidents in this neighborhood so the second component is not eligible for the Police Department to take action.

Chief Kitchens stated the final component in the State Statute allows the Police Department to make a judgment. Even still, if there is no speeding or not a lot of traffic accidents, can the Police Department still come up with some judgment, and in Chief Kitchen's experience and consultation with Public Works Director Brian Faust, there is nothing that would indicate there is some unique circumstance that exists that would require the police to do that. So the answer to the question is there a speeding problem in that neighborhood that would warrant the Police Department taking action, is no. Chief Kitchens further stated that there are a number of locations that are far worse than this neighborhood in terms of speeding and traffic accidents that take up quite a bit of the Police Department's resources.

Commissioner Stephens asked if the statute or local protocol defines how long the study is to last.



Chief Kitchens responded in the negative stating that in his experience the 14 day window gives them the best sense of what is really going on in that neighborhood. Additionally, the manufacturer of the technology also states that generally speaking this timeframe would give you your best estimation of what is going on.

Commissioner Neeland asked if people in this neighborhood could ask that the traffic study be done again at some time because the fact of the matter is that it was in place, then this board met, and the daycare owners said that they were going to talk to the daycare parents, which they apparently did and they all lowered their speed. The fact of the matter is the daycare parents were warned not to speed anymore but what if that picks back up again.

Chief Kitchen responded in the affirmative that the radar device can be put back out there again. He further stating that his experience with people knowing the radar device is out there is that they may slow down for a few days but after that, they return to their normal routine driving behavior and pattern.

Public Works Director Brian Faust stated he will just echo what the Police Chief said that based on the data he would not be supportive in a change in the speed limit or of speed calming methods.

With no questions for Mr. Faust, Ms. Hurley stated that the public hearing for this item was conducted at the November 6<sup>th</sup> Planning Commission meeting so tonight is not a public hearing. A number of people in the audience may want to speak to this item so at the board's discretion you may allow public comment if you would like to take that. Ms. Hurley stated that based on the length of public comment at the last meeting, with some fairly long speakers, that staff suggests out of respect for everyone's time that any comments be limited to five minutes, and be limited to any new information or concerns that were not presented at the last meeting, since all of those have been heard and entered into the record. This is standard with City Commission meetings, that actually limit speakers to three minutes. To keep everyone on track, Ms. Hurley will set her timer on her phone for five minutes with any speakers so we can keep things moving along. Before taking any public comments, staff suggests having the applicants provide any information or comment that they would like to.

Commissioner Stephens asked the applicants how the conversation went with the daycare parents about lowering their speed in the neighborhood, and if the applicants have noticed any differences themselves since the last meeting.

Applicants, Vanessa and Gerry Jackson, stated they did speak with the daycare parents, and the parents all understood the concerns of the neighbors, and the parents all respectfully stated they would watch their speed a bit closer.

Commissioner Stephens asked if they have received any more complaints from neighbors about parking, traffic volume, etc.

Mr. Jackson stated the neighbors to the west of them (Ron and LouAnn) spoke to them about a daycare parent who parked a little bit in front of their driveway. The Jackson's spoke with the daycare parent, and also purchased a road cone that they set out and have instructed the daycare parents not to park behind that cone.

Mrs. Jackson stated she puts the cone out in the morning and again in the afternoon and there has not been a problem with parking since.

Chairman Homan stated it concerns him that there is only one bathroom for eight daycare children.

Mrs. Jackson stated they have only one kid who is fully potty-trained and one kid that is in the process of being potty-trained.

Commissioner Stephens asked if they have been inspected by the State of Kansas, and if so, have they passed inspection.

Mrs. Jackson responded in the affirmative.

Chairman Homan asked if they can only watch kids up to a certain age.

Mrs. Jackson responded they are licensed to watch kids from 6 weeks of age to 11 years of age.

Ms. Hurley stated the State License is in the packet and outlines the ratio of kids that are allowed, and that ratio is based on the ages of kids in the daycare.

Mrs. Jackson stated their license allows for up to 12 kids but they will never have 12 kids because they will always have an infant in the daycare.

Mr. Jackson stated if you have an infant in the daycare, it lowers your maximum allowed to nine total children in the daycare. If they have two infants, the maximum number of children allowed will lower to eight.

Chairman Homan asked if anyone else would like to speak, and if so the allotted time to speak will be held to five minutes.

Rebekah Varvel, 1317 9<sup>th</sup> Avenue, stated she is a parent of a child who attends the daycare, and noticed at the November meeting there was a lot of emphasis on if daycares are needed in Leavenworth (Ms. Varvel provided staff and commissioners a packet of the importance of daycares). Ms. Varvel stated not only is there a need for daycare in Leavenworth but there is a need for daycare in Kansas. Leavenworth is located in what is called a daycare desert. In the packet she provided, there are maps of Leavenworth, as well as a map of the neighborhood where the Jackson's daycare is located. Just this year, the Kansas City Star reported that just in Kansas there is over 84,000 kids in Kansas alone that do not have daycare because there are not enough available slots open. Just in the Jackson's neighborhood, there are 444 children under the age of five that need daycare but there is only 184 slots available so there is definitely a need in this neighborhood for daycare to exist. Ms. Varvel further stated that Child Care Aware of Kansas did a study, which showed a lack of daycare openings. According to this study, there were approximately 1,800 children under the age of six that need daycare and were unable to find a daycare. Ms. Varvel stated she works for the Leavenworth School District and so do several other daycare parents that use the Jackson's daycare. When looking for daycare, Ms. Varvel actually looked at daycare in Platte City and Atchison because there just is not a lot of daycares in this area. She was lucky and fortunate to get into the Jackson's daycare. Ms. Varvel requests the commissioners take this information into account when looking to approve the Special Use Permit request.

Michael Ingram, 1908 Choctaw, stated he has been tracking appraisals within two blocks of Choctaw Street, in fact 30 properties around the city for 15 years, and knows a little bit about appraisals, and how it has worked over that time in the state and in the county. Our two blocks of Choctaw over the time period of 2022 to 2023, they went up 15.17%. It was a 15% standard application across the city; first time ever that has happened, and what would change it would be recent sales. That may have missed the mark as far as what we are doing because it is about our particular neighborhood. Mr. Ingram further stated he is glad Chief Kitchens is here because he could explain what the traffic study

was all about. While looking back at Chief Kitchens, Mr. Ingram stated when he got with Sgt. Mance back on the 5<sup>th</sup> of September, he took a ride around and sat at our house (inaudible as Mr. Ingram is turned around and not speaking into the microphone)...beautiful job, we appreciated it. Got it hooked up. It took two months to get the equipment up because it is so much in demand.

Mr. Ingram further stated he understood some things and one thing he understood at the end was we may get speed limit reduced, we may not but we would possibly have a stop sign up at the intersection where that T is. That would be helpful. Mr. Ingram turned around again and stated to Chief Kitchens he doesn't know where they are at in this whole process now.

Ms. Hurley requested that Mr. Ingram keep his comments directed into the microphone for the record.

Mr. Ingram continued by stating since the speed study came up, the summary was given the lack of data suggesting speeding or traffic volume issues. Lack of data might have been a Freudian slip. Mr. Ingram directed the commissioners to look at their packet at the speed study to point out something and have it clarified by the Police Chief. The summary page has the inbound and outbound traffic. There is a 310 difference between inbound and outbound. Apparently, there are magical cars that are appearing and go outbound (inaudible as Mr. Ingram keeps turning around directing his comments at Chief Kitchens). I don't know if that is radar beam that does not work or what could be going on but we'll move past that.

Mr. Ingram stated if you look at the distribution chart by hours, I'm just going to point to the 07:00 - 07:59 hour. This is the count for the entire 14-day period. The total number of cars coming in and going out is what? It's zero, and that is impossible. When we saw this because I was not being provided this information ahead of you guys. I had to see the packet and try to figure out what is going on so I can do something if necessary about it. There is something wrong about this report. I don't know how the data was logged but I know how this report gets brought off of the stealth equipment, and it could be that something happened as far as the data reporting part of it. I don't know but you cannot have zero as a count in the 07:00 - 07:59 hour, and if you were looking at this one excessive speed at that hour, why did you not notice here when she (Mrs. Jackson) opens up that there are no cars in those two weeks. Impossible. I know it's not true, and even the next hour, 37 total. There is something wrong. We did go to daylight savings time in this period but I don't know how that could affect this coming off of the measured recorded data on the machine and then being downloaded into this report. You can set it up for hours that you do not have it collecting, and there's some discrimination of vehicles and these sorts of things but there is something wrong right there. Turning directly around to face Chief Kitchens, Mr. Ingram stated he doesn't know (inaudible because Mr. Ingram is not speaking into the microphone).

Chairman Homan again requested that Mr. Ingram to speak directly into the microphone.

Mr. Ingram stated Chief I don't know how you get a zero when I saw vehicles in those times. Now turning and directly speaking to Ms. Jackson, Mr. Ingram stated I know you've had people at 7:00am. I mean, we know that so something is not correct about that. I don't know if it's an hour shift that needs to be done.

Commissioner Stephens stated he does not want Mr. Ingram to run out of time, and since he has stated that point about the 07:00 to 07:59 hour, does he have another point to make.

Mr. Ingram stated there is a day-by-day pattern that you can also drop out. There is no day-by-day so we don't see the weekend taken out.

The five minute timer went off.

Mr. Ingram proceeded to state Maryann's (Commissioner Neeland) point exactly though, we don't really see the morning and separate out who's what day. The Monday – Friday is what we were talking about.

Commissioner Stephens asked what story does this data not tell.

Mr. Ingram responded we don't know. There can't be a zero from 7:00 – 8:00am.

Commissioner Stephens asked Mr. Ingram what his subjective experience that is not represented in this data because we have over 95% compliance. We are not looking at a margin of like 40% so that if we missed an entire hour that it would throw off the results. This is a huge sample size.

Mr. Ingram asked what is the difference between the inbound and outbound. That is 310.

Commissioner Stephens asked with the overall results of the data, how is it different than what you experience as a human.

Mr. Ingram responded he experiences the 48 cars every day, or 32 right now, or whatever. I experience all of them passing in front of my face because I'm at the end of the cul-de-sac. So I don't know what this is going to record all the way up and down. It seems like it could be right but not for those hours.

Commissioner Stephens asked with the exception of those zeros, if Mr. Ingram thinks it captured the traffic volume (inaudible – Mr. Ingram started speaking).

Mr. Ingram stated why would I think that's correct though. I see that's not right. So is it a matter of the time, being a shift in the reporting and producing that report.

Ms. Hurley stated that Chief Kitchens can speak to how the data is collected since he is familiar with the equipment.

Looking at the map, Commissioner Stephens asked what if someone parks in front of this center.

Mr. Ingram yelled no, not for two weeks, Brian. No, we're not standing for that. This is not correct right there, and if it's a two hour shift, then we're capturing the wrong picture.

Commissioner Stephens stated the difference is this is not hinging on the traffic study. There is nothing (inaudible – Mr. Ingram interrupted).

Mr. Ingram stated he knows this has nothing to do with you and the Special Use Permit but it's been brought into this, and there is something wrong about it, and it was part of how she's saying (referring to Mrs. Jackson) oh this one out here at that time couldn't have been. Well we don't know what time that is.

Commissioner Stephens stated unless you can present object evidence (inaudible – Mr. Ingram interrupted).

Mr. Ingram stated he couldn't get in contact with them (pointing at Chief Kitchens) to even found out what had happened.

Commissioner Stephens stated if Mr. Ingram cannot present objective evidence then the board will have to go with the evidence that we have. We are only talking about a Special Use Permit. We have no authority to do anything else.

Mr. Ingram stated he was bringing this up because you co-opted this and I want to know you're not seeing at 7:00-8:00am there were no cars counted. That can't be. Something is wrong with the study.

Ms. Hurley stated that point has been made, and Chief Kitchens can speak to how the data is collected.

Commissioner Stephens asked Chief Kitchens if he has anything to add.

Chief Kitchens stated he is not prepared to answer the questions, and stands by the study. If Mr. Ingram has specific questions or he has issues with that, in my opinion it is not relevant to this tonight. I'm telling you in my opinion of 33 years of experience, a review of that data and traffic accidents the question was is there a speeding problem in the neighborhood, and the answer to that question is no, and that is unequivocal.

Mr. Ingram stated he question is why were there zero cars counted from 7:00-8:00am. It casts doubt on what we're looking at. I'm trying to figure it out in my head, and also the 300 car discrepancy between inbound and outbound. How did they magically appear in the neighborhood.

Ms. Hurley stated those concerns have been noted for the record, and staff asks that we move on to try and keep things moving.

Chairman Homan stated he appreciates Mr. Ingram bringing that concern to the board, and suggests that maybe Chief Kitchens could speak with Mr. Ingram to answer some of these questions the best he can. All the board can go by is what has been presented to them.

Mr. Ingram stated I understand. It was hey look, here we go again.

Chairman Homan stated they appreciate what Mr. Ingram has given them. The traffic study did not say anything about stop signs or anything like that. Rather than how many cars came in and out, maybe at the T intersection there should be a yield sign or stop sign. Maybe the neighborhood should go to the city with that.

Mr. Ingram stated that was discussed in the parallel path with Sgt. Mance from the beginning, and that is why I brought it up and told you what we've been doing.

Ms. Hurley stated that is not part of this consideration.

Chairman Homan stated all they can go by is what is provided in the study.

Mr. Ingram stated he did not mean for it to get wrapped into this process but it did because you all go it and put it in and that data cannot be true.

Ms. Hurley stated the traffic results were because of the request of Mr. Ingram at the last meeting. Staff suggests that Mr. Ingram get back in touch with Sgt. Mance, since he was his initial point of contact at the police station, if he has specific questions about the study. The study was requested by the neighbors, Mr. Ingram in particular, and the board at the last meeting that staff provide this data, and that is what staff has done to help the board make their decision. Staff suggests that we move on to the next speaker.

Commissioner Stephens stated he wants to make a point of clarification that this commission did not ask for the traffic study to be done. This commission heard there might be a study, and asked that this item be tabled so the board can have that information; but this data is being presented not as part of this Special Use Permit, but as additional information for the board to consider.

Ms. Hurley responded in the affirmative.

Bonnie Ingram, 1908 Choctaw, stated we noticed immediately when the stealth radar went up that it must have been obvious because it had slowly dropped, but by the time the last Planning Commission Meeting happened the next day it just dropped immediately. It was obvious that Vanessa Jackson spoke with the parents, and that they were coming in much slower, and it has continued. We are grateful for that. It has made it more pleasant to look out our front window and not see them coming in at that speed. The parking has been better, and the cones have really helped. Both my husband and I are data driven so when we see something that doesn't make sense, we can't let it go because if there is bad data then you don't know what you're looking at. We've heard a lot about daycare and I've looked at all the statistics too, and statistics can be tricky because a lot of that is about potential need of daycare. We weren't really here to talk about daycare. We were concerned that there was a business operating in the neighborhood that was causing a difference in traffic, and we wanted to see that addressed. If daycare is an issue here, I would think that in the City Connection that something should be put in there about daycare, and the need for a Special Use Permit. There's lots about massage therapists, and it's in there like every other time, and I don't really think that needs to be in there as much. Perhaps something about daycare can be put in there if we think we need daycare, and let people know what they need to do to provide it. We might get in on the front end of this process instead of the back end, as I had said in the last meeting. We have been more concerned about the process, not the fact that there is a daycare in our neighborhood, and I wanted to make that clear.

Claude Collins, 1920 2<sup>nd</sup> Avenue, stated he attended the last meeting, and wants to address some items that were mentioned then and at tonight's meeting. All this traffic before the daycare parents, they were going 50 mph. Where did that come from? I have a motorcycle that flies by my house sometimes at 88 mph and sometimes at 92 mph, or that's what it seems like. I was over at Gerry and Vanessa's house Thursday for Thanksgiving, and that night when I was leaving, I was driving south on 19<sup>th</sup> Street and did get up to 30 mph, and I thought it was too fast. I normally drive about 20 mph. If I'm out on the sidewalk and somebody is driving 30 mph, I'm going to be thinking they need to slow down because they are probably going 50 mph. We are basing 50 mph that everybody is driving based on people's visualization. As far as the daycare, anyone can have a home daycare up to six kids. The Jackson's are licensed for 12 children. For them to have 12 children, three of them have to be over the age of five. They can only have five kids under 5-years of age with a maximum of nine kids. Talking with the Jackson's, they do not watch school aged kids so the maximum they will have is nine kids with the permit. Without the permit they can have six so we are talking about three extra vehicles and 12 extra trips per day going down 19<sup>th</sup> Street. The other thing is that 19<sup>th</sup> Street is owned by the public, it is not owned by the residents of that community. They said it tonight, "our community", "my neighborhood". Well that is my street too. If I want to play my saxophone on 19<sup>th</sup> Street, I can because it's a public sidewalk. As far as walking on the street, that is against the law, and someone said it wasn't at the last meeting. The 2023 Kansas Statute standard traffic ordinance, section 68, paragraph (a) states if there is a sidewalk available, it shall be unlawful to walk in the roadway. They think that should be their private street, and it's not. I used to drive my motorcycle up and down that street every weekend about 11:30pm driving home from work. I had a restricted permit and could only drive to school and work so I would take the scenic route home because I wanted to go cruising, and the chances of a police officer being on a dead-end street is very slim. Next Spring, if the motorcycle club wants to take the scenic route on their way out to Hwy 92, and 50 Harley Davidsons

want to drive up 19<sup>th</sup> Street and back down, they can. It is a public street and not owned by the neighbors. I do understand where they are coming from. If I bought a house on a dead-end street, I'd be like ah, no traffic or very little traffic. After the last meeting, I looked at realtor.com, and there was a house pending in the 1800 block of Choctaw Street. Who is to say they aren't going to open up a home daycare for six kids. The next house that goes up for sale, I told my wife we are going to buy it and open up a home daycare and no Special Use Permit needed. Then the next house for sale, I'm going to buy it and rent it to someone who is going to open up a home daycare, and there is nothing that "their community" can do about that.

With no one else wishing to speak, Chairman Homan called for discussion among the commissioners.

Commissioner Stephens stated he wants to remind everyone that we are talking about a Special Use Permit to open a home daycare. We are not talking about their operations or if we think it is a good daycare or a bad daycare. He further stated that he agreed with one of the speakers that if we tied it to a tax incentive we would probably get more people to sign up for home daycares. Right now, there is no benefit, and they do the best that they can but it should be advertised more, and maybe we can do that.

Commissioner Stephens further stated that he appreciates the Police Department providing the data, and understands that it may have some holes in it but he also has some subjective data. He had a 15-18 minute conversation with a neighbor in the middle of the intersection of 19<sup>th</sup> Street and Choctaw. Not once did he fear for his, not once did a car drive by, and this was between 4:00pm and 4:30pm. Asked one neighbor to the north how many times she had somebody block her in, and she said it never happened. Also asked her if she noticed an increase in traffic, and she said not at all, and in fact she really liked what they were doing and thought it ran pretty well. The neighbor directly next door with a three-foot grass separation between the driveways, not enough to park a car, and even this neighbor said that there hasn't been any problems with cars blocking his driveway in the mornings or in the afternoons. A couple different times in the mornings and in the evenings, Commissioner Stephens went and parked in different areas in the neighborhood just to see the traffic for himself, and he did not see anything. Sees things that are a lot more dangerous in his neighborhood behind Henry Leavenworth School.

Chairman Homan stated the only comment he has is about the appraisals and the county's percentage, and it is not always sales that cause the increase. In 2022 and 2023, the interest rates were lower so the values were higher. To factor an appraisal is done 3 ways: 1) cost approach, 2) direct sales approach, and 3) income approach. On the cost approach, you look at 3 different kinds of depreciation: 1) age-life depreciation, 2) functional obsolescence, and 3) economic obsolescence, which is something outside your property causing loss and value to your property.

Commissioner Kem stated that one of the central issues she believes to be a concern of the residents is the traffic issue. Agrees that the traffic study is not valid because there are four hours for two weeks that have absolutely no traffic but there is enough information to be able to make an informed decision. Traffic issues have been mitigated with the things that the owners are doing with the cones and talking to the parents. Suggests to continue to have those conversations periodically, particularly when new parents come in. Other concerns about home values and process believed to have all been addressed so far.

With no further discussion, Chairman Homan called for a motion. Commissioner Stephens moved to recommend approval to the City Commission for the Special Use Permit to allow the operation of a home daycare at 1913 Choctaw, seconded by Commissioner Kem, and approved 5-1.

Ms. Hurley stated this item will go to the January 9, 2024 City Commission for first consideration ordinance.

Commissioner Stephens asked if public comment is allowed during that time.

Ms. Hurley responded that it is not a public hearing at the City Commission meeting. Generally, if the City Commissioners know there are people wishing to speak they will go ahead and take comments but it is not a public hearing.

**OTHER BUSINESS:**

With no other business, Ms. Hurley stated there will be a meeting on January 8, 2024.

Chairman Homan adjourned the meeting at 7:06 p.m.

Minutes taken by Planning Assistant Michelle Baragary.