



**CITY OF LEAVENWORTH**  
100 N. 5<sup>th</sup> Street  
Leavenworth, Kansas 66048  
[www.lvks.org](http://www.lvks.org)

**CITY COMMISSION STUDY SESSION & SPECIAL MEETING**  
**COMMISSION CHAMBERS**  
**TUESDAY, AUGUST 06, 2019 7:00 P.M.**

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**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 7 p.m. and midnight and available for viewing on YouTube*

**Study Session:**

1. City Festival Management Update (pg. 2)

**Special Meeting:**

Open a Special Meeting **Action:** Motion

2. Consider Resolution B-2228 Thornton Street Property **Action:** Motion (pg. 3)

**Adjourn**

**Action:** Motion

**Policy Report**  
City festival management update  
August 6, 2019

Prepared by:



Paul Kramer  
City Manager

**Issue:**

Representatives from O'Neill Events & Marketing, the CAMP Leavenworth event management firm, will brief the Commission on the status of the festival.

Updates will include vendor, entertainment, event and marketing information, among other items.

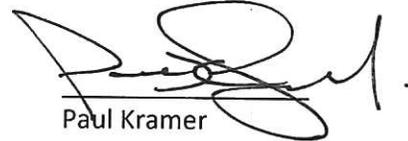
**CONSIDER A RESOLUTION DECLARING THE NECESSITY TO APPROPRIATE  
PRIVATE PROPERTY CONNECTED WITH THE THORNTON STREET  
IMPROVEMENTS PROJECT**

**PROJECT NO. 2015-795**

**August 6, 2019**



Michael G. McDonald, PE  
Public Works Director



Paul Kramer  
City Manager

**ISSUE**

Consider approval of Resolution B-2228 to start the process for appropriation of private property for public purposes on the Thornton Street Project.

**BACKGROUND**

The City of Leavenworth has completed the design of project 2015-795 Thornton Street between Fifth Street and Tenth Avenue. This project is expected to begin construction in Fall 2019. The plans have identified twenty-nine properties with thirty-seven temporary and permanent easements necessary to allow construction of the project.

These temporary easements are typically related to allow access onto private property to slope the banks back to a mowable slope, allow access during construction and similar items. The permanent easements are generally associated with providing access to drainage systems for maintenance, or a utility company to place their lines to avoid a conflict.

Staff has had one meeting with property owners to discuss the project and the need for easements prior to the completion of the design. Several owners returned the necessary documents after the meeting, and additional easements were returned after further contact from city staff. A contract with John Amrein of The Land Company was obtained to further contact owners regarding the project. There are currently four property owners with a total of five easements that have not been signed. The remaining easements are not necessary for the initial phases of the project, and construction is expected to begin in Early September.

In a general sense, the unreturned easement documents may be associated with property owned by large or small out of town owners or companies, or by people who have been out of town for an extended period, or by someone that does not like to open mail from the City, deceased owners, complicated trusts or other perfectly understandable reasons.

The easements are needed for the project. The protection of private property rights is a key American principle. The law also allows for the government to acquire private property for public purposes with "just compensation". Processes have been established to ensure that the power of the government is

not unreasonably applied to the citizens for this purpose, KSA 26-201. The approval of this resolution is simply the first step of a larger process summarized below.

#### **General Outline of Eminent Domain Actions**

1. Government approves a resolution declaring their intent to use the power of eminent domain (“condemnation”) for a specific project. This is the action recommended in this policy report.
2. Government adopts an ordinance identifying the legal descriptions of the property in question and the names of the owners.
3. After the ordinance is effective, an action is filed in District Court.
4. After a judge is assigned to the case, there are three appraisers appointed by the judge to review the documents, inspect the property and determine the value of compensation to be paid to the owner.
5. The appraisers will hold a hearing where the city and the owners can talk about their concerns and the amount of compensation.
6. After the hearing, and assuming the judge finds the needs of the city to be reasonable, the judge will issue an order listing the value of compensation for each easement. After this value has been paid to the court by the city and recorded in District Court, the easements are available for use by the city. The city can object to any of the amounts and “not pay”, but that easement will not be available for the project.
7. Should an owner believe the easements were undervalued, this can be appealed to the court system. It is important to note that the appeal is only to the value, not the actual need of the easement.

There are costs to the city for this process. The city is responsible for its own attorney fees, filing fees, appraiser fees and any compensation recommended by the court. The process is somewhat lengthy, and usually is complete within sixty days. City staff will continue to work with owners and The Land Company to obtain signed easements throughout this process.

#### **RECOMMENDATION**

Staff recommends that the City Commission approve Resolution B-2228 regarding the appropriation of private property for public purposes.

#### **Attachments**

- Resolution B-2228
- KSA 26-201 related to Kansas condemnation power

*(Publish in the Leavenworth Times on August \_\_\_\_\_, 2019)*

**RESOLUTION NO. B-2228**

**A RESOLUTION DECLARING THE NECESSITY TO APPROPRIATE PRIVATE PROPERTY CONNECTED WITH THE THORNTON STREET IMPROVEMENTS PROJECT, PROJECT NO. 2015-795 FOR THE USE OF THE CITY AND AUTHORIZING A SURVEY AND DESCRIPTION LAND OR INTEREST TO BE CONDEMNED TO BE PREPARED**

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

**Section 1:** That the Governing Body of the City of Leavenworth, Kansas, does hereby deem it necessary to appropriate private property for the use of the City for the purpose of rights-of-way, permanent easements and temporary construction easements to complete the Thornton Street Improvement Project to include curb and gutter, sidewalks, asphalt pavement, storm drainage systems, sanitary sewer systems and other improvements as shown on the plan documents.

**Section 2:** That the Governing Body of the City of Leavenworth, Kansas, does hereby authorize a survey and description of the land or interest to be condemned to be made by a licensed land surveyor or a professional engineer who is competent to conduct a land survey and filed with the City Clerk.

**Section 3:** That this resolution shall be published once in the official city newspaper as provided by K.S.A. 26-201.

**Section 4:** This resolution shall be effective upon passage and publication as provided by law.

**Passed and approved** this 6<sup>th</sup> day of August 2019.

\_\_\_\_\_  
Jermaine Wilson, Mayor

{Seal}

ATTEST:

\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk

**26-201. Cities; authority to condemn; interest acquired; resolution, notice, ordinance; exercise of power.** A city shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, but cities shall not have the right to acquire a fee simple title to property condemned solely for street purposes. Whenever it shall be deemed necessary by the governing body of any city to appropriate private property for the use of the city for any purpose whatsoever, the governing body shall by resolution declare such necessity and authorize a survey and description of the land or interest to be condemned to be made by a licensed land surveyor or a professional engineer who is competent to conduct a land survey and filed with the city clerk. Such resolution shall be published once in the official city newspaper. Upon the filing of the survey and description of the land or interest to be condemned the governing body shall by ordinance authorize and provide for the acquisition of such land or interest, setting forth such condemnation, the interest to be taken and for what purpose the same is to be used. If in the opinion of the governing body any property is specially benefited by the proposed improvement such property shall be designated as the benefit district and the same shall be fixed by the ordinance authorizing and providing for the acquisition of the land or interest. The governing body, as soon as practicable after passage of the ordinance authorizing and providing for the appropriation of such land or interest and the fixing of the benefit district, if any is fixed, shall proceed to exercise the power of eminent domain in accordance with the eminent domain procedure act.