



Welcome To Your City Commission Meeting - Please turn off or silence all cell phones during the commission meeting.
Meetings are televised everyday on Channel 2 at 7 p.m. and midnight

Call to Order – Pledge of Allegiance Followed by Silent Meditation

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

1. Minutes from February 13, 2018 Regular Meeting **Action:** Motion (pg. 3)

Second Consideration Ordinances:

2. Second Consideration Charter Ordinance No. 58 Exempting from KSA 12-3101 et seq. **Action:** Roll Call Vote (pg. 10)
3. Second Consideration Charter Ordinance No. 59 to Repeal Charter Ordinance No. 6 **Action:** Roll Call Vote (pg. 15)
4. Second Consideration Ordinance 8069 Franchise Contract Agreement AT&T **Action:** Roll Call Vote (pg. 17)
5. Second Consideration Ordinance 8070 to Repeal Chapter 14; Article VII Professional Wrestling Matches **Action:** Roll Call Vote (pg. 29)

NEW BUSINESS:

Citizen Participation: *(i.e. Items not listed on the agenda or receipt of petitions- Please state your name and address)*

General Items:

6. Consider Approval of Tattoo Establishment at 2920 S 4th Street **Action:** Motion (pg. 31)
7. Review Transportation Study KCATA **Action:** Consensus (pg. 32)
8. Review Port Authority Board Appointments **Action:** Motion (pg. 33)
9. Mayor Appointments **Action:** Motion (pg. 42)

Resolutions:

10. Resolution B-2189 - 2017 Annual Report for Stormwater **Action:** Motion (pg. 43)
11. Resolution B-2190 Stormwater Management Program **Action:** Motion (pg. 45)

Bids, Contracts and Agreements:

12. Consider Bids for Arborway Lighting Project **Action:** Motion (pg. 47)
13. Consider Design Service Contract with Napier Engineering-New Lawrence Road **Action:** Motion (pg. 53)

First Consideration Ordinances:

- 14. First Consideration Ordinance to Amend Section 110-40 Trafficways **Action:** Consensus (pg. 68)
 - 15. First Consideration Ordinance to Amend Chapter 78 Peddlers and Solicitors **Action:** Consensus (pg. 73)
-

Consent Agenda:

Claims for February 10, 2018 through February 23, 2018 in the amount of \$588,646.01; Net amount for Pay #4 effective February 16, 2018 in the amount of \$319,957.76 (Includes Police & Fire Pension of \$11,572.36). **Action:** Motion

Other Items:

Adjourn: **Action:** Motion



CALL TO ORDER - The Governing Body met in regular session and the following commission members were present: Mayor Mark Preisinger, Mayor Pro-Tem Jermaine Wilson, Commissioners Nancy Bauder, Larry Dedeke and Myron J. (Mike) Griswold.

Others present: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Parks & Recreation Director Steve Grant, Parks Superintendent Brian Bailey, Public Works Director Mike McDonald, Deputy Public Works Director Mike Hooper, WPC Superintendent Chuck Staples, City Planner Julie Hurley, Finance Director Ruby Maline, Public Information Officer Melissa Bower, City Attorney Tom Dawson, Deputy City Clerk Cary Collins and City Clerk Carla K. Williamson.

Mayor Preisinger opened the meeting with the pledge of allegiance followed by silent meditation.

Presentation to Ron and Kay Beaman; Wheel Thing Skate Center – Mayor Preisinger presented on behalf of the City a letter and certificate thanking Ron and Kay Beaman for 32 years of operating the Wheel Thing Skate Center dedicated to the youth of Leavenworth and congratulating them on their retirement.

Proclamation:

Military America Saves Week of February 26 – March 3, 2018; Kathy Rizzo and Tina Farr were present to accept the proclamation.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Bauder moved to approve the minutes from the January 23, 2018 regular meeting and the January 24, 2018 and February 6, 2018 special meeting as presented. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Second Consideration Ordinances:

Second Consideration Charter Ordinance No. 58 Related to Creating a Stormwater Program – City Manager Paul Kramer stated that staff would like more time to review the ordinance before second consideration and recommended tabling the item until the next meeting.

The City Commission was in favor by consensus to table the item. No action was taken. Second Consideration will be presented at the February 27, 2018 regular meeting.

NEW BUSINESS:

Citizen Participation:

Mike Jordan along with his Godson Jackson addressed the City Commission and discussed the following:

- Programs for youth
- In need of program for youth at risk
- Juvenile Justice Planning Team only for those kids arrested
- Guidance Center limited resources
- Scared Straight and DARE programs no longer available
- Would like Commission and County Commission to sit down and look at programs
- Possibly the Police Department could look at programs and let families know what is available
- Was in an at risk group himself when young and it helped him
- Families are unaware of where to turn and who to contact
- Possibly putting information on the City's website

Mayor Preisinger

- School district has some programs
- Requires mental health professionals
- JDC has mental health professional
- SRS has mental health professional
- City does not have mental health professionals

Commissioner Bauder

- Countywide child protection team available to catch children before they get into trouble
- Multi-Disciplinary group at the Guidance Center

Commissioner Wilson

- Asked the City Manager about the Scared Straight and DARE programs

City Manager Kramer said the DARE officer was eliminated during a time when the city had a shortage of police officers. It was deemed that the officers were needed combating crime on the streets rather than a DARE officer. The County picked up some of the DARE responsibilities.

Commissioner Dedeke

- Not aware that the City ever had a Scared Straight program
- He will contact the County Sheriff and see if it is something they would consider or have the manpower to do and what insurance would do.

Commissioner Griswold

- The youth are an import issue in the City
- Would like a Study Session on the subject

Mayor Preisinger asked Mr. Jordan about a social media post from January 15th about exposing corruption within Leavenworth to include the City Commission. He is not aware of any corruption and asked that Mr. Jordan please bring any issues forward so they can be investigated by local law enforcement, county sheriff or KBI.

Mr. Jordan stated that he does not want to throw out names but was just generalizing. Was told by a former city employee because it was an inconvenience by the City Commissioner to see the condition of some houses on their way home or on their way to work, targeted houses through code enforcement.

Yolanda Adams addressed the Commission

- Here to discuss what he wanted to discuss; not some personal thing that Mayor Preisinger has with him

The topic will be put on a future Study Session.

Vernon Ferguson-2400 Spring Garden

- Issue with City Planning, Codes and Code Enforcement
- Aug 2016 permit issued for 13 feet out toward street 20 feet wide addition to a house
- Today the structure is 24 wide 20 feet out
- House is encroaching on the street
- Structure was not done properly
- Went to City Manager and Code Enforcement both said nothing wrong
- Feels this is personal
- Was part of the building of the structure
- Informed owner a variance is needed

Mayor Preisinger asked that City Manager to report back to the Commission on the issue.

General Items:

Consider Approval of Tattoo Establishment at 2710 4th Street– City Manager Paul Kramer informed the Commission that late this afternoon City Staff was informed that something fell through with the property management company on the agreement for the proposed location. No action will be needed by the City Commission and the item will not be heard.

The item was not heard or addressed by the City Commission and was removed from the agenda.

Review of Property on Demolition List -1921 5th Avenue – City Planner Julie Hurley provided an update on 1921 5th Avenue. The City Commission placed the property on the Demolition list via Resolution B-2179 on October 10, 2017. On November 14, 2017 the City Commission granted Douglas Neu a 90 day extension. Siding has been installed. No new permits and no visible indication of additional work being performed.

Mr. Neu addressed the City Commission

- Needs to complete siding and get bids on the roof
- The repairs have taken longer than planned
- Needs an additional 90 days
- Plans to live in the house once repairs are complete
- Has been 5 years since the property has been lived in
- Has owned the property for 15 years

Commissioner Dedeker moved to give another 90 day extension to 1921 5th Avenue. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Mayors Appointments

Mayor Preisinger moved to appoint:

- To the Convention and Tourism Committee, reappoint Wendy Scheidt from Main Street and Mary B. Stephenson from the Leavenworth Historical Society to terms ending January 1, 2021;
- To the Solid Waste Management Committee for Leavenworth County, appoint Steve King Solid Waste Foreman City of Leavenworth and
- To the Parks and Community Activities Advisory Board, reappoint Jim Mathis to a term ending January 15, 2021 and appoint Ms. Reeshemah Richards to a term ending January 15, 2021.

Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Dates for City Commission Budget Work Session & Goal Setting– City Manager Paul Kramer discussed the need to set dates for the 2018 Goal Setting Session and Budget Work Sessions. For the Budget Work Sessions Mr. Kramer proposed 1:00 PM – 5:00 PM on July 11 and July 12. July 13 would be reserved if needed. For the Goal Setting Session Mr. Kramer proposed April 4 from 1:00 PM – 5:00 PM.

The City Commission was in agreement with the dates proposed by the City Manager for the Budget Work Sessions and tentative dates for the Goal Setting Session.

Resolution:

Resolution B-2187 to Set the Maximum Allowed for the 2018 General Improvements Bonds– City Manager Paul Kramer presented Resolution B-2187 for consideration and approval setting the maximum amount of \$1,818,504.00 for the City’s 2018 General Improvement Project, asphalt overlay.

Commissioner Bauder moved to adopt Resolution B-2187 setting the maximum amount for the 2018 asphalt overlay-general improvements project. Commissioner Dedeker seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Resolution B-2188 Section Eight Management Assessment Program (SEMAP) – City Manager Paul Kramer presented Resolution B-2188 for consideration and approval. The City Commission will be acting as the Leavenworth Housing Authority Board for this approval.

Commissioner Bauder moved to adopt Resolution B-2188 submitting the SEMAP certification to HUD. Commissioner Dedeker seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Bids, Contracts and Agreements:

Consider Bids for Parks and Recreation Mowing Contract – Parks Superintendent Brian Bailey presented for consideration the bids for the Parks and Recreation Mowing Contract. This is a three year contract with the option to renew for a two year price negotiated extension. Staff recommends the approval of the low

bid from Superior Lawn Care & Snow Removal in the amount of \$44,128.50 per season. Bids were opened on February 2, 2018 and were as follows:

Bidder	(City/State)	Base Bid
Superior Lawn Care and Snow Removal	Leavenworth, KS	\$44,128.50
Jake's Lawn & Landscape LLC	Rushville, MO	\$71,370.00
Sense of Pride Lawn & Landscape	Easton, KS	\$77,480.00
Ground FX	Leavenworth, KS	\$82,680.00
Affordable Lawn & Cemetery Care	Leavenworth, KS	\$104,390.00

Commissioner Griswold moved to approve the low bid with Superior Lawn Care & Snow Removal in the amount of \$44,128.50 per season. Commissioner Wilson seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Commissioner Bauder asked for a clarification on this being a three year contract.

A new motion was made to clarify and include the wording of a three year contract.

Commissioner Griswold moved to approve a three year contract low bid with Superior Lawn Care & Snow Removal in the amount of \$44,128.50 per season per year of that contract. Commissioner Wilson seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Consider Bids for Code Enforcement Vehicle – City Manager Paul Kramer stated that this purchase was budgeted for \$28,000.00 which would have been over the City Manager’s authority. The actual bids came in under \$25,000.00 which is within the authority of the City Manager; therefore it is not necessary for the City Commission to take action.

Commissioner Dedeke suggested that the City look at the policy of purchasing extended warranties. City Manager Kramer stated that staff would take a look at this on future purchases.

Consider Design Service Agreement with BG Consultants for the 2018 Sidewalk Project–Public Works Director Mike McDonald presented for consideration the design services contract with BG Consultants for the 2018 sidewalk project in an amount not to exceed \$49,602.00.

Commissioner Dedeke moved to approve the agreement for design engineering services with BG Consultants for \$49,602.00. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Consider Bids for Water Pollution Control Landfill Services – Public Works Director Mike McDonald presented for consideration the bids for Landfill Services. Staff recommends approval of the bid from Hamm’s Landfill at \$21.00 per ton for a total amount not to exceed \$102,900.00. Bids were opened on January 25, 2018 and were as follows:

Bidder	Address (City/State)	Base Bid
Hamm	Perry, KS	\$21.00 Per Ton
Waste Management of Kansas	Shawnee, KS	\$40.00 Per Ton

Commissioner Bauder moved to approve the contract for Landfill Services for the disposal of dewatered sludge with Hamm’s Landfill in an amount not to exceed \$102,900.00. Commissioner Griswold seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

First Consideration Ordinances:

First Consideration Ordinance Telecommunications Contract Franchise Agreement –AT & T – City Manager Paul Kramer presented for first consideration an ordinance to renew the telecommunications contract franchise agreement with Southwestern Bell Company dba AT&T Kansas.

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

First Consideration Ordinance to Repeal Article VII of Chapter 14 Related to Professional Wrestling Matches – City Manager Paul Kramer presented for first consideration an ordinance to repeal Article VII of Chapter 14 related to the licensing of professional wrestling matches. At the February 6, 2018 Study Session the City Commission provided a consensus to begin the process of repealing this article of the code of ordinances. These types of events are governed and regulated by the Kansas Department of Commerce Athletic Commission.

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

First Consideration Charter Ordinance to Repeal Charter Ordinance No 6 Related to the Holding of Government Offices by City Commissioners – City Manager Paul Kramer presented for first consideration a charter ordinance to repeal Charter Ordinance No 6. At the February 6, 2018 Study Session the City Commission reviewed Charter Ordinance No 6 *“A charter ordinance relating to the holding of government offices by city commissioners in Leavenworth, Kansas, and exempting the city from the provisions of K.S.A. 13-1802 and providing substitute and additional provisions on the same subject.”* The K.S.A. 13-1802 has been repealed by the state and the Charter Ordinance in place by the City is not enforceable.

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

CONSENT AGENDA:

Commissioner Griswold recapped three items on the claims review:

- \$164,000 for lease payment for capital IT project
- \$552,000.00 property taxes passed to the Library
- \$105,000.00 to Leavenworth County for the new roof on the Justice Center

Commissioner Griswold moved to approve claims for January 20, 2018 through February 9, 2018 in the amount of \$2,073,091.99; Net amount for Pay #3 effective February 2, 2018 in the amount of \$317,444.64 (No Police & Fire

Pension). Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

Other:

Mayor Preisinger:

This is City Attorney Tom Dawson's last night as City Attorney. He will remain as the City Prosecutor.

City Manager Paul Kramer:

- Springfield selected to hold American Legion state finals this year
- Springfield is also booked to hold five tournaments this year

Mr. Kramer also plans to address a letter to state delegation regarding the following:

- House bill 2560 - Kansas Cybersecurity Act; could result in a user fee \$700.00 per municipal employee to access the state network
- Property tax exemptions - Dark Stores (box stores)
 - These businesses are trying to get property taxes calculated as a vacant building
 - This would be cut to property tax base to cities across the state

Adjourn:

Commissioner Dedeke moved to adjourn the meeting. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried and the meeting adjourned.

Time Meeting Adjourned 8:12 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC

**POLICY REPORT
SECOND CONSIDERATION
CHARTER ORDINANCE 58
EXEMPTING THE CITY FROM K.S.A. 12-3101 ET SEQ.**

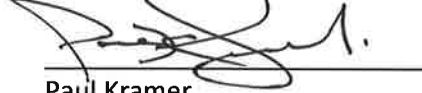
FEBRUARY 27, 2018

Prepared by:



Carla K. Williamson, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

BACKGROUND:

At the January 23, 2108 meeting the City Commission discussed and placed on first consideration a Charter Ordinance exempting the City from K.S.A. 12-3101 et seq.

At the February 13, 2018 City Commission meeting the City Commission tabled the second consideration of Charter Ordinance No. 58 as requested by staff to allow additional time for review of the Charter Ordinance.

The City Attorney David Waters reviewed the Charter Ordinance and made minor changes which are attached.

If approved the Charter Ordinance will be published once a week for two (2) consecutive weeks in the official city newspaper and will take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed.

RECOMMENDATION:

Staff would recommend approval of Charter Ordinance No. 58

A CONSTITUTIONAL CHARTER ORDINANCE EXEMPTING THE CITY OF LEAVENWORTH, KANSAS FROM THE PROVISIONS OF THE KANSAS WATER POLLUTION ACT K.S.A 12-3101 ET SEQ., SUCH THAT THE CITY MAY SUBSEQUENTLY PROVIDE FOR THE CREATION OF A STORM WATER MANAGEMENT PROGRAM AND A STORM WATER UTILITY FEE FOR THE CITY OF LEAVENWORTH, KANSAS, FOR THE PURPOSES OF PLANNING, DESIGNING, FUNDING, CONSTRUCTING AND MAINTAINING STORM WATER MANAGEMENT, SEDIMENT AND EROSION CONTROL, AND FLOOD AND STORMWATER DISCHARGE PROGRAMS, PROJECTS AND FACILITIES AND REVIEWING AND APPROVING STORM WATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF AND PROVIDING FOR STORM WATER MANAGEMENT RATES TO BE SET BY RESOLUTION OF THE GOVERNING BODY.

ACTION:

Charter Ordinance No. 58 is now presented for second consideration and requires a roll call vote with four (4) affirmative votes.

ATTACHMENTS:

- Charter Ordinance No. 58 Markup
- Charter Ordinance No. 58 Final

CHARTER ORDINANCE NO. 58

A CONSTITUTIONAL CHARTER ORDINANCE EXEMPTING THE CITY OF LEAVENWORTH, KANSAS FROM THE PROVISIONS OF THE KANSAS WATER POLLUTION ACT K.S.A 12-3101 ET SEQ ~~AND PROVIDING~~, SUCH THAT THE CITY MAY SUBSEQUENTLY PROVIDE FOR THE CREATION OF AN ORDINANCE ESTABLISHING A STORMWATER A STORM WATER MANAGEMENT PROGRAM AND A STORMWATER-STORM WATER UTILITY FEE FOR THE CITY OF LEAVENWORTH, KANSAS, FOR THE PURPOSE PURPOSES OF PLANNING, DESIGNING, FUNDING, CONSTRUCTING AND MAINTAINING STORMWATER STORM WATER MANAGEMENT, SEDIMENT AND EROSION CONTROL, AND FLOOD AND STORMWATER DISCHARGE PROGRAMS, PROJECTS AND FACILITIES AND REVIEWING AND APPROVING STORMWATER STORM WATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF AND PROVIDING FOR STORMWATER STORM WATER MANAGEMENT RATES TO BE SET BY RESOLUTION OF THE GOVERNING BODY.

WHEREAS the state of Kansas has passed legislation, known as the Kansas ~~Water water~~ pollution act, K.S.A 12-3101 et seq. (KWPA) which has been found by the Kansas Supreme Court to be a non-uniform legislative act that affects different classes of cities in the State in different manners; and

WHEREAS the KWPA also has a provision that allows the Secretary of Kansas Department of Health and Environment (KDHE) to by resolution allow cities to create their own storm water utility under the KWPA; and

WHEREAS the Kansas Legislature has not created in the ~~KPWA-KWPA~~ the authority for the KDHE to issue resolutions, and KDHE has taken the position that it does not have the authority to issue resolutions allowing cities to create a storm water utility under the KWPA; and

WHEREAS various cities have used their Constitutional Charter Ordinance authority to exempt themselves from the provision of the KWPA and KWPA is not uniform as it applies to all cities in the state which permits the exemption; and

WHEREAS upon exemption, the City of Leavenworth, Kansas ~~seeks~~ would seek to create a storm water management program and establish a storm water utility fee for the purpose of managing storm water in the City ~~and to collect a fee for that~~ and other applicable services and to manage, administer and enforce such regulations as may be promulgated by the City of Leavenworth for that purpose;.

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

Section 1. Exemption from State law. The City of Leavenworth, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas ~~herby, hereby~~ hereby exempts itself from the provisions of the KWPA, K.S.A 12-3101 *et seq.* ~~for the purpose of creating a storm water utility and a fee to implement the same.~~

Section 2. Repeal of inconsistent provisions. Any provision of the current ordinances of the City that are inconsistent or in conflict with this Charter Ordinance are hereby repealed to the extent of such inconsistency or conflict; ~~other~~ all such other provisions are hereby ratified and confirmed.

Section 3. This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official city newspaper.

Section 4. This Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subsection (c) (3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed and approved by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, the ~~13~~th day of February 2018.

Mark Preisinger, Mayor

{SEAL}

ATTEST:

Carla K. Williamson CMC, City Clerk

Published: The Leavenworth Times

First Publication Date: February 16, 2018

Second Publication Date: February 23, 2018

CHARTER ORDINANCE NO. 58

A CONSTITUTIONAL CHARTER ORDINANCE EXEMPTING THE CITY OF LEAVENWORTH, KANSAS FROM THE PROVISIONS OF THE KANSAS WATER POLLUTION ACT K.S.A 12-3101 ET SEQ., SUCH THAT THE CITY MAY SUBSEQUENTLY PROVIDE FOR THE CREATION OF A STORM WATER MANAGEMENT PROGRAM AND A STORM WATER UTILITY FEE FOR THE CITY OF LEAVENWORTH, KANSAS, FOR THE PURPOSES OF PLANNING, DESIGNING, FUNDING, CONSTRUCTING AND MAINTAINING STORM WATER MANAGEMENT, SEDIMENT AND EROSION CONTROL, AND FLOOD AND STORMWATER DISCHARGE PROGRAMS, PROJECTS AND FACILITIES AND REVIEWING AND APPROVING STORM WATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF AND PROVIDING FOR STORM WATER MANAGEMENT RATES TO BE SET BY RESOLUTION OF THE GOVERNING BODY.

WHEREAS the state of Kansas has passed legislation, known as the Kansas water pollution act, K.S.A 12-3101 et seq. (KWPA) which has been found by the Kansas Supreme Court to be a non-uniform legislative act that affects different classes of cities in the State in different manners; and

WHEREAS the KWPA also has a provision that allows the Secretary of Kansas Department of Health and Environment (KDHE) to by resolution allow cities to create their own storm water utility under the KWPA; and

WHEREAS the Kansas Legislature has not created in the KWPA the authority for the KDHE to issue resolutions, and KDHE has taken the position that it does not have the authority to issue resolutions allowing cities to create a storm water utility under the KWPA; and

WHEREAS various cities have used their Constitutional Charter Ordinance authority to exempt themselves from the provision of the KWPA and KWPA is not uniform as it applies to all cities in the state which permits the exemption; and

WHEREAS upon exemption, the City of Leavenworth, Kansas would seek to create a storm water management program and establish a storm water utility fee for the purpose of managing storm water in the City and other applicable services and to manage, administer and enforce such regulations as may be promulgated by the City of Leavenworth for that purpose.

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

Section 1. Exemption from State law. The City of Leavenworth, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby exempts itself from the provisions of the KWPA, K.S.A 12-3101 *et seq.*

Section 2. Repeal of inconsistent provisions. Any provision of the current ordinances of the City that are inconsistent or in conflict with this Charter Ordinance are hereby repealed to the extent of such inconsistency or conflict; all such other provisions are hereby ratified and confirmed.

Section 3. This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official city newspaper.

Section 4. This Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subsection (c) (3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed and approved by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, the 27th day of February 2018.

Mark Preisinger, Mayor

{SEAL}

ATTEST:

Carla K. Williamson CMC, City Clerk

Published: The Leavenworth Times

First Publication Date: March 2, 2018

Second Publication Date: March 9, 2018

**POLICY REPORT
SECOND CONSIDERATION
CHARTER ORDINANCE 59
REPEALING CHARTER ORDINANCE NO. 6 RELATED TO
HOLDING OF GOVERNMENT OFFICES BY COMMISSIONERS**

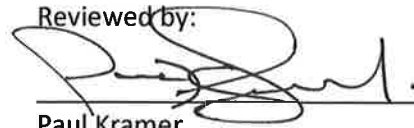
FEBRUARY 27, 2018

Prepared by:



Carla K. Williamson, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

BACKGROUND:

At the February 13, 2018 City Commission meeting the City Commission reviewed and placed on first consideration

**A CHARTER ORDINANCE OF THE CITY OF LEAVENWORTH,
KANSAS, REPEALING CHARTER ORDINANCE NO. 6.**

If approved the Charter Ordinance will be published once a week for two (2) consecutive weeks in the official city newspaper and will take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed.

RECOMMENDATION:

Staff would recommend approval of Charter Ordinance No. 59

ACTION:

Charter Ordinance No. 59 is now presented for second consideration and requires a roll call vote with four (4) affirmative votes.

ATTACHMENTS:

- Charter Ordinance No. 59

CHARTER ORDINANCE NO. 59

**A CHARTER ORDINANCE OF THE CITY OF LEAVENWORTH,
KANSAS, REPEALING CHARTER ORDINANCE NO. 6.**

WHEREAS, the City of Leavenworth, Kansas adopted Charter Ordinance No. 6 pursuant to the provisions of Section 5(c) of Article 12 of the Constitution of the State of Kansas related to the holding of government office by City Commissioners in Leavenworth Kansas, and exempting the City from the provision of K.S.A. 13-1802; and

WHEREAS, Section 5(c) (4) of Article 12 of the Constitution of the State of Kansas provides that a Charter Ordinance may be repealed by charter ordinance.

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

SECTION 1. That pursuant to the provisions of Section 5(c) of Article Twelve (12) of the Constitution of the State of Kansas, the City of Leavenworth, Kansas, does hereby repeal Charter Ordinance No. 6.

SECTION 2. This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official city newspaper.

SECTION 3. This Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subsection (c) (3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed and approved by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, the 27th day of February 2018.

Mark Preisinger, Mayor

{SEAL}

ATTEST:

City Clerk Carla K. Williamson, CMC

Published: The Leavenworth Times

First Publication Date: March 2, 2018

Second Publication Date: March 9, 2018

**POLICY REPORT
SECOND CONSIDERATION
ORDINANCE 8069
SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T KANSAS
CONTRACT FRANCHISE AGREEMENT**

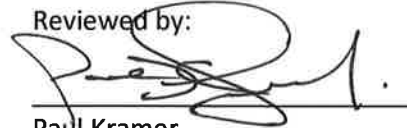
FEBRUARY 27, 2018

Prepared by:



Carla K. Williamson, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

BACKGROUND:

At the February 13, 2018 City Commission meeting the City Commission reviewed and placed on first consideration

AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T KANSAS, A CONTRACT FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES IN THE CITY OF LEAVENWORTH, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

RECOMMENDATION:

Staff would recommend approval of Ordinance No. 8069

ACTION:

Ordinance No. 8069 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8069

(Published in the Leavenworth Times on March 2, 2018)

ORDINANCE NO. 8069

AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T KANSAS, A CONTRACT FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES IN THE CITY OF LEAVENWORTH, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, and lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 2016 Supp. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Leavenworth, Kansas.
- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

- g. "Facilities" - means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunications services.
- h. "Grantee" - means Southwestern Bell Telephone Company d/b/a AT&T Kansas, an electing carrier and telecommunications service provider providing local exchange service and/or operating facilities within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City and that are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the State Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunication local exchange services provider" – means a local exchange carrier as defined in subsection (h) of K.S.A. 2016 Supp. 66-1,187 and amendments thereto, and/or a telecommunications carrier as defined in subsection (m) of K.S.A. 2016 Supp. 66-1, 187 and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term shall not include an interexchange carrier or competitive access provider that does not provide local exchange service, or any wireless communication services provider.
- m. "Telecommunications services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

- a. Subject to the provisions of K.S.A. 2016 Supp. 12-2001 and amendments thereto, there is hereby granted to Grantee this nonexclusive Contract franchise to provide telecommunications services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way. This Contract franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or,
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on property or facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. Access to the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 2016 Supp. 17-1902 and amendments thereto, and subject to the provisions of this Contract franchise, Grantee has the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

- b. Grantee's use of the Public right-of-way shall be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way.
- c. City shall, pursuant to Section 13 of this Contract franchise, provide reasonable advanced notice of the consideration and/or adoption of any rule, regulation, policies, resolutions and ordinances relating to the construction in or use of the Public right-of-way, inasmuch as such adoption affects Grantee's use of the Public right-of-way.
- d. If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, Grantee shall remove, relocate or adjust its Facilities within the Public right-of-way at no cost to the City, providing such request similarly binds all users of such public right-of-way. Such removal, relocation, or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the City for such relocation or adjustment, provided that the City shall provide Grantee with a minimum of one hundred eighty (180) days advance written notice to comply with any such removal, relocation or adjustment. Grantee shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within Grantee's various areas.
- e. When the City requests removal, relocation or adjustment of Grantee's Facilities within the Public right-of-way for construction or maintenance activities related to improvements that are, in whole or in part, for private benefit, the City shall require, as a condition of its approval of any request from any private party or parties for alteration of the Public right-of-way, that such private party or parties reimburse Grantee for the cost of removal, relocation or adjustment, in an amount equal to the percentage of the private benefit received. Grantee shall not be obligated to commence the removal, relocation or adjustment until receipt of funds for the costs from such private party or parties. For purposes of this paragraph, a mixed purpose public/private project shall be subject to a presumption of a private benefit of no less than 50 percent. Further, Grantee shall have no liability for delays caused by a private party's failure to reimburse costs. Grantee understands, however, that the City has no obligation to collect such reimbursement.
- f. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed the maximum Access line fee allowed by Kansas law. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 2016 Supp. 12-2001 (m) and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 2016 Supp. 12-2001 and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 2016 Supp. 12-2001, and amendments thereto. Subject to any limitations of Kansas Statute, Grantee's payment obligations shall survive the expiration or termination of this Contract franchise.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of \$1,000.00. The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- h. The franchise fee required herein pursuant to K.S.A. 2016 Supp. 12-2001(j), shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 2016 Supp. 12-2001 and K.S.A. 2016 Supp.17-1902 and amendments thereto. The franchise fee shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance. Such Access line (franchise) fee or Gross Receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4 a. hereinabove.

SECTION 5. ANNEXATION OR RENUMBERING STREETS

The City agrees to provide Grantee with notification in the event that it annexes property into the corporate boundaries of the City that would require Grantee to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property Grantee was not required to pay a franchise fee. The City agrees to provide Grantee with notification in the event the City renumbers or renames any streets that would require Grantee to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets Grantee would not have been required

to pay a franchise fee. The City agrees that in the event the City does not provide Grantee with notice of an annexation or renumbering and/or renaming of the streets, Grantee is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to Grantee of such.

SECTION 6. INDEMNITY AND HOLD HARMLESS.

- a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et. seq., and amendments thereto, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct.

The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

- b. Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Facilities in the Public right-of-way.
- c. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity. Notwithstanding the foregoing, nothing herein shall in any way obligate Grantee for the negligence of any other third party or any portion of any harm caused by the same.
- d. Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's or the City's activities in the Public right-of-way.

SECTION 7. INSURANCE REQUIREMENT AND PERFORMANCE BOND

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with insurers rated at least A-VII by AM Best and that are eligible or permitted to do business in the state of Kansas. Grantee shall provide the following insurance:
 - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit for bodily injury of \$1,000,000 each accident, by disease policy limits and by disease each employee.

- (2) Commercial general liability, written on Insurance Services Office (ISO) policy form CG 00 01 or its equivalent, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claim made basis, with a limit of Two Million Dollars (\$2,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may self-insure and, as such, Grantee has the ability to provide coverage in an of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred as respects this Contract franchise. In the event Grantee elects to self-insure its obligation to include City as an additional insured, the following provisions shall apply:
 - (1) City shall promptly and no later than thirty (30) days after notice thereof provide Grantee with written notice of any claim, demand, lawsuit or the like, for which it seeks coverage pursuant to the section and provide Grantee with copies of any demands, notices, summonses or legal papers received in connection with such claim, demand, lawsuit or the like;
 - (2) City shall not settle any such claim, demand, lawsuit or the like without the prior written consent of Grantee; and,
 - (3) City shall fully cooperate with Grantee in the defense of the claim, demand, lawsuit or the like.
 - c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee shall timely notify the City if the insurance is cancelled or non-renewed and not replaced.
 - d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of Fifty Thousand Dollars (\$50,000), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be, issued by a surety company authorized to transact business in the state of Kansas, and satisfactory to the City Attorney in form and substance.

SECTION 8. REVOCATION AND TERMINATION.

- a. In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures:

- (1) Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice, pursuant to Section 12 of the Contract franchise, upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise;
 - (2) If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided, pursuant to Section 12 of this Contract franchise, reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter.
 - (3) Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Leavenworth County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.
- b. Nothing herein shall prevent the City or Grantee from invoking any other remedy that may otherwise exist at law.

SECTION 9. RESERVATION OF RIGHTS.

- a. The City and Grantee hereby acknowledge that the City, in accordance with 47 U.S.C. § 253, may not prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunication service. To the extent permitted by law, the City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of: the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended; under the Constitution of the State of Kansas; nor, any of its rights and powers under or by virtue of present or future ordinances of the City.

- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of the Contract franchise or any present or future laws, non-franchise ordinances and/or rulings that may be the basis for parties entering into this Contract franchise.

SECTION 10. FAILURE TO ENFORCE.

The failure of either the City or Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or Grantee unless said waiver or relinquishment is in writing and signed by both the City and Grantee.

SECTION 11. TERM AND TERMINATION DATE.

- a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise as established by Section 16 herein, and ending on December 31, 2021. Thereafter, this Contract franchise will automatically renew for up to eight (8) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 2016 Supp. 12-2001 and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 12. MOST FAVORED NATION

Pursuant to K.S.A. 2016 Supp. 12-2001 and K.S.A. 2016 Supp. 17-1902 and amendments thereto, City represents and warrants that all benefits, terms and conditions in this Contract franchise and relative to Grantee’s deployment of network Facilities and services in the City are and, during the term of this Contract franchise, will continue to be no less favorable to Grantee in the same or similar circumstances than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, network based broadband or video services provider, competitive infrastructure provider or Internet Protocol services provider, regardless of the form or nature of the agreement with any such other carrier or provider, and that the City shall treat Grantee in a competitively neutral, non-discriminatory manner.

SECTION 13. POINT OF CONTACT AND NOTICES

All notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, First Class Postage Prepaid, Certified Mail, return receipt requested; or overnight delivery by a nationally recognized courier. All written notices shall be deemed delivered upon actual receipt or refusal of delivery.

The City:

The City of Leavenworth
100 N. 5th St
Leavenworth, Kansas 66603
Attn: City Clerk

Grantee:

Office of the President
Southwestern Bell Telephone Company
d/b/a AT&T Kansas
220 SE 6th St., Room 500
Topeka, KS. 66603

or to replacement addresses that may be later designated in writing.

SECTION 14. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to: a wholly owned parent or subsidiary; between wholly owned subsidiaries; or, to an entity with which Grantee is under common ownership or control, upon written notice to the City. City and Grantee acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise and that, in accordance with Kansas law, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee. In the event of any transfer or assignment of either this Contract franchise or Grantee’s business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment.

SECTION 15. CONFIDENTIALITY.

Information provided to the City pursuant to the terms of this Contract Franchise and/or K.S.A. 2016 Supp. 12-2001 and amendments thereto, shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and K.S.A. 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

SECTION 16. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the State of Kansas, and shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract franchise in accordance with Statute (the "Effective Date").

SECTION 17. PAYMENT OF PUBLICATION COSTS.

In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 18. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

SECTION 19. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war, terrorism and other disasters beyond Grantee's or the City's control.

SECTION 20. REPEAL.

City Ordinance No. 7750, a contract franchise issued to Southwestern Bell Telephone Co. d/b/a AT & T Kansas is hereby repealed.

PASSED AND APPROVED by the City Commission of the City of Leavenworth Kansas this 27th day of February, 2018.

Mark Preisinger, Mayor

ATTEST:

APPROVED AS TO FORM:

Carla K. Williamson CMC, City Clerk

David E. Waters, City Attorney

**POLICY REPORT
SECOND CONSIDERATION
ORDINANCE 8070
REPEALING CHAPTER 14; ARTICLE VII
PROFESSIONAL WRESTLING MATCHES**

FEBRUARY 27, 2018

Prepared by:



Carla K. Williamson, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

BACKGROUND:

At the February 13, 2018 City Commission meeting the City Commission reviewed and placed on first consideration

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF LEAVENWORTH, KANSAS, CHAPTER 14 AMUSEMENTS AND ENTERTAINMENT; REPEALING ARTICLE VII PROFESSIONAL WRESTLING MATCHES.

RECOMMENDATION:

Staff would recommend approval of Ordinance No. 8070

ACTION:

Ordinance No. 8070 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8070

(Summary Publish in the Leavenworth Times on March 2, 2018)

ORDINANCE NO. 8070

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF LEAVENWORTH, KANSAS, CHAPTER 14 AMUSEMENTS AND ENTERTAINMENT; REPEALING ARTICLE VII PROFESSIONAL WRESTLING MATCHES.

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

Section 1. That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 14, Amusements and Entertainment, Article VII, Professional Wrestling Matches, be repealed.

Section 2. That all and Sections 14-186 through 14-204 repealed herein and all other sections in conflict herewith are hereby repealed.

Section 3. That this Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

Passed by the Leavenworth City Commission on this 27th day of February, 2018.

Mark Preisinger, Mayor

(SEAL)

ATTEST:

Carla K. Williamson, City Clerk, CMC

POLICY REPORT
CONSIDER APPROVAL OF A TATTOO ESTABLISHMENT
RIGHTEOUS TATTOO STUDIO
2920 S. 4TH STREET

FEBRUARY 27, 2018



Carla K. Williamson, CMC City Clerk



Paul Kramer, City Manager

ISSUE:

Consider approval of a Tattoo Establishment License for Righteous Tattoo Studio at 2920 S. 4th street.

BACKGROUND:

Donnie and Amanda McQuitty submitted an application for a Tattoo Establishment License for a new business they intend to open at 2920 S 4th Street.

Typically the approval of a Tattoo Establishment comes to the City Commission after the business has been inspected and approved by the Chief of Police and City Health Inspector. In this instance, the applicant has not yet begun work at the proposed location. Construction of the interior to prepare for the opening of the business is expected to take approximately three (3) months.

Before signing the lease and starting construction, the applicant has asked for an approval contingent upon passing all inspections.

The applicant has had a tattoo business in Bonner Springs since September 2013 and is looking to expand to Leavenworth.

ACTION:

- Approve the Tattoo Establishment License for Righteous Tattoo Studio at 2920 S. 4th contingent upon passing all inspections

or

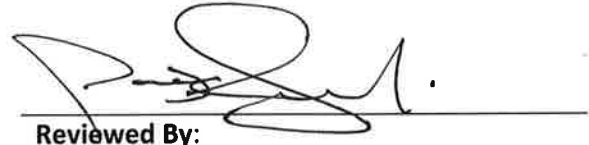
- Deny the request

POLICY REPORT
KCATA Transportation Study

FEBRUARY 27, 2018



Prepared By:
Julie Hurley,
City Planner



Reviewed By:
Paul Kramer,
City Manager

DISCUSSION

In 2017, the City of Leavenworth, in partnership with Leavenworth County, entered into an agreement with the Kansas City Area Transportation Authority (KCATA) and Mid-America Regional Council (MARC) to commission a transit study as part of MARC's Planning Sustainable Places initiative. This study is intended to directly address several transportation goals laid out in the City of Leavenworth's 2010 Comprehensive Plan. These goals include:

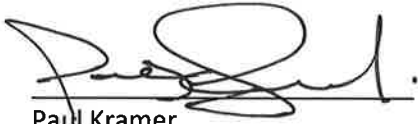
- *Advance the utilization of new transportation methods and technologies in transportation planning, modeling and safety in Leavenworth; and*
- *Promote multi-modal linkages between the City and the City of Kansas City.*

Additionally, the regional Affirmative Fair Housing Plan submitted in 2016 to HUD detailed Leavenworth's need for local and regional transportation to provide access to opportunities for low and moderate income residents.

An RFP was issued, and the team of Transystems and Vireo was selected to complete the study. Extensive public input was sought during the planning process. This study looks at the needs within the City and the County, connections to job centers within and outside the county, potential routes and services, and costs and funding options. Members of the project team will present the final plan along with recommendations for moving forward.

Policy Report
Review Port Authority Board Appointments
Feb. 27, 2018

Prepared by:



Paul Kramer
City Manager

Background:

The Leavenworth County Port Authority (LCPA) was created in 1969 under the laws of the state of Kansas by the City of Leavenworth and Leavenworth County. The original document that created the LCPA still governs how board members are appointed.

The appointment of board members requires a joint approval by the governing bodies of the City and the County.

Subject:

There are currently two vacancies on the five-member board. At its February 6 meeting, the Leavenworth County Board of County Commissioners (BOCC) nominated two candidates to fill those vacant seats.

The BOCC voted to reappoint Bob Patzwald to the LCPA Board on a 2-1 vote. The BOCC also voted to appoint Vernon Fields to the LCPA Board on a 2-1 vote.

Commission Action:

These two nominations are now in front of the City Commission for consideration.

Attachments:

- The LCPA agreement, including information on how board members are appointed
- The BOCC minutes indicating the nomination of Bob Patzwald and Vernon Fields
- The BOCC Certificates of Appointment for Bob Patzwald and Vernon Fields

PRK/

AN ORDINANCE DECLARING THERE IS A NEED FOR THE ESTABLISHMENT OF A PORT AUTHORITY IN THE CITY OF LEAVENWORTH, KANSAS; CREATING THE SAID AUTHORITY AND AUTHORIZING THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH COUNTY, KANSAS FOR THE FORMATION OF A JOINT PORT AUTHORITY.

WHEREAS, under Chapter 89, Session Laws of Kansas, 1969, Cities and Counties have been given the right to establish a Port Authority by declaring that there is a need for such Authority, and

WHEREAS, the Governing Body of the City of Leavenworth, Kansas does hereby find that there is a need for a Port Authority and that the same should be created and established, and

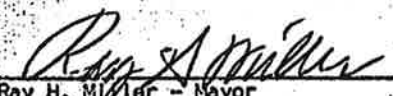
WHEREAS, Chapter 89 of the Session Laws of Kansas, 1969, authorizes any City or County to combine to form a Joint Port Authority by executing a cooperative agreement by the respective Governing Bodies.

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

Section 1. That there is hereby established a Port Authority for the City of Leavenworth, Kansas.

Section 2. That the Governing Body is hereby authorized to enter into an agreement with the Board of County Commissioners, for the formation of a Joint Port Authority.

Section 3. That this Ordinance shall take effect and be in force from and after its passage, approval and publication in the Leavenworth Times, the official newspaper of the City of Leavenworth, Kansas.


Ray H. Miller - Mayor

ATTEST:

Marguerite B. Strange, City Clerk

Passed and Approved:
December 30, 1969

Published:

LEAVENWORTH COUNTY PORT AUTHORITY AGREEMENT

- PARTIES:** Board of County Commissioners, Leavenworth County, Kansas, Governing Body of the City of Leavenworth, Kansas.!
- AREA:** All the incorporated and unincorporated areas lying within the jurisdiction, under the Port Authority Act, of the parties to this Agreement including submerged land, and air space contiguous to such area.
- PURPOSE:** Establishment of Leavenworth County Port Authority, investigation of the feasibility of a joint port authority for any appropriate northeast Kansas area, promotion of commerce, prosperity, industry, improvement of the health and living conditions of the people of this State, and for the promotion of the general welfare.

A G R E E M E N T

WHEREAS, the above parties to this agreement have by appropriate ordinance or resolution declared there to be a need for the establishing of a Port Authority for Leavenworth County, and the cities therein, for the promotion of the general welfare; and

WHEREAS, authority for the establishing of such a Port Authority has been provided by Chapter 89, 1969 Session Laws of the State of Kansas, the parties hereby agree as follows:

- I. **PURPOSE.** There is hereby established by the Agreement of the parties a Port Authority pursuant to Chapter 89, Laws 1969. Such Port Authority shall be called the Leavenworth County Port Authority. The Port Authority shall be for the purpose of promoting commerce, prosperity, industry, improvement of the health and living conditions of the people, and for the promotion of the general welfare.
- II. **JOINT AUTHORITY.** The Port Authority hereby established shall, upon its organization, investigate and determine the advantages and disadvantages of the combining of this Port Authority with other Port Authorities to form a joint Port Authority in any area within the Northeast Kansas Region. The investigation and determination of the Authority shall be reduced to writing and such report when completed shall be furnished to the parties of this Agreement. For the purpose of making such determination, the parties to this Agreement shall respectively contribute to the operating budget of the Port Authority an initial sum of Five Hundred Dollars each. Such additional sums as may be necessary, in the judgment of the parties to this Agreement, shall be provided for this purpose to the Port Authority.

III. JURISDICTION. The jurisdiction of the Leavenworth County Port Authority shall include all of the territory lying within the cities and counties which are parties hereto, all submerged lands, uplands, and air space contiguous to such territory, and any other property outside the territory of the parties to this Agreement conveyed to the Port Authority or over which it may obtain control pursuant to Section 6 (a) of Chapter 89, Laws of 1969.

IV. MEMBERSHIP. The Leavenworth County Port Authority shall consist of five members, to be selected jointly by the parties to this Agreement as follows:

Position 1	- - - - -	1 year
Position 2	- - - - -	2 years
Position 3	- - - - -	3 years
Position 4	- - - - -	4 years
Position 5	- - - - -	4 years

The successor to each position shall serve a term of four (IV) years. All members appointed in the above manner shall be considered directors of the Leavenworth County Port Authority. The directors shall serve without compensation, but shall be entitled to receive their necessary and actual expenses. The directors shall organize themselves, maintain regular minutes and records of the Port Authority, which records and minutes shall be open to the public. All directors shall comply strictly with the conflict of interest provisions of Chapter 89, Laws of 1969, and shall be deemed to have an affirmative duty to disclose any potential conflict of interest to the remaining directors and to the parties to this Agreement.

V. POWERS OF AUTHORITY. The Leavenworth County Port Authority shall have all those powers provided by Chapter 89, Laws of 1969, which shall include, but shall not necessarily be limited to, the power to purchase, construct, sell, lease and operate docks, wharves, warehouses, piers and other ports, terminals or other transportation facilities; to borrow money from private financial institutions, borrow money from private financial institutions, any agency of the State of Kansas or the United States, and to issue evidence of indebtedness therefor, including the encumbering of the assets of the Authority; to apply for and receive monies from the State of Kansas or the United States or any agency or instrumentality thereof, to construct, straighten, deepen or improve any canal, channel, river or stream or other water course; to acquire, own, hold, sell, lease and otherwise operate any real or personal property; to acquire, own, maintain, sell or lease any land within this jurisdiction which the Authority may be deemed desirable for development; to apply to proper United States officials for the right to establish, operate and maintain foreign trade zones; to exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements or other property necessary for the construction or efficient operation of any facility of the Port Authority included within its official plan; to maintain such funds as it deems necessary; to direct its agents or employees to make necessary surveys and examination of lands within its jurisdiction; to sell or lease

real or personal property not needed for the operation of the Port Authority, and to grant easements and rights-of-way over property of the Port Authority; and to promote, advertise and publicize the Port and its facilities, and to provide traffic information and other statistics to interested parties.

VI. ISSUANCE OF BONDS. The Port Authority shall, to pay all or any part of the cost of acquiring land or interests therein, constructing, equipping and furnishing buildings, structures and other port and transportation facilities, have the authority to borrow money therefor and to issue negotiable bonds of such Port Authority in such amount as the directors shall deem necessary. To secure the prompt payment of the principal and interest of such bonds, the Port Authority shall be authorized to agree to the use and disposition of the proceeds of the sale of bonds; to agree to the operation of the facilities of the Authority and the collection and disposition of revenues derived therefrom; to agree as to any rights, liabilities, powers and duties arising from the breach of any agreement entered into in authorizing and issuing bonds; to agree to carry insurance upon the buildings and facilities and upon the use and occupancy thereof, as may be deemed necessary in the judgment of the directors; to enter trust agreements with respect to the receipt of income and revenue pledged to the holders of bonds; to fix charges and fees to be imposed in connection with the use of any buildings or other facilities of the Port Authority. Any and all such agreements shall be binding upon the Port Authority, its agents and employees and upon its successors in interest.

VII. DEVELOPMENT PLAN. The Port Authority shall, as soon as practicable, prepare or cause to be prepared a plan for the future development of existing port facilities or other property within the jurisdiction of the Port Authority, including such maps, profiles and other data as necessary to set forth the location and character of the work to be undertaken by the Port Authority.

VIII. SEPARABILITY. If any one or more ^{of} the provisions of this agreement, shall be declared void, or if any one or more of the provisions of this agreement shall be superseded by any legislation, the validity of the remainder of this agreement shall not be affected.

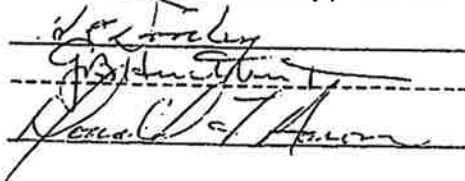
IX. EFFECTIVE DATE. This agreement shall become effective upon its adoption by two or more of the parties hereto, by execution of the original agreement or any duplicate original thereof, and upon the filing of same with the County Clerk of Leavenworth County, Kansas.

APPROVED:


John C. Tillotson
Leavenworth County Attorney


County Clerk of Leavenworth
County, Kansas

Board of County Commissioners
of Leavenworth County, Kansas



Thomas J. Brown, Jr.
Thomas J. Brown, Jr.,
City Attorney
Leavenworth, Kansas

Margaret Strong
City Clerk
City of Leavenworth, Kansas

The Governing Body of the
City of Leavenworth, Kansas
By:

Ray A. Miller
Mayor

Henry Floza

Manni Puhlan

John J. Taylor
W. H. Smith

The Board of County Commissioners met in regular session on Tuesday, February 6, 2018. Commissioner Smith, Commissioner Klemp and Commissioner Holland are present; Also present: Mark Loughry, County Administrator; David Van Parys, Senior County Counselor; Becky Matzeder, Executive Secretary; Jeff Joseph, Planning and Zoning Director; Krystal Voth, Senior Planner; David Lutgen, Public Works Director; Sarah Shafer, Public Works Deputy Director; John Richmeier, Leavenworth Times

Residents: AW Himpel, Glen Berry, John Matthews, Linda Sturgeon, Gary Starcher, Joe Herring, Travis Myers, Tamara Miller, David Thiel, Scott Hughes, Karen Ernzen

Discussion took place regarding the appointment of two members to the Leavenworth County Port Authority.

A motion was made by Commissioner Holland to reappoint Bob Patzwald and appoint Vernon Fields to the Leavenworth County Port Authority.

The motion was seconded by Commissioner Klemp for discussion.

Commissioner Klemp removed his second on the motion and moved to appoint Chris Donnelly.

Commissioner Smith indicated he would suggest Rod Sturgeon and Vernon Fields.

A motion was made by Commissioner Holland seconded by Commissioner Klemp to reappoint Bob Patzwald to the Leavenworth County Port authority.

Motion passed, 2-1 Commissioner Smith voting nay.

A motion was made by Commissioner Holland to appoint Vernon Fields.

Motion dies for lack of second.

A motion was made by Commissioner Klemp to appoint Chris Donnelly.

Motion dies for lack for second.

A motion was made by Commissioner Smith to appoint Rod Sturgeon.

Motion dies for lack of second.

Commissioner Smith expressed the need to have representation from each city on the Port Authority Board.

A motion was made by Commissioner Holland and seconded by Commissioner Klemp to appoint Vernon Fields to the Leavenworth County Port Authority.

Motion passed, 2-1 Commissioner Smith voting nay.

David Lutgen presented revisions to the Access Management Policy and a resolution approving it.

A motion was made by Commissioner Smith and seconded by Commissioner Klemp to approve the Access Management Policy and Resolution 2018-2.

CERTIFICATE OF APPOINTMENT

TO THE

LEAVENWORTH COUNTY PORT AUTHORITY

LEAVENWORTH, KANSAS

WHEREAS, the Leavenworth County and city of Leavenworth, by recorded action dated December 29, 1969, have established the Leavenworth County Port Authority as provided by K.S.A. 12-3402; and

WHEREAS, the Leavenworth County Port Authority serves the purpose of promoting commerce, prosperity, industry, improvement of the health and living conditions of the people and for the promotion of the general welfare; and

WHEREAS, the Leavenworth County Port Authority shall be directed by a Board consisting of five members with staggered four year terms and selected jointly by the City of Leavenworth and Leavenworth County; and

WHEREAS, the County Commissioners of Leavenworth County and the City Commissioners of the City of Leavenworth wish to appoint:

Vernon Fields

Vernon Fields is hereby appointed to the Board of Leavenworth County Port Authority to fill a term of four years to expire on January 1, 2022.

Board of County Commissioners
Leavenworth County, Kansas

City of Leavenworth
Leavenworth, Kansas

Approved and Recorded in the
Minutes on February 6, 2018

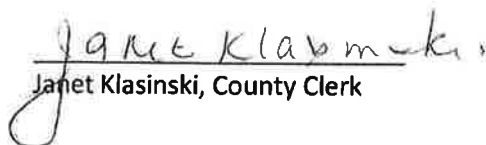
Approved and Recorded in the Minutes
on: _____


Louis Klemp, Chairman

Mark Preisinger, Mayor

ATTEST:

ATTEST:


Janet Klasinski, County Clerk

Carla Williamson, City Clerk

CERTIFICATE OF APPOINTMENT

TO THE

LEAVENWORTH COUNTY PORT AUTHORITY

LEAVENWORTH, KANSAS

WHEREAS, the Leavenworth County and city of Leavenworth, by recorded action dated December 29, 1969, have established the Leavenworth County Port Authority as provided by K.S.A. 12-3402; and

WHEREAS, the Leavenworth County Port Authority serves the purpose of promoting commerce, prosperity, industry, improvement of the health and living conditions of the people and for the promotion of the general welfare; and

WHEREAS, the Leavenworth County Port Authority shall be directed by a Board consisting of five members with staggered four year terms and selected jointly by the City of Leavenworth and Leavenworth County; and

WHEREAS, the County Commissioners of Leavenworth County and the City Commissioners of the City of Leavenworth wish to appoint:

Bob Patzwald

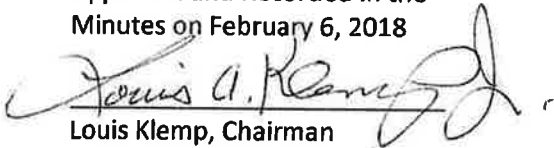
Bob Patzwald is hereby appointed to the Board of Leavenworth County Port Authority to fill a term of four years to expire on January 1, 2022.

Board of County Commissioners
Leavenworth County, Kansas

City of Leavenworth
Leavenworth, Kansas

Approved and Recorded in the
Minutes on February 6, 2018

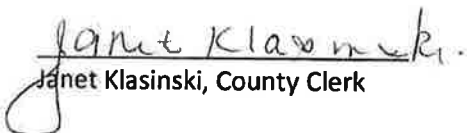
Approved and Recorded in the Minutes
on: _____


Louis Klemp, Chairman

Mark Preisinger, Mayor

ATTEST:

ATTEST:


Janet Klasinski, County Clerk

Carla Williamson, City Clerk

CITY OF LEAVENWORTH

TO: CITY COMMISSIONERS
FROM: MARK PREISINGER, MAYOR
SUBJECT: CITY APPOINTMENTS
DATE: FEBRUARY 27, 2018

I move to recommend the following appointments:

Convention and Tourism Committee:

- Reappoint Carolyn Kelly and Edna Wagner to terms ending January 31, 2021

Grow Leavenworth County:

- Appoint Jacob Dale to an unexpired term ending May 31, 2018

Sister City Advisory Board:

- Reappoint Bobbie Bower to a term ending December 31, 2020

POLICY REPORT PWD NO. 18-13

**ADOPT RESOLUTION B-2189 APPROVING
KDHE ANNUAL STORMWATER REPORT FOR 2017**

February 27, 2018

Prepared by:



Michael G. McDonald, PE
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Consider adoption of Resolution B-2189 approving the KDHE Annual Stormwater Report for 2017.

BACKGROUND:

The City of Leavenworth is required by Kansas Department of Health and Environment (KDHE) and Environmental Protection Agency (EPA) to submit an annual report each year by February 28th for activity in the prior calendar year. This is to review the status of the activities identified in the Stormwater Management Program (SMP). The City adopted the current Stormwater Management Program in 2016.

The Annual Report was reviewed at the study session on February 20th, 2018. Staff is completing the final version of the report which will be available online prior to the meeting for review.

The report is due to KDHE by February 28th, 2018 via digital delivery. It is anticipated that the final report will be submitted to KDHE on Wednesday, February 28th after final review by the City Commission at the February 27th meeting.

RECOMMENDATION:

Staff recommends the City Commission adopt Resolution B-2189 approving the Stormwater Management Program.

ATTACHMENT:

Resolution B-2189 Approving the KDHE Annual Stormwater Report for 2017

RESOLUTION NO. B-2189

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

SECTION 1: The 2017 Annual Report for Stormwater reflects the direction, efforts and accomplishments by City of Leavenworth for calendar year 2017. It shall be an official record of these actions to meet the requirements of KDHE for an Annual Report until or unless changed by official action.

PASSED AND APPROVED This 27th Day of February, 2018.

Mark Preisinger, Mayor

{Seal}

ATTEST:

Carla K. Williamson, CMC, City Clerk

POLICY REPORT PWD NO. 18-15

**ADOPT RESOLUTION B-2190 APPROVING THE CITY
STORMWATER MANAGEMENT PROGRAM**

February 27, 2018

Prepared by:



Michael G. McDonald, PE
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Consider adoption of Resolution B-2190 approving the Stormwater Management Program.

BACKGROUND:

The City of Leavenworth is required by Kansas Department of Health and Environment (KDHE) and Environmental Protection Agency (EPA) to have a Stormwater Management Program (SMP) to address various programs to ensure national water quality. The City adopted the current Stormwater Management Program in 2016 and there were no changes in 2017.

The SMP was reviewed at the study session on February 20th, 2018.

The current SMP is required to be included in the KDHE Annual Report and submitted by February 28th via digital delivery. It is anticipated that the Annual Report (and therefore the Stormwater Management Program) will be submitted to KDHE on Wednesday, February 28th after final review by the City Commission at the February 27th meeting.

RECOMMENDATION:

Staff recommends the City Commission adopt Resolution B-2190 approving the Stormwater Management Program.

ATTACHMENT:

Resolution B-2190 Approving the City Stormwater Management Program

RESOLUTION NO. B-2190

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

SECTION 1: The 2017 Stormwater Management Program shall become the official guiding authority for actions by the Leavenworth City Commission and its staff until or unless changed by official action.

PASSED AND APPROVED This 27th Day of February, 2018.

Mark Preisinger, Mayor

{Seal}

ATTEST:

Carla K. Williamson, CMC, City Clerk

POLICY REPORT PWD NO. 18-14

**APPROVE LOW BID FOR THE
ARBORWAY LIGHTING PROJECT**

Project 2017- 873

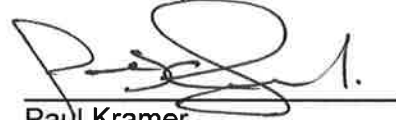
February 27, 2018

Prepared by:



Michael G. McDonald, P.E.,
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Approve the low bid for the Arborway Lighting Project.

BACKGROUND:

The street lighting along Fourth Street from Seneca to Pawnee was installed as part of the Fourth Street Arborway Project, and as part of the Urban Renewal Program in the 1970s. Once installed it became the responsibility of the City to maintain, repair and replace any lights, poles or wiring as necessary. The original type of wire installation and electrical equipment has proven to be expensive to maintain in recent years and many of the poles are in a condition of needing maintenance or replacement.

The City Commission budgeted funds for construction in 2017 for this project. As plans were being developed it became clear that it was likely to be more expensive than originally expected. Staff evaluated options to address costs and to improve the reliability of the system. Options included repairs, replacement, and changing wiring systems. The opportunity to remove the old City-owned system and replace it with a Westar-owned system was found to have several advantages for the City. Staff has worked with Westar to design the new pole placement, new conduit and street borings, and to take over the maintenance of the system.

The main advantages of these changes are:

- City avoids construction cost for a new wiring system and costs of upgrading poles and lights.
- City will not be responsible for routine maintenance as the new lights will be Westar street lights.
- All underground wiring will be new; reducing outages.
- Additional lights will be added as part of the project.

Based on the advantages of this lighting proposal to the City, staff has proceeded to coordinate with Westar and obtain bids for the City portion of the work.

Westar regulations impact what portions of the new lighting system are the responsibility of the City. These costs are primarily related to the installation of underground conduit and "screw-in" bases for the new poles. In agreement with Westar regulations, the City will manage and pay for a project to complete the cross-road bores, install the conduit and wiring, and pay for the cost of the screw-in pole bases. Once the new parts are installed, Westar will complete the project and take over the maintenance of the system. This is essentially the same as other street lights throughout the City.

The project consists of the following work:

1. The installation of approximately 2500 lineal feet of underground conduit and electrical cable. *(contractor installed)*
2. The installation of three (3) new secondary pedestals. *(contractor installed)*
3. Two (2) borings under Fourth Street. *(contractor installed)*
4. The installation of eleven (11) new screw-in pole bases, galvanized steel street light poles, ten (10) foot mast arms, and LED street light heads. *(installed by Westar)*
5. Removal of the existing street light poles and bases. *(city responsibility)*

In mid-January 2018, staff sent a request for bids to all twelve (12) Westar-certified contractors to solicit bids for the project. On February 14, 2018, staff opened bids from the two (2) contractors who submitted. The results are as follows:

Torgeson Trenching	Topeka, KS	\$27,477.56
Schuetz Construction	Bonner Springs, KS	\$34,600.00
Engineer's Estimate		\$45,000.00

Staff anticipates construction starting by early April with 60 calendar days for completion. City staff and Westar personnel will perform the necessary project inspections.

POLICY:

The City Commission generally approves the lowest qualified bidder for projects of this type.

RECOMMENDATION:

Staff recommends that the City Commission approve the low bid submitted by Torgeson Trenching to complete the Arborway Lighting Project in the amount of \$27,477.56.

ATTACHMENTS:

Bid Sheets
Engineer's Estimate
Project Map

Request For Bids
Re-Bid Arborway Lighting Project
 Project No: 2017-873

Bid Price – includes all permits, insurance and bond costs, equipment, materials, appurtenances, and labor for the installation of the items as identified. A KDOT right-of-way permit is required. All City of Leavenworth permit fees will be waived. All material and installation must be in accordance with all Westar specifications.

ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
CID (#6 Duplex)	2500	lf	\$ 12.50	\$ 31,250.00
SECONDARY PEDESTALS	3	each	\$ 50.00	\$ 150.00
4 th STREET BORES & RISER LOCATIONS	2	each	\$ 1600.00	\$ 3200.00
TOTAL BID PRICE			\$	34,600.00

Bidder: <u>Schuetz Const LLC</u>	FEIN: <u>26-3094066</u>
Address: <u>14833 142nd St.</u>	
City/State/Zip <u>Bonner Springs KS 66012</u>	
By: <u>Tony Schuetz</u>	Title: <u>President</u>
Telephone No. <u>913-422-7419</u>	
Fax No. <u>913-422-1267</u>	
Email Address: <u>tony@schuetzconst.com</u>	

Schuetz Const LLC HEREBY agrees that the City of Leavenworth has a right to reject any and all bids and to waive any "informalities".
 Completion date to be sixty (60) calendar days after the City Engineer has given "Notice to Proceed" or liquidated damages shall be in the amount of Two-Hundred-Fifty Dollars (\$250.00) per day for each calendar day until project completion.

Sincerely,
 Mike Hooper
 Deputy Director of Public Works

Request For Bids
Re-Bid Arborway Lighting Project
 Project No: 2017-873

Bid Price – Includes all permits, insurance and bond costs, equipment, materials, appurtenances, and labor for the installation of the items as identified. A KDOT right-of-way permit is required. All City of Leavenworth permit fees will be waived. All material and installation must be in accordance with all Westar specifications.

ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
CID (#6 Duplex)	2500	lf	\$ 8.89	\$ 22,225.00
SECONDARY PEDESTALS	3	each	\$ 200.00	\$ 600.00
4 th STREET BORES & RISER LOCATIONS	2	each	\$ 1,077.30	\$ 2,154.60
			TOTAL BID PRICE \$	27,477.56

Bidder: <u>Torgeson Trenching Inc</u>	FEIN: <u>48-1196882</u>
Address: <u>3545 SW 6th St.</u>	
City/State/Zip <u>Topeka KS 66606</u>	
By: <u>Todd H Pease</u>	Title: <u>Vice President</u>
Telephone No. <u>785-633-5731</u>	
Fax No. <u>785-233-7066</u>	
Email Address: <u>toddp@torgesonelectric.com</u>	

_____ **HEREBY** agrees that the City of Leavenworth has a right to reject any and all bids and to waive any "informalities".

Completion date to be sixty (60) calendar days after the City Engineer has given "Notice to Proceed" or liquidated damages shall be in the amount of Two-Hundred-Fifty Dollars (\$250.00) per day for each calendar day until project completion.

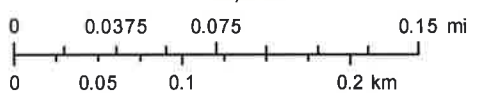
Sincerely,
 Mike Hooper
 Deputy Director of Public Works

City of Leavenworth, KS GIS Web Map



2/22/2018 11:39:58 AM

1:4,514



- △ REMOVE
- NEW
- REMAIN

City of LV GIS, 2017
 LV GIS Dept 09/23/2016
 City of LV GIS
 Dave Griffith, 2013
 Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the

POLICY REPORT PWD NO. 18-09

CONSIDER DESIGN CONTRACT WITH NAPIER ENGINEERING, LLC.
FOR THE NEW LAWRENCE RD. IMPROVEMENT PROJECT

City Project 2017-869

February 27, 2018

Prepared by:



Michael G. McDonald, P.E.,
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Consider the design contract received from Napier Engineering, LLC. for the New Lawrence Road Improvement Project.

BACKGROUND:

The existing New Lawrence Road is a gravel road with open ditches on both sides of the roadway east of the intersection at 20th Street. The West Glen Subdivision currently under construction by Reilly and Sons Realty will use New Lawrence Road as access to the subdivision. The current roadway is narrow and not capable of handling the increased traffic in a safe and efficient manner from the new subdivision.

In late 2017, Staff sent out a Request for Qualifications (RFQ) to engineering firms interested in the project. RFQs were received from two (2) firms. Interviews were conducted and it was determined Napier Engineering was the most qualified firm.

The road will be designed to be 31-foot wide with curb and gutter and improved storm drainage. The improvements will start at the end of pavement at the 20th Street intersection and run north to approximately 150 feet north of the north line of the West Glen Subdivision.

Initial construction will be funded through the City and paid back through taxes collected on properties within the subdivision.

It is expected that these improvements will occur in late 2018.

POLICY:

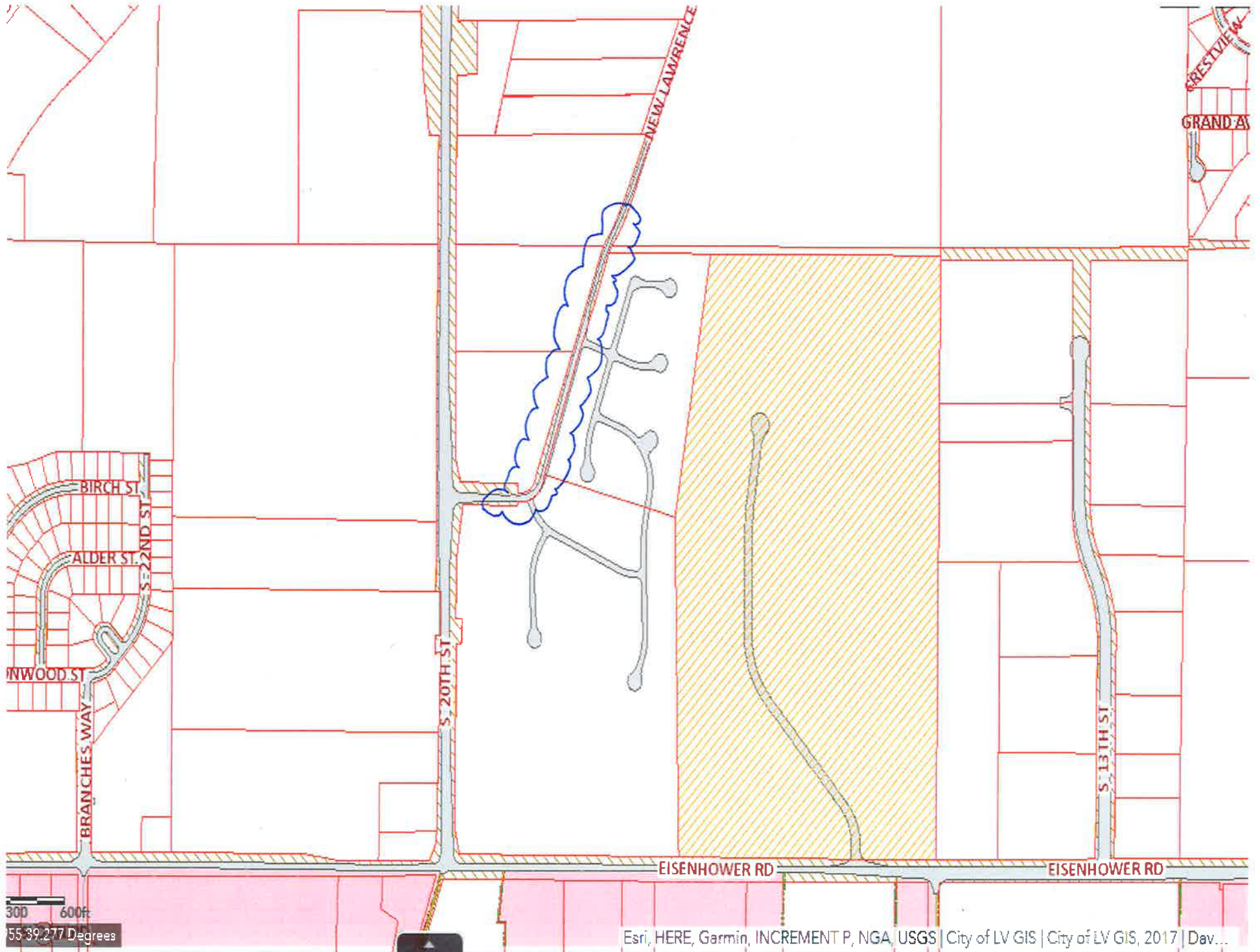
The City generally uses the Qualifications Base Selections process to select engineers for project design. Napier Engineering, LLC. has completed the design of numerous projects for the City.

RECOMMENDATION:

Staff recommends the City Commission approve the design contract submitted by Napier Engineering, LLC for the New Lawrence Road Improvement Project in an amount not to exceed \$35,300.

ATTACHMENTS:

Location Map
Contract



NAPIER ENGINEERING, LLC

207 South 5th Street
Leavenworth, KS 66048

Rev-December 20, 2017

City of Leavenworth
Attn: Paul Kramer, City Manager
City Hall
100 N. 5th Street
Leavenworth, KS 66048

RE: Street Improvements – New Lawrence Road, Leavenworth, KS

- **Engineering & Surveying**
- **Approximately 1,500 Linear Feet of Road Improvements**

Napier Engineering, LLC proposes to provide engineering services for the above referenced project as follows:

- | | |
|---|-----------------|
| 1. Topographic Survey | \$5,200 |
| <ul style="list-style-type: none">▪ Provide horizontal & vertical data for project▪ Locate all storm structures and pipes, w/ elevations, material, etc.▪ Locate sanitary sewer manholes, size of pipe and grades▪ Show topographic contours at 1' intervals.▪ Locate existing utilities (KS Dig Safe)▪ Plot property lines & existing easements as provided by Title Report | |
| 2. Legal & Easements | \$3,500 |
| <ul style="list-style-type: none">▪ Legal description of Right of Way on West Side (If not required-\$1,500 deduct)▪ Proposed Drainage & Temporary Construction Easements▪ Ownership & Encumbrances for adjacent properties (5 Properties @\$250 each) | |
| 3. Preliminary Design | \$1,500 |
| <ul style="list-style-type: none">▪ Meet w/ City to Determine Typical Cross-Section▪ Prepare Preliminary Profile for City Review▪ Prepare Preliminary Storm Design for City Review | |
| 4. Final Design | \$17,000 |
| <ul style="list-style-type: none">▪ Construction Documents<ul style="list-style-type: none">○ Typical Section○ Plan & Profile Sheets○ Grading Plan○ Cross Section Sheets○ Storm Sewer Design○ Temporary Access Plan for Residents○ Erosion Control Plans▪ KDHE NOI & SWPPP▪ Printing | |

5. Construction Phase (Hourly not to exceed)	\$3,500
▪ Assist City with Spec Book and Bidding Process	
▪ Attend Preconstruction Meeting	
▪ Answer questions from Client / GC as needed during bidding and construction	
▪ Respond to contractor’s request for information (RFI)	
▪ Review shop drawings and material submittals during construction for civil related work	
▪ Periodic Site Visits during construction of project	
▪ Final Walkthrough of project and prepare punch list w/ City for contractor	
6. Meetings (Hourly not to exceed)	\$1,000
▪ Meeting with City Officials & Land Owners	
7. Geotech (5 Borings along street)	\$3,600
<hr/>	
Total	\$35,300

This proposal for engineering services *does not* include:

- **Fees**
 - Permits, Plan Review, Application, Filing, etc.
- **Studies**
 - Geotechnical or Traffic Impact Study, etc.
- **Miscellaneous**
 - Certified Mailings, etc.

Items listed above shall be performed under a separate proposal, on an hourly basis or an agreed upon lumps sum amount.

This proposal includes one re-submittal of the plans with minor revisions in accordance with city review comments. Major revisions will be performed on an hourly basis.

All Hourly Rates are based upon the following schedule:

<u>Position</u>	<u>Standard Bill Rate</u>
Clerical	\$50.00
Construction Observer	\$95.00
Engineering Technician	\$75.00
Principal Engineer	\$150.00
Project Engineer	\$125.00
Project Manager	\$100.00
Registered Landscape Architect	\$90.00
Registered Land Surveyor	\$115.00
Design Engineer	\$80.00

Survey Crew

\$130.00

Billing shall be based on a Net 30 days from the date the invoice is sent from Napier Engineering.

Construction Phase Services and meetings shall be billed on an hourly basis. Any remainder at the conclusion of the contract will not be billed and shall be viewed as a deduct to the City of Leavenworth.

The construction drawings shall be provided in electronic form to the City of Leavenworth for an electronic record of the project.

Thank you for the opportunity to submit this proposal for your consideration. We will immediately proceed upon receipt of this signed proposal.

Respectfully Submitted,

Brett Napier, P.E.
Napier Engineering

Proposal Accepted By: City of Leavenworth

By: _____

Date: _____

Title: _____



Via email: brett@napiereng.com

December 20, 2017

Mr. Brett Napier, P.E.
Napier Engineering
207 South 5th Street
Leavenworth, Kansas 66048

Re: Proposal for Geotechnical Exploration
New Lawrence Road Improvements
Leavenworth, Kansas
Geotechnology Proposal No. P031291.01

Dear Mr. Napier:

In response to your request, Geotechnology, Inc. (Geotechnology) is pleased to submit this proposal to perform a geotechnical exploration for improvement of the New Lawrence Road at the intersection of S 20th Street in Leavenworth, Kansas. We have prepared this proposal based on our review of your December 12, 2017 request for proposal email, our local experience, and a site visit.

1.0 PROJECT INFORMATION

We understand the project will include the reconstruction of 1,400 lineal feet of New Lawrence Road near its intersection with S 20th Street. We understand that no significant changes to the horizontal alignments are planned. The new pavement thickness will meet the City standards, and a pavement section of 8 inches of asphalt underlain by 6 inches of compacted crushed rock, underlain in turn, by Tensar triaxial grid, is planned. The existing road is relatively flat, has two lanes and a speed limit of 30 miles per hour. Improvements to the road include widening to 31 feet and the addition of curb and gutter. We understand the City will provide traffic control during drilling operations.

2.0 SCOPE OF SERVICES

Geotechnology's proposed scope of services includes the following:

- Drill five borings, each to a depth of 5 feet. The borings will be located in the ditch or road. The borings will be located at intervals of approximately 350 feet. If auger refusal material is encountered before the planned depth the boring will be terminated. Rock coring is not planned.
- An auger will be used to penetrate the pavement and the existing pavement thickness will be determined by measuring the side of the borehole. Pavement coring is not planned.
- Soil sampling will be performed using split-spoon and Shelby tube sampling techniques at 2.5-foot intervals.



- Approximately locate the borings in the field by measuring distances from site features. Ground surface elevations will be determined using Google Earth.
- Contact Kansas One-Call for member companies to locate public utilities in proximity to the borings prior to drilling. Private utilities, if present, must be located by others prior to drilling. The locating of private utilities is excluded from our scope of services.
- Backfilling the borings with concrete.
- Laboratory testing will include the following: moisture content and dry unit weight determination, Atterberg limits tests.
- Prepare a report that summarizes the results of the borings, laboratory tests, and engineering analyses and provides geotechnical design and construction recommendations, including the following:
 - A discussion of our understanding of the project;
 - A boring location plan;
 - General geologic information, including depth of rock, if encountered;
 - Remediation of subgrade soils with volume change potential, if required;
 - Site grading considerations, including an evaluation of the suitability for reuse of the on-site soils; and
 - Pavement subgrade preparation and considerations

Geotechnology owns and operates drilling equipment, which reduces the client's risk by eliminating subcontract work. Our drilling staff are trained and focused on obtaining quality samples in a safe manner. Please consider this when comparing our proposal to firms that rely on subcontracted drilling services.

A copy of "Important Information about This Geotechnical Engineering Proposal" that is published by the Geoprofessional Business Association (GBA) is enclosed for your review.

Our scope of services assumes that each boring location is accessible to our drill rig. Drill rig access to boring locations in unpaved areas may leave ruts in the soil or grass. Our scope does not include restoration of ruts or other disturbances caused by the drill rig.

3.0 SCHEDULE AND FEE

Coordination of the boring locations and utility notifications will take four days to complete. Drilling will take one day, weather permitting. Laboratory testing will be completed approximately one week after completion of drilling. The geotechnical exploration report will be issued two weeks following completion of fieldwork. Results of the exploration can be discussed throughout the course of the project as tests and analyses are completed.

Our services are offered in accordance with the accompanying Terms for Geotechnology's Geotechnical Services (Terms). The cost of our services will be a lump sum fee of Three Thousand Six Hundred Dollars (\$3,600.00). This sum includes drilling, sampling, laboratory testing, boring log preparation, engineering analyses, and report preparation.



This proposal and fee estimate have been prepared using Geotechnology's standard fee schedule. Geotechnology reserves the right to revise this proposal and fee estimate, at any time, if any flow down and/or contract provisions are required by the Client or the Owner to conform with any local, state, or federal wage act requirements, including, but not limited to, the Davis-Bacon Act, as Amended, the McNamara-O'Hara Service Contract Act, etc., the required use of union labor, or for any required safety, security, vehicle, drug and alcohol testing, or for any third party payment fees, or for other requirements not specified in the Client's request for proposal or not defined in Geotechnology's scope of services.

4.0 ACCEPTANCE

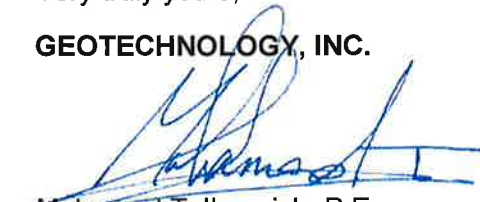
If this proposal, including the contractual terms, is acceptable please sign in the space provided on the following Terms and return one executed copy of the Terms and this proposal to our office as your authorization for us to proceed.

* * * * *

We appreciate the opportunity to submit this proposal for the referenced project and look forward to hearing from you soon. If you have a question or comment concerning this proposal, or if we may be of another service to you, please contact the undersigned.

Very truly yours,

GEOTECHNOLOGY, INC.



Mohamad T. Ibrawish, P.E.
Senior Engineer



Sheryl D. Gallagher, P.E., D.GE
Geotechnical Manager

MTI/SDG/MHM:mti/ljd

Enclosures: GBA's Important Information about This Geotechnical Engineering Proposal
Terms for Geotechnology's Geotechnical Services

Important Information about This

Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation*

is an offer to better manage your risk. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk “Catch-22” situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report’s recommendations when another firm performs the services needed to evaluate the recommendations’ adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project’s geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project *is not* a mold prevention consultant; *none of the services being offered have been designed or proposed for the purpose of mold prevention.*

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members’ misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by having your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members’ plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled “limitations,” many of these provisions indicate where geotechnical engineers’ responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal’s provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Rely on Your Geotechnical Engineer for Additional Assistance

Membership in the Geoprofessional Business Association (GBA) exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with a GBA-member geotechnical engineer for more information. Confirm a firm’s membership in GBA by contacting GBA directly or at its website.



8811 Colesville Road/Suite G106, Silver Spring, MD 20910
Telephone: 301/565-2733 Facsimile: 301/589-2017
e-mail: info@geoprofessional.org www.geoprofessional.org

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TERMS FOR GEOTECHNOLOGY'S GEOTECHNICAL SERVICES

1 - THE AGREEMENT

- a. This AGREEMENT is made by and between: **Geotechnology, Inc.**, hereinafter referred to as GEOTECHNOLOGY, and **Napier Engineering**, hereinafter referred to as CLIENT.
- b. The AGREEMENT between the parties consists of these TERMS, the attached PROPOSAL identified as Proposal No. **P031291.01**, dated **December 20, 2017**, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.
- c. This proposal is valid for 90 days from **December 20, 2017**.
- d. The technical pricing information contained in this PROPOSAL submitted by GEOTECHNOLOGY is to be considered confidential and proprietary and shall not be released or otherwise made available to any third party without the express written consent of GEOTECHNOLOGY.
- e. It is intended by the parties to this AGREEMENT that GEOTECHNOLOGY'S services in connection with the project shall not subject GEOTECHNOLOGY'S individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against GEOTECHNOLOGY, a Missouri corporation, and not against any of GEOTECHNOLOGY'S employees, officers or directors.

2 - STANDARD OF CARE

- a. CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by GEOTECHNOLOGY will be based solely on information available to GEOTECHNOLOGY. GEOTECHNOLOGY is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.
- b. GEOTECHNOLOGY offers different levels of services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. CLIENT has reviewed the scope of services and has determined that it does not need or want a greater level of service than that being provided.
- c. The standard of care for all professional engineering and related services performed under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. GEOTECHNOLOGY makes no warranties, express or implied, under this AGREEMENT or otherwise, in connection with any services performed or furnished by GEOTECHNOLOGY.

3 - SITE ACCESS AND SITE CONDITIONS

- a. CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for GEOTECHNOLOGY to perform the services set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted GEOTECHNOLOGY free access to the site. GEOTECHNOLOGY will take reasonable precautions to reduce damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.
- b. Unless indicated otherwise in the PROPOSAL, CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. GEOTECHNOLOGY will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against GEOTECHNOLOGY arising from damage done to subterranean structures and utilities not identified or accurately located.

4 - SAMPLES AND CUTTINGS

- a. GEOTECHNOLOGY will dispose of soil and rock samples ninety (90) days after submittal of the report covering those samples. Further storage or transfer of samples can be made at CLIENT'S expense upon CLIENT'S prior written request.
- b. Cuttings, rinse water, well development and other wastes will be left on site and are CLIENT'S responsibility to dispose unless specifically addressed in the PROPOSAL.
- c. CLIENT shall take custody of all monitoring wells, probe holes and borings installed by GEOTECHNOLOGY and shall take any and all necessary steps for the proper maintenance, repair or closure for such wells, probes, or borings at CLIENT'S expense.

5 - OBSERVATION

- a. CLIENT recognizes that unanticipated or changed conditions may be encountered during construction and, principally for this reason, CLIENT shall retain GEOTECHNOLOGY to observe construction. CLIENT understands that construction observation is conducted to reduce – not eliminate – the risk of problems arising during construction and that provision of the service does not create a warranty or guarantee of any type. In all cases, contractors shall retain responsibility for the quality and completeness of their work and for adhering to the plans, specifications, and recommendations on which their work is based. Should GEOTECHNOLOGY for any reason not provide construction observation during the implementation of GEOTECHNOLOGY'S plans, specifications, and recommendations, or should CLIENT restrict GEOTECHNOLOGY'S assignment of observation personnel, CLIENT shall, to the fullest extent permitted by law, waive any claim against GEOTECHNOLOGY, and indemnify, defend, and hold GEOTECHNOLOGY harmless from any claim or liability for injury or loss arising from field problems allegedly caused by findings, conclusions, recommendations, plans, or specifications developed by GEOTECHNOLOGY.

- b. GEOTECHNOLOGY shall not be required to sign any document, no matter by whom requested, that would result in GEOTECHNOLOGY having to certify, guarantee, or warrant the existence of conditions whose existence GEOTECHNOLOGY cannot ascertain. CLIENT agrees not to make resolution of any dispute with GEOTECHNOLOGY or payment of any amount due to GEOTECHNOLOGY in any way contingent upon GEOTECHNOLOGY signing any such document.
- c. The use of the word "certify" or "certification" by a registered professional engineer in the practice of professional engineering constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either express or implied. The definition and legal effect of any and all certifications shall be limited as stated herein.

6 - JOBSITE

- a. Unless indicated otherwise in the PROPOSAL, GEOTECHNOLOGY will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction or other field activities selected by any agent or agreement of CLIENT, or safety precautions and programs incident thereto. GEOTECHNOLOGY shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of GEOTECHNOLOGY or its employees or its subcontractors on a site shall imply that GEOTECHNOLOGY controls the operations of others, nor shall this be construed to be acceptance by GEOTECHNOLOGY of any responsibility for jobsite safety.
- b. CLIENT understands that GEOTECHNOLOGY'S services under this AGREEMENT are limited to geotechnical engineering and that GEOTECHNOLOGY shall have no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials. CLIENT shall be solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any hazardous materials located on or in the project site, or located during the performance of this AGREEMENT. The existence or discovery of unanticipated hazardous materials shall constitute a Changed Condition, and GEOTECHNOLOGY shall have the right to suspend its services in whole or in part if a mutually acceptable modification is not negotiated between GEOTECHNOLOGY and CLIENT.

7 - CHANGED CONDITIONS

- a. If, during the course of performance of this AGREEMENT, conditions or circumstances are discovered which were not contemplated by GEOTECHNOLOGY at the commencement of this AGREEMENT, GEOTECHNOLOGY shall notify CLIENT in writing of the newly discovered conditions or circumstances, and CLIENT and GEOTECHNOLOGY shall renegotiate, in good faith, the terms and conditions of this AGREEMENT.

8 - BILLING AND PAYMENT

- a. CLIENT will pay GEOTECHNOLOGY in accordance with the procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by GEOTECHNOLOGY, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify GEOTECHNOLOGY in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. The absence of written notification described above, shall constitute an unqualified acceptance of the invoice amount due and payable, and waiver by CLIENT of all claims with respect thereto.
- b. CLIENT recognizes that late payment of invoices results in extra expenses for GEOTECHNOLOGY. GEOTECHNOLOGY retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of GEOTECHNOLOGY'S invoices are not paid when due, GEOTECHNOLOGY reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this AGREEMENT until all past due amounts have been paid in full.
- c. If test results that indicate failure of a material to meet the intended specification require retesting of the material after additional work by parties responsible for that material, the cost of retesting will be invoiced to the CLIENT.
- d. GEOTECHNOLOGY may elect to adjust its rates under this AGREEMENT to account for changes in overhead rates and salary adjustments no sooner than one year from the date of this AGREEMENT, and no more often than once per year at the end of each subsequent year.

9 - TERMINATION

- a. This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. In the event of termination, GEOTECHNOLOGY will be paid for services performed prior to the date of termination plus reasonable termination expenses, including, but not limited to the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

10 - ALLOCATION OF RISK

10.1 LIMITATION OF LIABILITY

- a. GEOTECHNOLOGY and CLIENT have evaluated the risks and rewards associated with this project, including GEOTECHNOLOGY'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of GEOTECHNOLOGY to CLIENT and third parties granted reliance is limited to the greater of \$50,000 or GEOTECHNOLOGY'S fee, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of GEOTECHNOLOGY'S services or this agreement regardless of cause or causes. Such causes include, but are not limited to, GEOTECHNOLOGY'S negligence, errors, omissions, strict liability, statutory liability, negligent misrepresentation, breach of contract, breach of warranty, or other acts giving rise to liability based on contract, tort or statute. If CLIENT prefers to have higher limits of liability coverage, GEOTECHNOLOGY agrees, upon receipt of CLIENT'S written request at the time of accepting our PROPOSAL, to increase the limits of liability up to a maximum of \$1,000,000.00 at an additional cost of 5 percent of our total fee or \$1,000.00, whichever is greater.

- b. Neither party shall have any liability to the other party for loss of product, loss of profit, loss of use, or any other indirect, incidental, special or consequential damages incurred by the other party.

10.2 INDEMNIFICATION

- a. Subject to the provisions of the Limitation of Liability described in 10.1a. above, CLIENT and GEOTECHNOLOGY each agree to indemnify the other party and the other party's officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this AGREEMENT. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of CLIENT and GEOTECHNOLOGY, they shall be borne by each party in proportion to its negligence.
- b. CLIENT shall indemnify and hold harmless GEOTECHNOLOGY, its agents, subcontractors, directors, officers, and employees, from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including reasonable attorney's fees or other loss arising from damage to subterranean structures or utilities which were not adequately shown on plans furnished by CLIENT to GEOTECHNOLOGY in advance of our work or the discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any costs associated with possible reduction of the property's value.

11 - CONTINUING AGREEMENT

- a. The indemnity obligations and limitations of liabilities established throughout this AGREEMENT, regardless of paragraph number, shall survive the assignment, transfer, expiration or termination of this AGREEMENT.

12 -PREVAILING WAGE AND UNION MEMBERSHIP

- a. Unless CLIENT specifically informs GEOTECHNOLOGY in writing or it is specifically identified in our proposal that prevailing wage regulations or union membership are required for the Project and the Scope of Services identifies it as covered, CLIENT will reimburse, defend, indemnify and hold harmless GEOTECHNOLOGY from and against any liability resulting from a subsequent determination that prevailing wage regulations or union membership cover the Project, including all additional costs, fines and attorneys' fees.

13 -THIRD PARTY RELIANCE UPON REPORTS

- a. All Documents are prepared solely for use by CLIENT (and Owner, if applicable) and shall not be provided to any other person or entity without GEOTECHNOLOGY'S written consent. CLIENT shall defend, indemnify and hold harmless GEOTECHNOLOGY, its officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without GEOTECHNOLOGY'S written consent.

14 -NON-SOLICITATION OF EMPLOYEES

- a. CLIENT recognizes that GEOTECHNOLOGY, as a part of the services covered by this AGREEMENT, may provide one or more of its employees to work with members of CLIENT'S project staff or specifically on a CLIENT'S project. For purposes of this AGREEMENT, an employee of GEOTECHNOLOGY may be a permanent or temporary employee assigned to provide services to CLIENT. CLIENT hereby agrees that CLIENT will not hire, either directly or indirectly, or provide inducement to hire an employee of GEOTECHNOLOGY either as an employee of CLIENT or as an employee of a subcontractor or supplier to CLIENT, such suppliers to include providers of contract labor, during the term of this AGREEMENT and for a period of six months after the termination of this AGREEMENT. Any hiring or inducement to hire any GEOTECHNOLOGY employee during the term of this AGREEMENT and for a period of six months after termination of this AGREEMENT will be subject to a fee equal to 25% of the total fee for services generated by that employee during a nominal 12-month period.

15 -DISPUTES RESOLUTION

- a. All claims, disputes, and other matters in controversy between GEOTECHNOLOGY and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to mediation as a condition precedent to litigation. Notwithstanding any other provision of the Agreement, unless prohibited by law, GEOTECHNOLOGY shall have, in addition to any other right or option set forth herein, the right to proceed in creating a lien upon the building or other improvements and upon the real estate on which the building or improvements are situated for the work and labor done and the labor and materials furnished on and to said real estate and to enforce its mechanic's lien pursuant to all rights and remedies available to it under law.
- b. If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation, then:
 - (1) the claim will be brought and tried in St. Louis County, Missouri and CLIENT waives the right to move the action to any other county or judicial jurisdiction, and
 - (2) the prevailing party in any arbitration or litigation between GEOTECHNOLOGY and CLIENT shall be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, expert witness costs, and other claim related expenses. For purposes of this paragraph, a party prevails if (i) the judgment is equal to or in excess of the Plaintiff's last written demand for settlement, the Plaintiff shall also be entitled to recover its costs, expenses and reasonable attorney's fees from Defendant; (ii) the judgment is equal to or less than the Defendant's last written offer of settlement, the Defendant shall be entitled to recover its costs, expenses and reasonable attorney's fees from the Plaintiff; (iii) the judgment is in between the Plaintiff's last written demand for settlement and the Defendant's last offer of settlement, then neither party shall recover any of its costs, expenses or attorney's fees from the other.



16 - GOVERNING LAW AND SURVIVAL

- a. The law of the State of Missouri will govern the validity of these TERMS, their interpretation and performance.
- b. If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this AGREEMENT for any cause.

17 - SUCCESSORS AND ASSIGNS

- a. This AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its interests herein (unless assignee assumes in writing assignor's obligations hereunder) without the prior written consent of the other party, which consent will not be unreasonably withheld. No assignment shall operate to relieve the assignor of its obligations under the AGREEMENT.

18 - OTHER PROVISIONS

- a. It is agreed that this AGREEMENT is entered into by the parties for the sole benefit of the parties to the AGREEMENT, and that nothing in the AGREEMENT shall be construed to create a right or benefit for any third party.
- b. Neither party shall hold the other responsible for damages or delay in performance caused by weather and other acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
- c. The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

19 - FUTURE SERVICES

- a. All future services including, but not limited to, review of plans and specifications, construction monitoring, and post-construction work, rendered by GEOTECHNOLOGY at CLIENT'S request for the project described in the PROPOSAL shall be conducted under the terms of this AGREEMENT.


20 - SIGNATURES

- a. The parties have read the foregoing, including any attachments thereto, understand completely the terms, and willingly enter into this AGREEMENT that will become effective on the date signed below by CLIENT.

Napier Engineering

 (Signature)
 By: _____ (Print Name)
 Position: _____
 Date: _____

Geotechnology, Inc.


 (Signature)
 By: Sheryl Gallagher, P.E., D.GE (Print)
 Position: Geotechnical Manager
 Date: December 20, 2017

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
AMENDING CHAPTER 110, ARTICLE II, SECTION 110-40
MAIN TRAFFICWAYS**

FEBRUARY 27, 2018


Carla K. Williamson, CMC City Clerk


Paul Kramer, City Manager

ISSUE:

First Consideration Ordinance to amend the City Code of Ordinances, Section 110-40 Main Trafficways.

BACKGROUND:

In order to issue bonds for the New Lawrence Road project the City must designate New Lawrence Road as a trafficway. In reviewing the current trafficways in the City it was determined that other additions and revisions were needed.

ACTION:

Consensus by the Governing Body to place on first consideration.

ATTACHMENTS:

- Current language in Sec. 110-10
- Draft Ordinance

Chapter 110 - TRAFFIC AND VEHICLES

ARTICLE II. - LOCAL TRAFFIC REGULATIONS

Sec. 110-40. - Main trafficways.

The governing body has deemed it for the best interest of the city to declare the following streets main trafficways:

Second Street , from the north line of Poplar Street to the north side of Marion Street.

Fourth Street , from Metropolitan Avenue to Eisenhower Road.

Tenth Avenue , from the south side of Spruce Street to the north right-of-way of Eisenhower Road.

Tenth Street , from the south side of Spruce Street to the south side of Metropolitan Avenue.

20th Street Trafficway, from the south right-of-way line of Eisenhower Road where it intersects with New Lawrence Road, north to the north line of Section 15, Township 9 south, Range 22 east; thence in a generally northerly direction for a distance of approximately 1/3 of a mile; thence arcing in a northwesterly direction to a point crossing Leavenworth County Road 5, 100 feet southwest of Five Mile Creek; thence arcing northerly, intersecting Limit and Vilas Streets at approximately 19th Street; thence north and northwesterly, crossing LeCompton Street at a point immediately east of the Pine Ridge Subdivision; thence northerly in an irregular alignment to Spruce Street, continuing north along existing 20th street from Spruce Street to the north right-of-way line of Metropolitan Avenue; thence north and northeasterly to the Hancock Street gate of Fort Leavenworth.

Cherokee Street , from Broadway to Lawrence Avenue to include the intersection of Lawrence Avenue, Sherman Avenue and Cherokee.

Eisenhower Road, from the west line of Fourth Street to the west city limits.

Hughes Road , from the north line of Eisenhower Road to the south line of Limit Street.

Idaho Street , beginning from U.S. Highway 73/Fourth Street trafficway to the east side of the Frontage Road a distance of approximately 100 feet.

K5 Highway/Muncie Road , from the centerline of the intersection of Fourth Street to a point 450 feet west and 600 feet east.

Limit Street , from the east line of Fourth Street to the west line of Wilson Avenue.

Limit Street , from the east side of Shrine Park Road to the west side of 22nd Street.

Marion Street , from the east line of Fourth Street to the west line of Wilson Avenue.

Metropolitan Avenue , from the west abutment of Centennial Bridge to the west side of 22nd Street.

Ottawa Street , from the west line of Tenth Street to the east line of 20th Street.

Pennsylvania Street , from the west line of Broadway to the east line of Tenth Avenue.

Shawnee Street , from the west line of Tenth Street to the east line of 20th Street.

Shrine Park Road , from the north side of the right-of-way of Limit Street south to the center line of Eisenhower Road.

Spruce Street , from the east side of Third Street to the west city limits.

Vilas Street , from the east side of 18th Street to the west side of 22nd Street.

(Code 1978, § 35-20; Ord. No. 6952, § 1, 11-29-88; Ord. No. 7028, § 1, 9-11-90; Ord. No. 7081, § 1, 12-17-91; Ord. No. 7119, § 1, 2-9-93; Ord. No. 7186, § 1, 9-27-94; Ord. No. 7257, § 1, 3-12-96; Ord. No. 7306, § 1, 3-25-97)

State Law reference— Main trafficways, K.S.A. 12-685 et seq.

(Published in the Leavenworth Times on _____, 2018)

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE DECLARATION OF STREETS AS MAIN TRAFFICWAYS; AMENDING AND REPEALING EXISTING LEAVENWORTH MUNICIPAL CODE OF ORDINANCES SECTION 110-40— MAIN TRAFFICWAYS; AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

Section 1. That Chapter 110, Article II, Section 110-40 of the Municipal Code of Ordinances for the City of Leavenworth, Kansas, is hereby amended to read as follows:

SECTION 110-40. - Main trafficways.

The governing body has deemed it for the best interest of the city to declare the following streets main trafficways:

2nd Street, from the north line of Poplar Street to the north side of Marion Street.

4th Street, from Metropolitan Avenue to Eisenhower Road.

10th Avenue, from the south side of Spruce Street to the north right-of-way of Eisenhower Road.

10th Street, from the south side of Spruce Street to the south side of Metropolitan Avenue.

20th Street Trafficway, from south right-of-way line of Eisenhower Road northerly to the north line Metropolitan Avenue; thence northerly (also known as Santa Fe Trail, being maintained by the Kansas Department of Transportation and Leavenworth County) to the Hancock Avenue gate of Fort Leavenworth and thence northerly to north city limits.

Cherokee Street, from Broadway to Lawrence Avenue to include the intersection of Lawrence Avenue, Sherman Avenue and Cherokee.

Eisenhower Road, from the west line of 4th Street west to the west city limits, subject to the provisions of that certain agreement dated March 24, 2016, by and among the city, the City of Lansing, Kansas, and the Board of County Commissioners of Leavenworth, County, Kansas, related to Eisenhower Road and certain improvements thereto and the future maintenance thereof;

Hughes Road, from the north line of Eisenhower Road to the south line of Limit Street.

Idaho Street, beginning from 4th Street to the east side of the Frontage Road a distance of approximately 100 feet.

Limit Street, from west line of Wilson Avenue to the west side of 22nd Street.

Marion Street, from the east line of 4th Street to the west line of Wilson Avenue.

Metropolitan Avenue, from the west abutment of Centennial Bridge to the west side of 16th Street; and from west side of 16th Street to west side of 20th Street and Pawnee Street; and from west side of 20th Street west to west side of 22nd Street

Muncie Road, from 600 feet east of center of 4th Street west to 100 feet west of west line of New Lawrence Road.

New Lawrence Road, from 20th Street Trafficway east to the north line of the intersection of 14th Street and New Lawrence Road.

Ottawa Street, from the west line of 10th Street to the east line of 20th Street.

Pennsylvania Street, from the west line of Broadway to the east line of 10th Avenue.

Shawnee Street, from the west line of 10th Street to the east line of 20th Street.

Shrine Park Road, from the north side of the right-of-way of Limit Street south to the center line of Eisenhower Road.

Spruce Street, from the east side of 3rd Street to the west city limits.

Thornton Street, from west line of 4th Street to the East line of 10th Avenue.

Vilas Street, from the east side of 10th Avenue to the west side of 22nd Street.

Section 2. This Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its publication once in the official City newspaper.

PASSED AND APPROVED by the City Commission of the City of Leavenworth, Kansas, on _____, 2018.

Mark Preisinger, Mayor

ATTEST:

Carla K. Williamson, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

POLICY REPORT
FIRST CONSIDERATION ORDINANCE AMENDING CHAPTER 78
PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

FEBRUARY 27, 2018


Carla K. Williamson, CMC City Clerk


Paul Kramer, City Manager

ISSUE:

First Consideration Ordinance to amend the City Code of Ordinances - Chapter 78; Peddlers, Solicitors and Transient Merchants.

BACKGROUND:

At the October 17, 2017 and November 17, 2017 Study Sessions the City Commission reviewed the City Code of Ordinances Chapter 78 Peddlers and Solicitors. Staff recommended the following changes:

- Amended definitions to better define Peddlers vs Solicitors and include any other relevant definitions.
- Add a requirement for all Peddlers/Solicitors to provide a photograph which would be added to their license and required to be displayed at all times while soliciting.
- Require application for a Peddler/Solicitor to be submitted at least 2 business days prior to the days of soliciting to give staff sufficient time to process applications.
- Update application requirements.
- Chapter has nothing stating what happens if someone violates this section of the ordinance. Staff would recommend adding a section for violations.

The City Commission agreed to the recommended changes and added a change to the frequency of a transient merchant permit.

Previously not more than one license could be issued to a transient merchant during a six-month period of time. That language has been changed to no more than 2 per calendar year.

Staff prepared a draft ordinance for first consideration incorporating the changes along with revising the layout of the ordinance for easier readability and flow.

ACTION:

Consensus by the Governing Body to place on first consideration.

ATTACHMENTS:

- Ordinance Markup
- Draft Ordinance

Chapter 78 –PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

Article I – In General

Sec. 78-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means any person, whether a resident of this city or not, traveling from house to house, or from street to street traveling by foot or by any other means of conveyance, for the purpose of selling or soliciting for sale who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or services other than agricultural products produced or processed in this state: personal property of any nature and offering the same for sale.

Peddling as used in this chapter shall include all activities ordinarily performed by a peddler.

Person as used in this chapter shall mean any individual, firm, partnership, corporation, company, religious sect or denomination, society, organization or league and includes any trustee, director, member, partner, officer, receiver, assignee, employee, agent or other similar representative thereof.

Solicitor means any person, whether a resident of this city or not, traveling from house to house, or from street to street traveling by foot or by any other means of conveyance who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares or other personal property of any nature for the future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes upon private property, to request contribution of funds or anything of value.

Solicitation as used in this chapter shall include all activities ordinarily performed by a solicitor.

Transient merchant, itinerant merchant or itinerant vendor are defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, or public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer. A transient merchant is not a person who has a permanent

business presence in Leavenworth and conducts sales or activities similar as described herein on a temporary basis.

Sec. 78-2. ~~License~~ Permit and fees required.

~~No person shall engage in the activities as defined in section 78-1, within the corporate limits of the city without first obtaining a license as allowed and regulated herein. Any applicant for a license under this chapter shall file with the city clerk a sworn application on a form furnished by the city clerk, which shall give the following information:~~

- ~~(1) Name and date of birth of applicant.~~
- ~~(2) State sales tax number.~~
- ~~(3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents.~~
- ~~(4) Physical description of the applicant.~~
- ~~(5) Period of time for which the license is applied.~~
- ~~(6) Address of the applicant's present place of residence.~~
- ~~(7) A brief description of the nature of the business and the goods to be sold.~~
- ~~(8) Location and zoning of any structure, building or vehicle to be used for the activities defined herein.~~
- ~~(9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony conviction.~~

No person, Peddler, Solicitor or Transient Merchant, shall operate within the corporate limits of the City without having first obtained the required permits from the City Clerk. The fee for such permits shall be prescribed in Appendix F and are not prorated, refundable or transferable.

~~—Additional conditions. In no case may a transient merchant license be issued for use in or on a city owned property including rights-of-way, parks or open spaces or the community center. The governing body of the city may grant in specific cases a waiver of this prohibition.~~

Sec. 78-3. ~~Sec. 78-4.~~ Exclusions to the license permit requirement.

The provisions of this chapter shall not apply to:

- (1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- (2) Wholesale trade shows or conventions when conducted in conformance to the zoning ordinance;

- (3) Any general fair, auction, or bazaar sponsored by any church, religious, non-profit organization or a local permanent business;
- (4) Garage sales held on premises devoted to residential use having obtained the needed permits as allowed in Chapter 90 of the City Code of Ordinances;
- (5) Sales of agricultural goods raised or produced by the seller;
- (6) Solicitations, sales or distributions made by charitable, educational or religious organizations sponsored bazaars and sales, and concessions at school athletic events;
- (7) Sidewalk sales when conducted under the appropriate provisions of the City Code;
- (8) The sale of Christmas Trees;
- (9) Festivals, fairs and carnivals as ~~allow~~ allowed by the governing body on public property.

(10) Federal, State, County or City census takers or political candidates or their agents.

Sec. 78-4. Misrepresentation of goods or services.

It shall be unlawful for any peddler or solicitor, or transient merchant to make false or fraudulent statements concerning the quality or nature of the goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Sec. 78-5.

~~—Issuance of license. Upon determination of compliance with the requirements herein, the city clerk shall issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. A transient merchant license shall be valid for a period not to exceed five days. Not more than one license may be issued to any transient merchant during any six-month period of time. The city clerk shall keep a permanent record of all such licenses issued. The licensee shall carry the certificate at all times.~~

~~Sec. 78-6. Fees for license.~~

~~The city clerk shall collect a fee pursuant to Appendix F at the time of issuance. No license issued under the provisions of this chapter shall be used by any person, other than the one to whom it was issued. Any person engaged in activities as described herein shall exhibit their licenses at the request of any citizen.~~

~~Sec. 78-7. Revocation of license~~permit.

The city clerk City Clerk or Chief of Police may revoke any license permit issued under this chapter, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license permit.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.
- (3) Any violation of this chapter.
- (4) Conducting the business as defined herein in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the city. Notice of the revocation of a license shall be in writing to the applicant by the City Clerk and ~~the city clerk and~~ shall set forth the grounds of revocation.
- (5) Unauthorized use of the public right-of-way for sale or display of merchandise, or for display of an advertising sign.
- (6) Violation of a site plan requirement for an existing land use or violation of any applicable provisions of the zoning ordinance.

~~—Setbacks. Display of merchandise and parking of vehicles for the sale or display of merchandise shall be within an enclosed structure and subject to the building setback requirements of the zoning district in which any activity subject to the provisions of this chapter is being conducted.~~

~~Sec. 78-9. Signs.~~

~~Signs shall be limited to one sign per location, not to exceed nine square feet in total area, including lettering or designs painted on or attached to vehicles.~~

~~Sec. 78-8~~ 78-6. ~~Sec. 78-10.~~—Use of streets.

No peddler-, solicitor or Transient Merchant shall have any exclusive right to any location in on the public streets or right-of-ways, nor be permitted a stationary location in on the public street or right-of-way. No peddler-, solicitor or Transient Merchant shall be permitted to operate in any congested area where his or her operations might impede or inconvenience the public. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Sec. 78-7. - 78-17. Reserved

Article II Peddlers and Solicitors

Sec. 78-18. Peddler and Solicitor permit required.

No person shall engage in the activities of a Peddler or Solicitor as defined in section 78-1, within the corporate limits of the city, without first obtaining a permit as allowed and regulated

herein. Any applicant for a permit under this article shall file an application with the City Clerk. Application shall be accompanied by the fee set out in appendix F.

Application for a Peddler or Solicitor permit shall be submitted at least two (2) business days prior to the days of peddling or soliciting to process the application. Application fee is non-refundable and permit is non-transferable.

Application shall be made on a form furnished by the City Clerk, which shall provide the following information:

- (1) Name and date of birth of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.
- (3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (4) A copy of the applicant's government-issued photo identification
- (5) Period of time for which the permit is applied.
- (6) Address of the applicant's present place of residence.
- (7) A brief description of the nature of the business and the goods to be sold.
- (8) A description of the motor vehicle including make, model, year, color and tag number if a motor vehicle will be used.
- (9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony convictions, misdemeanor or ordinance violations involving force, threat of force, violence, theft, dishonesty, fraud, sexual misconduct or the violation of any laws regulating the act of soliciting or peddling with the past five years in this state or any other state or subdivision thereof or of the United States.
- (10) Two (2) 2" x 2" photographs of the applicant showing the head and shoulders of the applicant in a clear and distinguishing manner taken within sixty days prior to the date of filing the application.
- (11) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (12) A statement as to whether or not the applicant has ever had a peddler or solicitor permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.

(13) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times while peddling/soliciting.

Sec. 78-19. Issuance of Peddler or Solicitor permit

Upon determination of compliance with the requirements herein, the City Clerk shall issue a permit. Such permit shall contain the signature of the City Clerk or designee and city logo. Permit shall include the name of the licensee, the date of issuance, length of time the license shall be valid, and the nature of the business involved.

Peddlers and Solicitors shall be issued a badge which shall be worn by the permittee in such a way as to be conspicuous at all times while the permittee is peddling or soliciting in the City.

Sec. 78-11~~78-20~~. –Refusing to leave premises.

Any peddler or solicitor who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or agent, to leave the premises and not return to such premises, shall be deemed guilty of a misdemeanor.

Sec. 78-12~~78-21~~. –Entrance to premises restricted.

It shall be unlawful for any peddler or solicitor to enter upon any private premises when such premises is posted with a sign stating "No peddlers allowed" or "No solicitations allowed" or other words to such effect.

Sec. 78-13. ~~Misrepresentation of goods or services.~~

~~It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of the peddler's goods, wares, merchandise or services for the purpose of inducing another to purchase the same.~~

Sec. 78-14. ~~Sec. 78-22.~~ Hours of operation.

It shall be unlawful for any peddler or solicitor to engage in the business of peddling or soliciting within the city between the hours of one half-hour before sunset and 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

Sec. 78-23. - 78-38. Reserved

Article III Transient Merchants

Sec. 78-39 Transient Merchants permit required

No person shall engage in the activities of a Transient Merchant as defined in section 78-1, within the corporate limits of the city without first obtaining a permit as allowed and regulated herein. Any applicant for a permit under this Article shall file an application with the City Clerk.

Application shall be accompanied by the fee set out in appendix F. Application for Transient Merchant permit shall be submitted at least two (2) business days prior to process the application except as stated in Sec 78-40 (Additional conditions Transient Merchants use in or on City owned property). Application fee is non-refundable and license is non-transferable.

Application shall be made on a form furnished by the City Clerk, which shall provide the following information:

- (1) Name and address of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.
- (3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (4) A copy of the applicant's government-issued photo identification
- (5) Period of time for which the permit is applied.
- (6) Address of the applicant's present place of residence.
- (7) A brief description of the nature of the business and the goods to be sold.
- (8) A description of the motor vehicle including make, model, year, color and tag number if a motor vehicle will be used.
- (9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony convictions, misdemeanor or ordinance violations involving force, threat of force, violence, theft, dishonesty, fraud, sexual misconduct or the violation of any laws regulating Transient Merchants within the past five years in this state or any other state or subdivision thereof or of the United States.
- (10) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (11) A statement as to whether or not the applicant has ever had a Transient Merchant permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.

- (12) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times during the permit period.

Sec. 78-40. Additional conditions Transient Merchant use in or on City owned property.

In no case may a Transient Merchant permit be issued for use in or on a city owned property including rights-of-way, parks or open spaces or the community center. The Governing Body of the City may grant in specific cases a waiver of this prohibition.

Application and request for waiver shall be on a form provided by the City Clerk and submitted to the City Clerk at least 30 days prior to the date of the activity to be placed on the agenda of the next regular meeting of the Governing Body.

Application and request for waiver of use of City owned property shall include the following information:

- (1) Name and address of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.
- (3) Statement that any vendors associated with the event may be subject to Kansas sales tax and the City will inform the Kansas Department of Revenue (KDOR) of the event.
- (4) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (5) City Property requested to be used.
- (6) Period of time for which the permit is applied.
- (7) A brief description of the nature of the business and the goods to be sold.
- (8) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (9) A statement as to whether or not the applicant has ever had a Transient Merchant permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (10) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times during the permit period.

Sec. 78-41. Insurance Certificate Required for Transient Merchant use in or on City owned property.

Every Transient Merchant before obtaining any permit as provided herein for use in or on city property, shall cause a certificate of insurance to be posted with the city clerk of bodily injury liability in the amount of \$1,000,000.00 per incident, and such certificate shall also provide that the policy of insurance shall not be canceled, amended, changed or altered without giving the city clerk ten days' written notice thereof. Such certificate shall further provide for the indemnification of any person who shall incur damage claimed as a result of use of the public way under the permit issued under this division and hold the city harmless and indemnify the city for any claim for damages as a result of such use.

Sec. 78-42. Issuance of Transient Merchant Permit

A transient merchant permit shall be valid for a period not to exceed five days. Not more than two (2) permits may be issued to any transient merchant in a calendar year. The City Clerk shall keep a permanent record of all such licenses issued. The permittee shall display the permit at all times.

Upon determination of compliance with the requirements herein, the City Clerk shall issue a permit. Such permit shall contain the signature of the City Clerk or designee, city logo and shall show the name of the licensee, the date of issuance, place and length of time the license shall be operative, and the nature of the business involved.

Sec. 78-43. - Setbacks.

Display of merchandise and parking of vehicles for the sale or display of merchandise shall be within an enclosed structure and subject to the building setback requirements of the zoning district in which any activity subject to the provisions of this chapter is being conducted.

Sec. 78-44. - Signs.

Signs shall be limited to those allowed in the City Development Regulations and shall be subject to applicable sign fees.

Sec. 78-45. - 78-60. Reserved

(Summary Publish in the Leavenworth Times on _____ 2018)

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF LEAVENWORTH, KANSAS, CHAPTER 78 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

Section 1. That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 78 Peddlers and Solicitors, be amended to read as follows:

Chapter 78 –PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

Article I – In General

Sec. 78-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means any person, whether a resident of this City or not, traveling from house to house, or from street to street traveling by foot or by any other means of conveyance, who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale.

Peddling as used in this chapter shall include all activities ordinarily performed by a peddler.

Person as used in this chapter shall mean any individual, firm, partnership, corporation, company, religious sect or denomination, society, organization or league and includes any trustee, director, member, partner, officer, receiver, assignee, employee, agent or other similar representative thereof.

Solicitor means any person, whether a resident of this City or not, traveling from house to house, or from street to street traveling by foot or by any other means of conveyance who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares or other personal property of any nature for the future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes upon private property, to request contribution of funds or anything of value.

Solicitation as used in this chapter shall include all activities ordinarily performed by a solicitor.

Transient Merchant means as any person, whether as owner, agent, consignee or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, or public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the City, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer. A transient merchant is not a person who has a permanent business presence in Leavenworth and conducts sales or activities similar as described herein on a temporary basis.

Sec. 78-2. Permit and fees required.

No person, Peddler, Solicitor or Transient Merchant, shall operate within the corporate limits of the City without having first obtained the required permits from the City Clerk. The fee for such permits shall be prescribed in Appendix F and are not prorated, refundable or transferable.

Sec. 78-3. Exclusions to the permit requirement.

The provisions of this chapter shall not apply to:

- (1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- (2) Wholesale trade shows or conventions when conducted in conformance to the zoning ordinance;
- (3) Any general fair, auction, or bazaar sponsored by any church, religious, non-profit organization or a local permanent business;
- (4) Garage sales held on premises devoted to residential use having obtained the needed permits as allowed in Chapter 90 of the City Code of Ordinances;
- (5) Sales of agricultural goods raised or produced by the seller;
- (6) Solicitations, sales or distributions made by charitable, educational or religious organizations sponsored bazaars and sales, and concessions at school athletic events;
- (7) Sidewalk sales when conducted under the appropriate provisions of the City Code;
- (8) The sale of Christmas Trees;
- (9) Festivals, fairs and carnivals as allowed by the Governing Body on public property;
- (10) Federal, State, County or City census takers or political candidates or their agents.

Sec. 78-4. Misrepresentation of goods or services.

It shall be unlawful for any Peddler or Solicitor, or Transient Merchant to make false or fraudulent statements concerning the quality or nature of the goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Sec. 78-5. Revocation of permit.

The City Clerk or Chief of Police may revoke any permit issued under this chapter, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for permit.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.
- (3) Any violation of this chapter.
- (4) Conducting the business as defined herein in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the City. Notice of the revocation of a license shall be in writing to the applicant by the City Clerk and shall set forth the grounds of revocation.
- (5) Unauthorized use of the public right-of-way for sale or display of merchandise, or for display of an advertising sign.
- (6) Violation of a site plan requirement for an existing land use or violation of any applicable provisions of the zoning ordinance.

Sec. 78-6. Use of streets.

No Peddler, Solicitor or Transient Merchant shall have any exclusive right to any location on the public streets or right-of-ways, nor be permitted a stationary location on the public street or right-of-way. No Peddler, Solicitor or Transient Merchant shall be permitted to operate in any congested area where his or her operations might impede or inconvenience the public. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Sec. 78-7. - 78-17. Reserved.

Article II Peddlers and Solicitors

Sec. 78-18. Peddler and Solicitor permit required.

No person shall engage in the activities of a Peddler or Solicitor as defined in section 78-1, within the corporate limits of the city, without first obtaining a permit as allowed and regulated herein. Any applicant for a permit under this article shall file an application with the City Clerk. Application shall be accompanied by the fee set out in appendix F.

Application for a Peddler or Solicitor permit shall be submitted at least two (2) business days prior to the days of peddling or soliciting to process the application. Application fee is non-refundable and permit is non-transferable.

Application shall be made on a form furnished by the City Clerk, which shall provide the following information:

- (1) Name and date of birth of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.
- (3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (4) A copy of the applicant's government-issued photo identification
- (5) Period of time for which the permit is applied.
- (6) Address of the applicant's present place of residence.
- (7) A brief description of the nature of the business and the goods to be sold and/or services to be offered or provided.
- (8) A description of the motor vehicle including make, model, year, color and tag number if a motor vehicle will be used.
- (9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony convictions, misdemeanor or ordinance violations involving force, threat of force, violence, theft, dishonesty, fraud, sexual misconduct or the violation of any laws regulating the act of soliciting or peddling with the past five years in this state or any other state or subdivision thereof or of the United States.
- (10) Two (2) 2" x 2" photographs of the applicant showing the head and shoulders of the applicant in a clear and distinguishing manner taken within sixty days prior to the date of filing the application.
- (11) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (12) A statement as to whether or not the applicant has ever had a peddler or solicitor permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (13) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times while peddling/soliciting.

Sec. 78-19. Issuance of Peddler or Solicitor permit.

Upon determination of compliance with the requirements herein, the City Clerk shall issue a permit. Such permit shall contain the signature of the City Clerk or designee and city logo.

Permit shall include the name of the licensee, the date of issuance, length of time the license shall be valid, and the nature of the business involved.

Peddlers and Solicitors shall be issued a badge which shall be worn by the permittee in such a way as to be conspicuous at all times while the permittee is peddling or soliciting in the City.

Sec. 78-20. Refusing to leave premises.

Any Peddler or Solicitor who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or agent, to leave the premises and not return to such premises, shall be deemed guilty of a misdemeanor.

Sec. 78-21. Entrance to premises restricted.

It shall be unlawful for any Peddler or Solicitor to enter upon any private premises when such premises is posted with a sign stating "No peddlers allowed" or "No solicitations allowed" or other words to such effect.

Sec. 78-22. Hours of operation.

It shall be unlawful for any Peddler or Solicitor to engage in the business of peddling or soliciting within the City between the hours of one half-hour before sunset and 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

Sec. 78-23. - 78-38. Reserved.

Article III Transient Merchants

Sec. 78-39 Transient Merchant permit required.

No person shall engage in the activities of a Transient Merchant as defined in section 78-1, within the corporate limits of the City without first obtaining a permit as allowed and regulated herein. Any applicant for a permit under this Article shall file an application with the City Clerk.

Application shall be accompanied by the fee set out in appendix F. Application for Transient Merchant permit shall be submitted at least two (2) business days prior to process the application except as stated in Sec 78-40 (Additional conditions Transient Merchants use in or on City owned property). Application fee is non-refundable and license is non-transferable.

Application shall be made on a form furnished by the City Clerk, which shall provide the following information:

- (1) Name and address of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.

- (3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (4) A copy of the applicant's government-issued photo identification
- (5) Period of time for which the permit is applied.
- (6) Address of the applicant's present place of residence.
- (7) A brief description of the nature of the business and the goods to be sold.
- (8) A description of the motor vehicle including make, model, year, color and tag number if a motor vehicle will be used.
- (9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony convictions, misdemeanor or ordinance violations involving force, threat of force, violence, theft, dishonesty, fraud, sexual misconduct or the violation of any laws regulating Transient Merchants within the past five years in this state or any other state or subdivision thereof or of the United States.
- (10) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (11) A statement as to whether or not the applicant has ever had a Transient Merchant permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (12) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times during the permit period.

Sec. 78-40. Additional conditions Transient Merchant use in or on City owned property.

A Transient Merchant permit shall not be issued for use in or on a City owned property including rights-of-way, parks or open spaces or the Community Center; provided, that the Governing Body of the City may grant in specific cases a waiver of this general prohibition.

Application and request for waiver shall be on a form provided by the City Clerk and submitted to the City Clerk at least 30 days prior to the date of the activity to be placed on the agenda of the next regular meeting of the Governing Body.

Application and request for waiver of use of City owned property shall include the following information:

- (1) Name and address of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.

- (3) Statement that any vendors associated with the event may be subject to Kansas sales tax and the City will inform the Kansas Department of Revenue (KDOR) of the event.
- (4) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (5) City property requested to be used.
- (6) Period of time for which the permit is applied.
- (7) A brief description of the nature of the business and the goods to be sold and/or services to be offered or provided.
- (8) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (9) A statement as to whether or not the applicant has ever had a Transient Merchant permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (10) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times during the permit period.

Sec. 78-41. Insurance Certificate Required for Transient Merchant use in or on City owned property.

Every Transient Merchant before obtaining any permit as provided herein for use in or on city property, shall cause a certificate of insurance to be posted with the City Clerk of bodily injury liability in the amount of \$1,000,000.00 per incident, and such certificate shall also provide that the policy of insurance shall not be canceled, amended, changed or altered without giving the City Clerk ten days' written notice thereof. Such certificate shall further provide for the indemnification of any person who shall incur damage claimed as a result of use of the public way under the permit issued under this division and hold the City harmless and indemnify the City for any claim for damages as a result of such use.

Sec. 78-42. Issuance of Transient Merchant permit.

A Transient Merchant permit shall be valid for a period not to exceed five days. Not more than two (2) permits may be issued to any Transient Merchant in a calendar year. The City Clerk shall keep a permanent record of all such licenses issued. The permittee shall display the permit at all times.

Upon determination of compliance with the requirements herein, the City Clerk shall issue a permit. Such permit shall contain the signature of the City Clerk or designee, city logo and shall show the name of the licensee, the date of issuance, place and length of time the license shall be operative, and the nature of the business involved.

Sec. 78-43. - Setbacks.

Display of merchandise and parking of vehicles for the sale or display of merchandise shall be within an enclosed structure and subject to the building setback requirements of the zoning district in which any activity subject to the provisions of this chapter is being conducted.

Sec. 78-44. - Signs.

Signs shall be limited to those allowed in the City Development Regulations and shall be subject to applicable sign fees.

Sec. 78-45. - 78-60. Reserved.

Section 2. That all sections of Chapter 78 amended herein and all other sections in conflict herewith are hereby repealed.

Section 3. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City newspaper.

Passed by the Leavenworth City Commission on this ____th day of _____, 2018.

Mark Preisinger, Mayor

{Seal}

ATTEST:

Carla K. Williamson, City Clerk, CMC

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney