



# City of Leavenworth

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**City Council**  
Robert C. Eaton - *Mayor*  
Peter D. DeVries  
Tibor Lak - *Mayor Pro-Tem*  
Michael Molohon  
Elmer Larsen  
Robert Francis  
Cheri Kelley Farivar  
Larry Meyer  
Joel Walinski - *City Administrator*

## LEAVENWORTH CITY COUNCIL AGENDA

Leavenworth City Hall - Council Chambers  
April 26, 2011 6:00 p.m.

### Call to Order

### Flag Salute

### Roll Call

#### Council Committees -4<sup>th</sup> Tuesday

Econ. Dev. 4:00 Finance 5:00

### Consent Agenda

1. Approval of Agenda
2. Approval of April 12, 2011 Study Session Minutes
3. Approval of April 12, 2011 Regular Meeting Minutes
4. Claims \$69,995.95

### Public Safety Reports – Bruce Long

### Councilmember and Committee Reports

### Mayor/Administration Reports

### Resolutions, Ordinances, Orders and Other Business

- |        |  |
|--------|--|
| Info   | 1. MEND Project Update – Brian Thompson-Royer  |
| Action | 2. Der Hinterhof Special Use Permit – Joel Walinski  |
| Action | 3. Resolution 4-2011 Rate & Fees Amended – Joel Walinski                                       |
| Action | 4. Resolution 5-2011 Electric Charging Station Grant Application – Connie Krueger              |
| Action | 5. Resolution 6-2011 City Sponsored Special Events – Joel Walinski                             |
| Action | 6. Motion to Set Public Hearing for May 10 at 6:15 p.m. to Update the City TIP – Joel Walinski |
| Info   | 7. Attorney Discussion – Joel Walinski   |

### Information Items for Future Consideration

1. Reminder – Council/TBD Budget Retreat 4/27 at the Enzian – 4<sup>th</sup> Floor - Danube Room

### Comments from the Public on Items Not on the Agenda

### Adjournment

**(Next Ordinance is 1393 - Next Resolution is 7-2011)**

## SUPPLEMENTAL COUNCIL AGENDA

### 1. MEND Project Update

Upper Valley MEND Director Brian Thompson-Royer will present the Council with an update on the status of the Chumstick Housing Project. Mr. Thompson-Royer has provided information that is located in section 1 of the packet. The city staff has provided additional information that Brian will be discussing pertaining to the current status of the City's House Bill 2060 funds and the authorized use of these funds for affordable housing projects and low-income persons. Also included is a copy of the Interlocal Agreement with the City and Chelan County pertaining to these funds.

### 2. Der Hinterhof Special Use Permit

The City Council is being asked to give consideration of a Special Use Permit (SUP) applied for by Mr. Stephen Demarest and Mrs. Deborah Demarest for amplified music at the Der Hinterhof. The SUP would allow for live amplified outdoor music on site and exempting the amplified music from the 70dBA sound level limitation. The sound level exemption requested would be to limit noise and sound to 90dBA until 10 PM (11:00 PM on holiday and Festival Saturdays). The dates requested are the Saturdays throughout the summer months May through October with a total of 28 days over 2 consecutive 90-day periods. The application for the SUP is included, as well as a draft SUP and a copy of LMC 9.33 for the council's review. This item was reviewed at the April 12 Council Study Session and tabled at the April 12, 2011 Council Meeting with direction given to staff to develop alternative language for Item #5 of the SUP.

The City Attorney and Administrator have developed the following language to address the concerns identified by the Council on April 12, 2011 for Item #5 of the SUP:

*In the event a sound measurement is taken in accordance with LMC 9.33 which exceeds the sound levels authorized by this permit, the City shall have the right to revoke this permit and issue a Notice of civil Noise Infraction pursuant to LMC 9.33.050 and subject to the civil remedies and civil penalties authorized in LMC 21.13.080*

LMC 9.33.050 stipulates violation and penalties. LMC 21.13.080 provides direction on the process and recourse of actions for those issued a Civil Noise Infraction.

City staff has also had ongoing discussions with the Chelan County Sheriff's Department regarding the enforcement of the LMC. At this time the Sheriff's Department equipment has not been certified in 2011 and therefore cannot be used for enforcement. The options open to the City for enforcement of the ordinance would be: (1) to request the Sheriff's Department to certify their equipment with the City possibly assist in the cost sharing of this effort. The estimated cost is \$400 for each sound measuring unit. (2) to direct City Staff to have a code enforcement person trained and to acquire a sound measurement unit that can be certified for enforcement purposes, or (3) to direct staff to contract with a private firm to be available and do certified sound monitoring in accordance with LMC 9.33.

Another option which does not direct efforts at enforcement but rather focus the effort on compliance would be to work with the Sheriff's Department and City Code Enforcement personnel to have sound level readings monitored and/or to require the applicant to provide hourly average dBA level readings during those evening hours in operation and provide those back to the City for review on a weekly basis. The two efforts could provide some level of assurance that efforts are being made by the applicant to be compliant with the SUP.

A third option to consider would be for the City Council to schedule a follow-up review of the SUP if they do approve the SUP; the follow-up could be scheduled in July. This allows for the Council to review the dBa readings from May and June events, provides an opportunity for those who have concerns about the SUP to have their concerns heard, and the new ordinance review by the DOE will be completed by this time.

The LMC 9.33.040 Exemptions allows for the City Council to approve with conditions or deny special use permits at its sole discretion. To approve the SUP the Council must consider the conditions and provisions for granting a special use permit stipulated in LMC 9.33.040 (I) (Items 1 – 5 below). The Council's decision of approval or denial of the SUP must be based on whether the request meets the following criteria:

1. The special use permit is necessary; and
2. There exists a special circumstance relative to size, topography, location or surroundings of the subject property; and
3. Requesting property owner or agency has provided a plan for mitigation of noise to be implemented on the approval of the special use permit; and
4. That the granting of the special use permit will not be materially detrimental to the comfort, health, or safety of the public; and
5. That the special use permit is limited to not more than 14 days in any 90 day period.

Council Options for this evening are:

- a) *Motion to approve the Special Use Permit as written.*
- b) *Motion to approve the Special Use Permit with the following changes to the provided SUP:*

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- c) *Motion to deny the Special Use Permit requested.*

The new noise ordinance LMC 9.33 was approved March 8, 2011 and is effective pending the review by the Department of Ecology (DOE). The DOE review is a requirement of WAC 173-60-110(2) because the noise ordinance does differ from those adopted by the DOE. The DOE must review the ordinance with 90 days.

Rebeca Wadkins, organizer for the Leavenworth Ale-Fest that was held last weekend, has provided the City with information on decibel readings from the event and is provided as additional information to the Council.

### 3. Resolution 4-2011 Rate & Fees Amended

The City Council is being asked to consider approval of Resolution 4-2011 Rate & Fees Amendments. The fees being considered for amendment are:

- Confirmation of the direction provided by the City Council on March 22, 2011 to amend the Pre-Application Fees on Commercial Projects.
- Approval of the 2011 Outdoor Pool Fees as recommended by the Park and Recreation Service Area (PRSA). The PRSA will be meeting Monday April 25, 2011 to review and provide a recommendation on the 2011 fees. The resolution at this time includes the staff recommended changes to the fee structure.
- Approval of amending the Garbage Fees to include fees for a 96 tote container for commercial accounts.

- Approval of a change to the Water Meter Charges. These changes would remove the higher water meter fee for homes located outside of City limits. Buy in charges for homes located outside the City limits would remain in place and will be reviewed as part of the utility rate study. The cost of the purchase of the water meter by the City whether inside or outside the City is the same and this change in the fee structure reflects that cost.

The Resolution is included under tab #3 for your review.

#### 4. Resolution 5-2011 Electric Charging Station Grant Application

The City Council is being asked to approve Resolution 5-2011 which acknowledges the City Council support of the Electric Charging Station Grant Application. The City has worked in partnership with Chelan County Public Utilities District (PUD) in developing the proposal for a location of a level 3 electric vehicle fast charging station in response to requests by the Washington State Department of Transportation (WSDOT). The City initially identified several sites and requested the PUD to provide an analysis of sites based on electrical infrastructure improvements that maybe necessary. The City staff also reviewed the accessory elements that would be of benefit to the user: WiFi availability, public restrooms, public safety, and proximity to downtown or park space. Using this criteria and the cost analysis of the PUD, the preferred location is the parking lot located at City Hall. A copy of the grant application and resolution is provided for your review. A site plan is currently under development and the Council will have an opportunity to review this should Leavenworth be selected for a level three charging station.

#### 5. Resolution 6-2011 City Sanctioned Special Events

The City Council is being asked to officially sanction several of the upcoming community events as officially sanctioned parades and other public events under LMC 9.33 Public Disturbance Noise Ordinance for 2011. These events would then be exempt from the noise limitations under LMC 9.33. This is a necessary procedural step to help begin to define officially sanctioned events and special events.

The criteria used for officially sanctioned public events would be the following (all four (4) requirements must be met):

1. The event has a long standing history of occurrence, and
2. The main event is open to the public at no cost, and
3. The primary focus of the event takes place on City owned property; Right of Way or park property, and
4. The City has made a significant commitment of resources to the success of the event.

Using the initial review, three current festivals or celebrations meet all requirements: MaiFest, Autumn Leaf Festival and Christmas Lighting Ceremonies. The Council will be asked to establish the officially sanctioned events on an annual basis by resolution. A draft resolution will be provided prior to the council meeting.

#### 6. Motion to Set Public Hearing for May 10 at 6:15 p.m. to Update the City TIP

Annually each year the City readopts the Six-Year Transportation Improvement Plan (TIP) in June/July. Due to the application and award of funding from the Chelan-Douglas STP Grant process the City will need to update the plan immediately. This motion will set the required public hearing for the next Council meeting and allow for adoption of a new resolution.

## 7. Attorney Discussion

This item will be a discussion item lead by Mayor Eaton outlining the process the Mayor will be using to make an appointment of a new City Attorney which is then presented to the Council for confirmation. At the April 12, 2011 Council Meeting, current City Attorney Mr. Terry McCauley provided his recommendation on the process and firm the City should consider for the City Attorney position. Mr. McCauley recommended the firm of Weed, Graafstra, and Benson, Inc., P.S. located in Snohomish WA. Mr. Thom Graafstra would be the individual designated as the Leavenworth City Attorney. The firm focuses its practice on providing legal counsel to small to medium size cities and government agencies. The firm also is very cost conscious with their clientele. Included is some additional information: Law Firm Qualifications and requested references about and a memorandum on “Ways to Reduce Legal Cost and Fees”.