

TITLE 10

LAND USE PLANNING AND ZONING

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Chapter 10.01

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10.01.010 Terms. In accordance with Indiana Code 36-7-4-218 all four year terms for the Advisory Plan Commission (APC) shall end on the first Monday of January. (Ord. 2013-6, July 8, 2013)

Chapter 10.02

BOARD OF ZONING APPEALS

Sections:

10.01.010 Terms

10.02.010 Terms. In accordance with Indiana Code 36-7-4-906 all four year terms for the Board of Zoning Appeals (BZA) shall end on the first Monday of January. (Ord. 2013-6, July 8, 2013)

Chapter 10.04

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10.04.001 Public Meeting. The Advisory Plan Commission of Leavenworth, Indiana, did on September 4, 2007 hold a legally advertised public meeting to consider adoption of the attached Comprehensive Plan (Exhibit A) for the town. (Res. 2007-1, Whereas, Sept. 10, 2007)

10.04.002 Comments. The Plan Commission did consider said Comprehensive Plan until all comments and objections were heard. (Res. 2007-1, Whereas, Sept. 10, 2007)

10.04.003 Indiana Code Compliance. The Plan Commission found that the plan meets the requirements of Indiana Code 36-7-4-500, and that the adoption of this plan is found to be in the best interest of Leavenworth, Indiana. (Res. 2007-1, Whereas, Sept. 10, 2007)

10.04.004 Town's Best Interest. The Town Council finds that it is in the best interest of the Town to adopt said plan. (Res. 2007-1, Whereas, Sept. 10, 2007)

10.04.010 Adoption of Comprehensive Plan. The Town Council of Leavenworth, Indiana, hereby adopts Exhibit A, attached and made a part hereof, as the Comprehensive Plan of the Town of Leavenworth, Indiana. (Res. 2007-1, Sept. 10, 2007)

Chapter 10.10

APPLYING FOR FLOOD INSURANCE

Sections:

- 10.10.010 Assurance to enforce the National Flood Insurance Program Regulations**
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10.10.010 Assurance to enforce the National Flood Insurance Program Regulations.

The Town of Leavenworth assures the Federal Insurance Administration that it will enact as necessary, and maintain in force in those areas having flood, mudslide (i.e., mudflow), or flood-related erosion hazards, adequate land use and control measures with effective enforcement provisions consistent with the criteria set forth in Section 1910 of the National Flood Insurance Program Regulations. (Ord. 2005-3, S10.10.010, Jan. 10, 2005) (Res. 1983-1, S1, Feb. 17, 1983)

10.10.020 Enforcing the National Flood Insurance Program Regulations. The Town of Leavenworth Planning Commission is vested with the responsibility, authority, and means to:

- (1) Assist the Zoning Administrator, at his/her request, in the determination of the limits of the area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards.
- (2) Provide such information as the Zoning Administrator may request concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas.
- (3) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow), or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards.
- (4) Submit on the anniversary date (February 17, 1983) of Leavenworth's initial eligibility an annual report to the Zoning Administrator, on the progress made during the past year within the community in the development and implementation of flood plain management measures.

- (5) Upon occurrence, notify the Zoning Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that all Flood Hazard Boundary Maps and Flood Insurance Rate Maps accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority. (Ord. 2005-3, S10.10.020, Jan. 10, 2005) (Res. 1983-1, S2, Feb. 17, 1983)

10.10.030 Clerk-Treasurer to assist public with flood hazard information. Appoints Leavenworth Clerk-Treasurer to maintain for public inspection and to furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a Flood Hazard Boundary Map or Flood Insurance Rate Map, any certificates of flood-proofing, and information on the elevation (in relation to mean sea level) of the level of the lowest habitable floor (including basement if habitable) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed the elevation (in relation to mean sea level) to which the structure was floodproofed. (Res. 1983-1, S3, Feb. 17, 1983)

10.10.040 Town agrees to take official action as necessary to carry out the National Flood Insurance Program objectives. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the program. (Res. 1983-1, S4, Feb. 17, 1983)

Chapter 10.12

FLOOD HAZARD ZONING ORDINANCE

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10.12.010 Statutory Authorization. The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Town Council of the Town of Leavenworth does hereby adopt the following floodplain management regulations. (Ord. 2014-2, Article 1, SA, June 9, 2014) (Ord. 2000-3, S1, Apr. 10, 2000) (Ord. 1995-4, S1, Sept. 12, 1995)

10.12.020 Findings of Fact.

- (1) The flood hazard areas of the Town of Leavenworth are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages. (Ord. 2014-2, Article 1, SB, June 9, 2014)

10.12.030 Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage.
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- (6) Make federally subsidized flood insurance available for structures and their contents in the Town by fulfilling the requirements of the National Flood Insurance Program. (Ord. 2014-2, Article 1, SC, June 9, 2014) (Ord. 2005-3, S10.12.020, Jan 10, 2005) (Ord. 2000-3, S2, Apr. 10, 2000) (Ord. 1995-4, S2, Sept 12, 1995)

10.12.040 Objectives. The objectives of this ordinance are:

- (1) To protect human life and health.
- (2) To minimize expenditure of public money for costly flood control projects.

- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) To minimize prolonged business interruptions.
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas. (Ord. 2014-2, Article 1, SD, June 9, 2014)

10.12.200 Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

- (1) **A zone** means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:
 - A. Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.
 - B. Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)
 - C. Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.
 - D. Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.
 - E. Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.
 - F. Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon

completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

- (2) **Accessory structure** (appurtenant structure) means a structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.
- (3) **Addition** (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.
- (4) **Appeal** means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.
- (5) **Area of shallow flooding** means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (6) **Base Flood** means the flood having a one percent chance of being equaled or exceeded in any given year.
- (7) **Base Flood Elevation (BFE)** means the elevation of the one-percent annual chance flood.
- (8) **Basement** means that portion of a structure having its floor sub-grade (below ground level) on all sides.
- (9) **Boundary River** means the part of the Ohio River that forms the boundary between the Kentucky and Indiana.
- (10) **Boundary River Floodway** means the floodway of a boundary river.
- (11) **Building** - see "Structure."
- (12) **Community** means a political entity that has the authority to adopt and

enforce floodplain ordinances for the area under its jurisdiction.

- (13) **Community Rating System (CRS)** means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.
- (14) **Critical facility** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.
- (15) **Development** means any man-made change to improved or unimproved real estate including but not limited to:
- A. construction, reconstruction, or placement of a structure or any addition to a structure;
 - B. installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
 - C. installing utilities, erection of walls and fences, construction of roads, or similar projects;
 - D. construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
 - E. mining, dredging, filling, grading, excavation, or drilling operations;
 - F. construction and/or reconstruction of bridges or culverts;
 - G. storage of materials; or
 - H. any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing, resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

- (16) **Elevated structure** means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation

perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

- (17) **Elevation Certificate** is a certified statement that verifies a structure's elevation information.
- (18) **Emergency Program** means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.
- (19) **Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.
- (20) **Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- (21) **FEMA** means the Federal Emergency Management Agency.
- (22) **Flood** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.
- (23) **Flood Boundary and Floodway Map (FBFM)** means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.
- (24) **Flood Insurance Rate Map (FIRM)** means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
- (25) **Flood Insurance Study (FIS)** is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.
- (26) **Flood Prone Area** means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Flood")
- (27) **Flood Protection Grade (FPG)** is the elevation of the regulatory flood plus

two feet at any given location in the SFHA. (see "Freeboard")

- (28) **Floodplain** means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.
- (29) **Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
- (30) **Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.
- (31) **Floodproofing (dry floodproofing)** is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.
- (32) **Floodproofing certificate** is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.
- (33) **Floodway** is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.
- (34) **Freeboard** means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.
- (35) **Fringe** is those portions of the floodplain lying outside the floodway.

- (36) **Hardship** (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.
- (37) **Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.
- (38) **Historic structures** means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
- (39) **Increased Cost of Compliance (ICC)** means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.
- (40) **Letter of Final Determination (LFD)** means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.
- (41) **Letter of Map Change (LOMC)** is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

Letter of Map Amendment (LOMA) means an amendment by letter to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes

flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

(42) **Lowest adjacent grade** means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

(43) **Lowest floor** means the lowest elevation described among the following:

- A. The top of the lowest level of the structure.
- B. The top of the basement floor.
- C. The top of the garage floor, if the garage is the lowest level of the structure.
- D. The top of the first floor of a structure elevated on pilings or pillars.
- E. The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - 1. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;
 - 2. the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
 - 3. such enclosed space shall be usable solely for the parking of vehicles and building access.

(44) **Manufactured home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

- (45) **Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- (46) **Market value** means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.
- (47) **Mitigation** means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.
- (48) **National Flood Insurance Program (NFIP)** is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.
- (49) **National Geodetic Vertical Datum (NGVD) of 1929** as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.
- (50) **New construction** means any structure for which the "start of construction" commenced after the effective date of the community's first floodplain ordinance.
- (51) **New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.
- (52) **Non-boundary river floodway** means the floodway of any river or stream other than a boundary river.
- (53) **North American Vertical Datum of 1988 (NAVD 88)** as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.
- (54) **Obstruction** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any

watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

- (55) **One-percent annual chance flood** is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory Flood".
- (56) **Physical Map Revision (PMR)** is an official republication of a community's FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.
- (57) **Public safety and nuisance** means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.
- (58) **Recreational vehicle** means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.
- (59) **Regular program** means the phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.
- (60) **Regulatory flood** means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood location is as defined in 10.12.310 of this chapter and Article 3 (B) of the Ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".
- (61) **Repetitive loss** means flood-related damages sustained by a structure on two separate occasions during a 10- year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred
- (62) **Section 1316** is that section of the National Flood Insurance Act of 1968, as

amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

- (63) **Special Flood Hazard Area (SFHA)** means those lands within the jurisdiction of the Town subject to inundation by the regulatory flood. The SFHAs of the Town of Leavenworth are generally identified as such on the Crawford County, Indiana and Incorporated Areas Flood Insurance Rate Map dated July 16, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1-A30, AH, AR, A99, or AO).
- (64) **Start of construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (65) **Structure** means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.
- (66) **Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (67) **Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have

incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

- (68) **Suspension** means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.
- (69) **Variance** is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.
- (70) **Violation** means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.
- (71) **Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
- (72) **X zone** means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMS) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.
- (73) **Zone** means a geographical area shown on a FIRM that reflects the severity or type of flooding in the area.
- (74) **Zone A** (see definition for A zone)
- (75) **Zone B, C, and X** means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.) (Ord. 2014-2, Article 2, June 9, 2014) (Ord. 2005-3, S10.12.030, Jan 10, 2005) (Ord. 2000-3, S3, Apr.10, 2000) (Ord. 1995-4, S3, Sept. 12, 1995)

General Provisions.

10.12.300 Lands to Which This Ordinance Applies. This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of the Town of Leavenworth. (Ord. 2014-2, Article 3, SA, June 9, 2014)

10.12.310 Basis for Establishing Regulatory Flood Data. This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below.

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the Town of Leavenworth shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Crawford County, Indiana and Incorporated Areas and the corresponding Flood Insurance Rate Map dated July 16, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.
- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the Town of Leavenworth, delineated as an "A Zone" on the Crawford County, Indiana and Incorporated Areas Flood Insurance Rate Map dated July 16, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.
- (4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA. (Ord. 2014-2, Article, 3, SB, June 9, 2014) (Ord. 2005-3, S10.12.050, Jan 10, 2005) (Ord. 2000-3, S5, Apr. 10, 2000) (Ord. 1995-4, S5, Sept. 12, 1995)

10.12.320 Establishment of Floodplain Development Permit. A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance

prior to the commencement of any development activities in areas of special flood hazard. (Ord. 2014-2, Article 3, SC, June 9, 2014)

10.12.330 Compliance. No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations. (Ord. 2014-2, Article 3, SD, June 9, 2014)

10.12.340 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2014-2, Article 3, SE, June 9, 2014)

10.12.350 Discrepancy between Mapped Floodplain and Actual Ground Elevations.

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.
- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA. (Ord. 2014-2, Article 3, SF, June 9, 2014)

10.12.360 Interpretation. In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 2014-2, Article 3, SG, June 9, 2014)

10.12.370 Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the Town of Leavenworth, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder. (Ord. 2014-2, Article 3, SH, June 9, 2014)

10.12.380 Penalties for Violation. Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and shall be punishable by a fine not exceeding \$50.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Floodplain Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the Town from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible. (Ord. 2014-2, Article 3, SI, June 9, 2014)

Administration.

10.12.400 Designation of Administrator. The Town Council of the Town of Leavenworth hereby appoints the Zoning Administrator to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator. (Ord. 2014-2, Article 4, SA, June 9, 2014) (Ord. 2005-3, S10.12.040, Jan. 10, 2005) (Ord. 2000-3, S4, Apr. 10, 2000) (Ord. 1995-4, S4, Sept. 12, 1995)

10.12.410 Permit Procedures. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

- (1) Application Stage.
 - A. A description of the proposed development.
 - B. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
 - C. A legal description of the property site.
 - D. A site development plan showing existing and proposed development locations and existing and proposed land grades.
 - E. Elevation of the top of the planned lowest floor (including basement)

of all proposed buildings. Elevation should be in NAVD 88 or NGVD.

- F. Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.
 - G. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See Article 4, Section C. (6) in the Ordinance or 10.12.420 (6) of this Chapter for additional information.)
- (2) Construction Stage. Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk.

Upon establishment of the floodproofed elevation of a floodproofed structure, it shall be the duty of the applicant to submit to the Floodplain Administrator a floodproofing certificate. Certification shall be prepared by or under the direction supervision of a registered professional engineer and certified by same. (The Floodplain Administrator shall review the floodproofing certification submitted.) The applicant shall correct any deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the floodproofing certification or failure to make correction required shall be cause to issue a stop-work order for the project.

- (3) Finished Construction. Upon completion of construction, an elevation certification which depicts the "as-built" lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification is required to be submitted by the applicant to the Floodplain Administrator. (Ord. 2014-2, Article 4, SB, June 9, 2014) (Ord. 2005-3, S10.12.060, Jan. 10, 2005) (Ord. 2000-3, S6, Apr. 10, 2000) (Ord. 1995-4, S6, Sept. 12, 1995)

10.12.420 Duties and Responsibilities of the Floodplain Administrator. The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section E and G (1) of this ordinance (10.12.540 and 10.12.560(1) of this Chapter), and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.
- (5) Maintain and track permit records involving additions and improvements to residences located in the floodway.
- (6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this ordinance.
- (8) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (9) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (10) Review certified plans and specifications for compliance.
- (11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4 Section B (10.12.410).

Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Article 4 Section B (10.12.410). (Ord. 2014-2, Article 4, SC, June 9, 2014) (Ord. 2005-3, S10.12.040, Jan. 10, 2005) (Ord. 2000-3, S4, Apr. 10, 2000) (Ord. 1995-4, S4, Sept. 12, 1995)

Provisions for Flood Hazard Reduction.

10.12.500 General Standards. In all SFHAs and known flood prone areas the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance. (Ord. 2014-2, Article 5, SA, June 9, 2014)

10.12.510 Specific Standards. In all SFHAs, the following provisions are required:

- (1) In addition to the requirements of Article 5, Section A (10.12.500), all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - A. Construction or placement of any structure having a floor area greater than 400 square feet.
 - B. Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).
 - C. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.
 - D. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
 - E. Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.
 - F. Reconstruction or repairs made to a repetitive loss structure.
 - G. Addition or improvement made to any existing structure with a previous addition or improvement constructed since the community's first floodplain ordinance.
- (2) **Residential Structures.** New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4), (10.12.510(4)).
- (3) **Non-Residential Structures.** New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4), (10.12.510(4)). Structures located in all

"A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

- A. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in Article 4, Section C (12), (10.12.420(12)).
- B. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

- (4) **Elevated Structures.** New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- A. Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
- B. The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.
- C. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- D. Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- E. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- F. The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

- (5) **Structures Constructed on Fill.** A residential or nonresidential structure

may be constructed on a permanent land fill in accordance with the following:

- A. The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
- B. The fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE.
- C. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
- D. The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- E. The top of the lowest floor including basements shall be at or above the FPG.

(6) **Standards for Manufactured Homes and Recreational Vehicles.** Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

- A. These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood:
 - 1. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - 2. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B 4, (10.12.510(4)).
 - 3. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to

have openings.

B. These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:

1. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
2. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B 4, (10.12.510(4)).
3. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

C. Recreational vehicles placed on a site shall either:

1. be on site for less than 180 days;
2. be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
3. meet the requirements for "manufactured homes" as stated earlier in this section.

(7) **Accessory Structures.** Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:

- A. Shall not be used for human habitation.
- B. Shall be constructed of flood resistant materials.
- C. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
- D. Shall be firmly anchored to prevent flotation.

- E. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
 - F. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B 4, (10.12.510(4)).
- (8) **Above Ground Gas or Liquid Storage Tanks.** All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement. (Ord. 2014-2, Article 5, SB, June 9, 2014) (Ord. 2005-3, S10.12.080, Jan. 10, 2005) (Ord. 2000-3, S8, April 10, 2000) (Ord. 1995-4, S8, Sept. 12, 1995)

10.12.520 Standards for Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres. (Ord. 2014-2, Article 5, SC, June 9, 2014)

10.12.530 Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible. (Ord. 2014-2, Article 5, SD, June 9, 2014)

10.12.540 Standards for Identified Floodways. Located within SFHAs, established in Article 3, Section B, (10.12.310) are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a

permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of a non-substantial addition/ improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources)

No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 (10.12.500-10.12.570) of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed, which acting alone or in combination with existing or future development, that will adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

For all projects involving channel modifications or fill (including levees) the Town shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12. (Ord. 2014-2, Article 5, SE, June 9, 2014)

10.12.550 Standards for Identified Fringe. If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Article 5 (10.12.500-10.12.570) of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG. (Ord. 2014-2, Article 5, SF, June 9, 2014)

10.12.560 Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

- (1) Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and

fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway (including letters of authorization) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Article 5 (10.12.500-10.12.570) of this ordinance have been met.

(2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 (10.12.500-10.12.570) of this ordinance have been met.

(3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the regulatory flood more than 0.14 of one foot and shall not increase flood damages or potential flood damages. (Ord. 2014-2, Article 5, SG, June 9, 2014)

10.12.570 Standards for Flood Prone Areas. All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per Article 5 (10.12.500-10.12.570). (Ord. 2014-2, Article 5, SH, June 9, 2014)

Variance Procedures.

10.12.600 Designation of Variance and Appeals Board. The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance. (Ord. 2014-2, Article 6, SA, June 9, 2014)

10.12.610 Duties of Variance and Appeals Board. The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Crawford County Circuit Court. (Ord. 2014-2, Article 6, SB, June 9, 2014)

10.12.620 Variance Procedures. In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

- (1) The danger of life and property due to flooding or erosion damage.
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (3) The importance of the services provided by the proposed facility to the community.
- (4) The necessity to the facility of a waterfront location, where applicable.
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (6) The compatibility of the proposed use with existing and anticipated development,
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges. (Ord. 2014-2, Article 6, SC, June 9, 2014)

10.12.630 Conditions for Variances.

- (1) Variances shall only be issued when there is:
 - A. A showing of good and sufficient cause.

- B. A determination that failure to grant the variance would result in exceptional hardship.
 - C. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (2) No variance for a residential use within a floodway subject to Article 5, Section E or Section G (1) of this ordinance, 10.12.540 or 10.12.560(1) of this chapter) may be granted.
 - (3) Any variance granted in a floodway subject to Article 5, Section E or Section G (1) of this ordinance (10.12.540 or 10.12.560(1) of this chapter) will require a permit from the Indiana Department of Natural Resources
 - (4) Variances to the Provisions for Flood Hazard Reduction of Article 5, Section B, (10.12.510) may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
 - (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
 - (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See Article 6, Section E (10.12.640)).
 - (8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See Article 6, Section E (10.12.640)). (Ord. 2014-2, Article 6, SD, June 9, 2014) (Ord. 2000-3, S 10, April 10, 2000) (Ord. 1995-4, S10, Sept. 12, 1995)

10.12.640 Variance Notification. Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the flood protection grade will result in increased premium rates for flood insurance up

to amounts as high as \$25 for \$100 of insurance coverage; and;

- (2) Such construction below the flood protection grade increases risks to life and property.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance. (Ord. 2014-2, Article 6, SE, June 9, 2014)

10.12.650 Historic Structure. Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure. (Ord. 2014-2, Article 6, SF, June 9, 2014)

10.12.660 Special Conditions. Upon the consideration of the factors listed in Article 6 (10.12.600-10.12.660), and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance. (Ord. 2014-2, Article 6, SG, June 9, 2014)

10.12.700 Severability. If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance. (Ord. 2014-2, Article 7, June 9, 2014) (Ord. 2005-3, S10.12.140, Jan 10, 2005) (Ord. 2000-3, S13, Apr. 10, 2000) (Ord. 1995-4, S13, Sept. 12, 1995)

10.12.800 Effective Date. This ordinance shall be in full force and effect on July 16, 2014. (Ord. 2014-2, Article 8, June 9, 2014)

Chapter 10.18

ZONING JURISDICTIONAL BOUNDARY DESCRIPTION

Sections:

10.18.010 Boundary description

10.18.010 Boundary description.

LEAVENWORTH JURISDICTIONAL AREA

Boundary Description

Commencing at the northwest corner of Section 35-3S-1E, thence east to the southwest corner of the SE quarter of Section 26-3S-1E; thence north along the half section line, to the northwest corner of the SE quarter of Section 26-3S-1E; thence east along the north line of the SE quarter of Section 26-3S-1E to the west line of Section 25-3S-1E; thence north to the northwest corner of Section 25-3S-1E; thence east along the section line of the following Sections 25-3S-1E and 30-3S-2E; thence south along the west line of Section 29-3S-2E to the northwest corner of the southwest quarter of Section 29-3S-2E; thence east along the half section line of Section 29-3S-2E to the east line of Section 29-3S-2E; thence south along the east line to the southeast corner of the Section; thence east along the north line of Section 33-3S-2E to the northeast corner of the NW quarter of Section 33-3S-2E; thence south along the half section line to the southeast corner of the SW quarter of Section 33-3S-2E; thence south to the Blue River; thence meandering south along the Blue River to the Ohio River; thence northwesterly along the Ohio River to the south line of Section 2-4S-1E; thence west along the south line of Section 2-4S-1E to the southwest corner; thence north along the west line of Section 2-4S-1E and Section 35-3S-1E to the place of beginning. (Ord. 1989-10, Nov. 13, 1989)

Chapter 10.20

ZONING ORDINANCE

Sections:

- 10.20.001 Replacement Ordinance**
- 10.20.002 Public Meeting**
- 10.20.003 Consideration of Replacement Ordinance**
- 10.20.004 Indiana Code Compliance**
- 10.20.005 Town's Best Interest**
- 10.20.010 Adoption of Zoning Ordinance**
- 10.20.030 Violations and Penalties**

10.20.001 Replacement Ordinance. The replacement ordinance is enacted in accordance with Indiana State Law (Indiana Code 36-7-4-600 series) for the purpose of promoting the public health, safety, comfort, morals, convenience, and general welfare by establishing land use classifications, by dividing the Town into districts, imposing regulations, restrictions, and prohibitions on the use and occupancy of real property, by limiting the height, area, and bulk of buildings and other structures, by providing for yards and other open spaces around them, by establishing standards of performance and design, and by providing for the administration and enforcement thereof. (Ord. 2008-2, Whereas, July 14, 2008)

10.20.002 Public Meeting. The Advisory Plan Commission of Leavenworth, Indiana, did on June 2, 2008 hold a legally advertised public meeting to consider adoption of the attached replacement Zoning Ordinance (Exhibit A) for the town. (Ord. 2008-2, Whereas, July 14, 2008)

10.20.003 Consideration of Replacement Ordinance. The Plan Commission did consider said replacement Zoning Ordinance until all comments and objections were heard. (Ord. 2008-2, Whereas, July 14, 2008)

10.20.004 Indiana Code Compliance. The Plan Commission found that the replacement Zoning Ordinance meets the requirements of Indiana Code 36-7-4-600, and that the adoption of this replacement Zoning Ordinance is found to be in the best interest of Leavenworth, Indiana. (Ord. 2008-2, Whereas, July 14, 2008)

10.20.005 Town's Best Interest. The Town Council finds that it is in the best interest of the Town to adopt said replacement Zoning Ordinance. (Ord. 2008-2, Whereas, July 14, 2008)

10.20.010 Adoption of Zoning Ordinance. The Town Council of Leavenworth, Indiana, hereby adopts Exhibit A, attached and made a part hereof, as the replacement Zoning Ordinance of the Town of Leavenworth, Indiana. (Ord. 2008-2, July 14, 2008)

10.20.030 Violations and Penalties.

(1) Zoning Ordinance.

- A. Prohibition on Violations. It shall be unlawful to construct or use any structure, land or water, or engage in any development activity in violation of any provisions of this Title, or otherwise neglect, refuse or fail to comply with the Title's requirements. Any person who violates or fails to comply with any of the provisions of this Title shall, upon conviction thereof, be subject to the penalties set forth in (B) below, and in addition, shall pay all costs and expenses, including reasonable attorney and professional consultant fees involved in the case.

- B. Penalties. Any person, firm, corporation or similar entity who violates, disobeys, omits, neglects, fails or refuses to comply with any provisions of this Title shall be fined no less than ten dollars (\$10.00 nor more than one hundred dollars (\$100.00) for each offense. Each day a violation exists or continues shall constitute a new offense.
 - 1. Procedures. Any violator of the Town of Leavenworth Zoning 2008-2, as amended after being served a notice of violation has three (3) days to notify town officials for a plan of corrective action.

 - 2. Penalties and Fines. Failure on the part of any violator will result in the following penalties assessed:
 - \$10.00 per day for up to 10 days

 - \$25.00 per day for 11-30 days

 - \$50.00 per day for 31-59 days

 - \$100.00 per day for violations existing 60 days and over

 - 3. Cost of Abatement/Legal or Professional Fees. The violator additionally will be responsible for the Cost of Abatement and any necessary legal or professional fees incurred by the Town of Leavenworth to abate said violation

- C. Notice of Violation. If the Zoning Administrator and/or Building Inspector determines that a violation of this Title exists, and further determines that the nature of such violation is not such as to pose a great and immediate danger to the public health, safety, peace, morals, or decency, the Zoning Administrator and/or Building Inspector may serve written notice by certified mail on the current

owner of the property (as indicated on the tax records) on which said violation is occurring to remove said violation with ten (10) working days of signed receipt of the notice. Any entity other than a property owner found in violation of this ordinance may also be notified and held liable for such acts per this Section. If such violations are not removed or abated within ten (10) days, the Zoning Administrator shall cause the violation to be abated per (D) below.

- D. Abatement of Violation by the Town. If the Zoning Administrator and/or Building Inspector determines that a violation poses a great and immediate danger to the public health, safety, peace, morals, or decency, the Zoning Administrator may cause the violation to be abated. Costs associated with such abatement shall be charged to the owner of the property on which said violation has been (E) below.

- E. Cost of Abatement. In addition to any other penalty imposed by this Chapter for a violation of the provisions of this Title, the cost of abating a violation of this Title shall be collected as a debt from the owner of the property on which said violation has occurred. An account of the expenses incurred by the Town to abate the violation shall be kept and such expenses shall be charged to and paid by the property owner. Notice of the bill for abatement of the violation shall be mailed to the last known address of said property owner by certified mail, and shall be payable within thirty (30) calendar days from the receipt thereof. Any unpaid costs and/or fines will be filed as a lien against the property. (Ord. 2013-7, July 8, 2013)

(2) Injunctive Relief.

- A. The Board of Zoning Appeals, or any designated enforcement official, may bring an action for injunction in the circuit court to restrain a person from violating this Title.

- B. The Board of Zoning Appeals may also bring an action for a mandatory injunction, directing a person to remove a structure erected in violation of this Title.

- C. If the Board of Zoning Appeals is successful in its action, the respondent shall bear the costs of the action including the Town's Attorney's fees. A change of venue from the county may not be granted in such an action. (Ord. 2013-7, July 8, 2013)

- (3) Burden of Proof.
 - A. In an enforcement action brought under this Title, the party alleging the existence of a nonconforming use or variance granted by the Board of Zoning Appeals has the burden of proof on that issue. The nonexistence of a nonconforming use or variance need not be proved. (Ord. 2013-7, July 8, 2013)

Chapter 10.22

BUILDING FEES, ZONING FEES, AND CERTAIN REAL ESTATE DEVELOPMENT FEES

Sections:

10.22.010 Structure Fees

10.22.020 Zoning Code Fees

10.22.010 Structure Fees. Whenever an owner of real estate desires to construct or desires to build a new structure within the zoning jurisdiction of the Town of Leavenworth, Indiana that applicant or its agent must pay the following fees:

- (1) Single Family Dwelling - \$60.00 plus \$.01 per square foot of the building.
- (2) Two Family Dwelling - \$120.00 plus \$.01 per square foot of the building.
- (3) Multifamily Dwelling, Apartment Buildings, Condominiums, Cooperative Buildings, Mobile Homes in parks or any other type of multifamily housing - each building is \$55.00 for the first unit and \$25.00 for each unit thereafter plus \$.01 per square foot for each building.
- (4) Industrial and Commercial Buildings.
 - A. Each separate building \$150.00 plus \$.01 per square foot.
 - B. Addition to each existing structure \$50.00 plus \$.01 per square foot for each foot of the new addition.
 - C. Off street parking lots (operated by any entity other than local government, state government, or federal government) \$50.00 plus \$2.00 per parking space.
- (5) Additions to existing one and two family dwellings - \$20.00 per room for up to three rooms; over three rooms it is \$60.00 plus \$.01 per square foot of the total area of the new addition.
- (6) Detached garages and carports - \$20.00 for one and two car garage with an additional \$5.00 charge for those detached garages and carports which have room for more than two cars. (Applies only when garage or carport is not constructed at the same time as principally permitted use.)
- (7) Accessory items:
 - A. Multipurpose structures such as yard barns (portable or stationary) - \$25.00

- B. Swimming Pools (includes in ground and above ground) - \$10.00 plus \$.01 per square foot of the square footage covered by the swimming pool including any concrete aprons and patio areas surrounding and/or adjacent the pool.
 - C. All permitted accessory uses in all residential districts and mixed use district except composting, off-street parking of recreational vehicles and off-street parking and loading - \$10.00.
 - D. All permitted accessory uses in commercial and industrial districts - \$25.00.
- (8) Demolition of Building Structures:
- A. Principal Buildings - \$25.00
 - B. Accessory Building - \$15.00
- (9) Temporary Permits
- A. Temporary Improvement Location Permit - \$50.00
 - B. Temporary Certificate of Occupancy - \$25.00
- (10) Moving or changing location of buildings:
- A. Principal Buildings - \$50.00
 - B. Accessory Buildings - \$20.00
- (11) Sign Permits - \$15.00
- (12) Sign Erections:
- A. Signs up to 4' X 8' (32' square) - \$10.00 per face of sign.
 - B. Signs or billboards with over 32' square each square footage of face is \$1.00 per square foot per face of sign or billboard.
 - C. Nonprojecting signs (minimum \$10.00) or \$.35 per square foot if the total calculated in this manner exceeds \$10.00.
- (13) Remodeling - This applies to a project which exceeds \$1000.00 in total costs excluding installation of central heating, air conditioning, major rewiring, major plumbing, etc. - \$20.00.
- (14) Certificate of occupancy fees:

- A. One and two family residences - \$25.00
- B. Multifamily residential - \$50.00
- C. Commercial and Industrial - \$75.00
- D. Conditional use - \$50.00
- E. Accessory use - \$2.00 (Ord. 2008-3, S1, Oct. 13, 2008)

10.22.020 Zoning Code Fees The following fees apply to those applicants who seek zoning amendments, zoning variances, conditional uses, and other approvals under the present zoning code as applicable to the Town of Leavenworth as follows:

- (1) Variance - \$250.00
- (2) Zoning Amendments including change of master plan, zoning classification, or change in zoning text - \$100.00; change of zoning map - \$250.00.
- (3) Change in development plan (which has been previously approved) - \$25.00; filing fee for original development plan - \$75.00.
- (4) Conditional Uses - \$250.00
- (5) Appeals from Administrator to Board of Zoning Appeals - \$100.00
- (6) Grading permits as required under Article 10.20.100.010 of the existing zoning code of the Town of Leavenworth:
 - A. Filing Fee - \$25.00 (in the event that an applicant fails to pay the required \$25.00 filing fee for a grading permit as required under the existing zoning code of the Town of Leavenworth, any enforcement action to compel the applicant to pay such filing fee shall require a fine in the sum not less than \$250.00 and not more than \$1000.00.) (Ord. 2008-3, S2, Oct. 13, 2008)

Chapter 10.24

SUBDIVISION CONTROL ORDINANCE

Sections:

- 10.24.001 Purpose**
- 10.24.002 Public Meeting**
- 10.24.003 Comments**
- 10.24.004 Indiana Code Requirements**
- 10.24.005 Town's Best Interest**
- 10.24.010 Adoption**

10.24.001 Purpose. The ordinance is enacted in accordance with Indiana State Law (Indiana Code 36-7-4-700 series) for the purpose of establishing control over the recording and division of lands, the development of lands, the control of land uses, the proper and legal description of side lands for the assessment of taxes, the recording of property purchased or sold, and for the health, welfare and enjoyment of properties by the current and future citizens of Leavenworth. (Ord. 2008-4, Whereas, Oct. 13, 2008)

10.24.002 Public Meeting. The Advisory Plan Commission of Leavenworth, Indiana, did on August 4, 2008 hold a legally advertised public meeting to consider adoption of the attached Subdivision Control Ordinance (Exhibit A) for the town. (Ord. 2008-4, Whereas, Oct. 13, 2008)

10.24.003 Comments. The Plan Commission did consider said Subdivision Control Ordinance until all comments and objections were heard. (Ord. 2008-4, Whereas, Oct. 13, 2008)

10.24.004 Indiana Code Requirements. The Plan Commission found that the Subdivision Control Ordinance meets the requirements of Indiana Code 36-7-4-700, and that the adoption of this Subdivision Control Ordinance is found to be in the best interest of Leavenworth, Indiana. (Ord. 2008-4, Whereas, Oct. 13, 2008)

10.24.005 Town's Best Interest. The Town Council finds that it is in the best interest of the Town to adopt said Subdivision Control Ordinance. (Ord. 2008-4, Whereas, Oct. 13, 2008)

10.24.010 Adoption. The Town Council of Leavenworth, Indiana, hereby adopts Exhibit A, attached and made a part hereof, as the Subdivision Control Ordinance of the Town of Leavenworth, Indiana. (Ord. 2008-4, S1, Oct. 13, 2008)