BEFORE THE LEAVENWORTH HEARING EXAMINER

I. INTRODUCTION

1. Nicole Bulow hereby appeals the City of Leavenworth's June 23, 2026, Administrative Interpretation (LUA2026-026) under LMC 21.09.030. In September 2025, Ms. Bulow sought a Group B Home Occupation Permit so she could continue operating her home-based physical therapy practice after moving to Leavenworth. She had operated that practice from her Seattle home for fifteen years without issue. But City representatives told her the City would deny her application. Ms. Bulow then asked the City to explain whether LMC 18.36.060(B) prohibits physical therapy as a home occupation—and, if so, why. The City answered yes and offered its rationale. This appeal challenges that interpretation.

II. CONTACT INFORMATION

2. The appellant's full name and mailing address are:

Ms. Nicole Bulow
517 Burke Ave.
Leavenworth, WA 98826

III. STATEMENT OF FACTS

3. This appeal arises from Ms. Bulow's request for a formal City interpretation of LMC 18.36.060(B). On June 1, 2026, Ms. Bulow submitted a Petition for a Declaratory Order—also called a "Request for Interpretation"—to the City's Community Development Department under RCW 34.05.240, WAC 480-07-930, and LMC 21.03.020(B). Ms. Bulow has attached this request to this appeal as Exhibit T. In the petition, she asked the City to decide whether LMC

18.36.060(B) allows physical therapy, yoga, Pilates, personal training, and massage as home occupations, and whether she could seek a variance if the City prohibited physical therapy. Her submission met all requirements of RCW 34.05.240 and LMC 21.03.020(B).

4. Before requesting an interpretation, Ms. Bulow repeatedly asked the City to clarify whether physical therapy qualified as a Group B home occupation. The City provided inconsistent explanations for why it prohibited physical therapy while approving comparable home occupations. At the time of her application, Ms. Bulow was aware that the City had approved a massage therapy Group B permit and had encouraged another massage therapist to apply. Public records later revealed additional approvals for a home hair salon and a yoga-and-massage business.

5. Ms. Bulow understood LMC 18.36.060(B)(20)(c) to prohibit physicians, dentists, chiropractors, and "any like or similar uses or activities." She saw no reason the City would treat physical therapy like these businesses, and she explained to the City why her practice closely resembles massage therapy, a permitted use. She also showed that she satisfied the Group B permit requirements, including that her proposed "waiting room" was the home's TV room; she would not use the kitchen for business; and she would not use any ADU. Regardless, the City told her she could not operate her home-based physical therapy practice.

6. As an alternative, Ms. Bulow sought a Group A permit under LMC 18.36.060(A). Group A permits typically cover home-office occupations and allow no more than two customers per month. The City approved Ms. Bulow's Group A permit only on the condition that, because she practices physical therapy, she serves no customers. In other words, a Group A permit would be useless to her.

7. The Code gives the Community Development Director authority to "interpret the meaning or application of the provisions" of LMC Titles 14, 15, 16, 17, 18, and 21, along with associated RCWs and WACs. LMC 21.03.020.

8. On June 23, 2026, the City responded with Administrative Interpretation LUA2026-026 (the "Administrative Interpretation"), issued "in accordance with LMC 21.09.030, Limited Administrative Review." Ms. Bulow has attached the Administrative Interpretation to this petition as Exhibit S.

9. The City confirmed that "Group B Home Occupations are permitted in residential zones, subject to the criteria outlined in LMC 18.36.060(B)."[1] It then listed the prohibited Group B occupations, including LMC 18.36.060(B)(20)(c)'s ban on physicians, dentists, chiropractors, and "any like or similar uses or activities."[2]

10. The City gave three reasons for treating physical therapy as a prohibited "like or similar" use: "Clinical treatment setting," "Patient vulnerability and continuity of care," and the fact that "Physical therapists are licensed under the Washington State law (RCW 18.74) and regulated by the Department of Health, consistent with the licensure requirements that characterize the prohibited home occupation professions (physicians, dentists, chiropractors)."[3]

11. According to the City, "the purpose and intent of the home occupation regulations is to maintain the peace, [quiet] and residential character of all residential neighborhoods and to direct uses that do not maintain those characteristics into more appropriate zoning districts, such as commercial or industrial zones."[4] The City also claimed that a physical therapy home business

[1] Page 3, line 6 of Exhibit S.
[2] Page 3, line 8 of Exhibit S.
[3] Page 4, lines 9-9.3 of Exhibit S.
[4] Page 4, line 11 of Exhibit S.

"generates client traffic, waiting room use, and treatment activities that are more characteristic of a medical office than listed examples (hairdressers, music teachers, consultants)."[5]

12. The City also addressed "Personal services" as defined by the Code (specifically, LMC 21.90) and stated that these include "businesses 'involving the maintenance of the human body, or other services to one's person,' such as beauty parlors, barbershops, music instruction, etc." Though "physical therapy involves the maintenance and rehabilitation of the human body, the definition of 'personal service' explicitly excludes 'medical offices.'"[6]

13. The City also explained why it views massage, yoga, Pilates, and personal training differently from physical therapy. First, the City stated that "Massage therapy as a home occupation differs from physical therapy in that it is generally not a licensed clinical treatment for diagnosed medical conditions in the same manner as physical therapy."[7] It justified this difference from physical therapy by stating that "Physical therapists have broader diagnostic and treatment authority (clinical) backed by doctoral-level training, while massage therapists provide specialized soft tissue therapy within a more narrowly defined scope."[8] The City went on to determine that "[y]oga, Pilates, and personal training are fitness and wellness instruction activities, most closely related to the use category of an 'exercise facility' and "Exercise facilities are not permitted in the residential zones of the city, according to the District Use Chart."[9] Thus, according to the City, yoga, Pilates, and personal training cannot be home businesses.

14. Lastly, in response to Ms. Bulow's question whether she could obtain a variance if the City banned physical therapy, the City clarified that "[v]ariances under LMC Chapter 18.56

[5] Page 4, line 11.1 of Exhibit S.
[6] Page 4, lines 12-12.1 of Exhibit S.
[7] Page 4, line 13.1 of Exhibit S.
[8] Page 4-5, line 13.1 of Exhibit S.
[9] Page 5, line 13.2 of Exhibit S.

apply to dimensional standards (e.g., setbacks, heights, area requirements) only. A variance cannot authorize a use that is expressly prohibited by the zoning code."[10]

IV. ARGUMENT

15. The City's interpretation of LMC 18.36.060(B)(20)(c) bars physical therapists from operating Group B home occupations by treating them as "like or similar" to physicians, dentists, and chiropractors without a rational basis. The City identifies professional differences, but it never connects those differences to any legitimate zoning concern. That disconnect makes the interpretation arbitrary and unconstitutional.

A. The City's stated distinctions are unrelated to the purposes of the home occupation ordinance.

16. The Administrative Interpretation rests on three asserted distinctions: physical therapy occurs in a clinical treatment setting; physical therapists care for vulnerable patients and provide continuity of care; and Washington licenses and regulates physical therapists as healthcare professionals. The City also says physical therapy resembles a medical office rather than a permitted personal service. None of those distinctions advance the land-use purposes of LMC 18.36.060(B).

i. Professional licensure and clinical practice do not affect the neighborhood.

17. Clinical practice, professional licensure, patient diagnosis, and doctoral-level training are criteria relevant to healthcare, not land use. These factors do not affect traffic, parking demand, customer volume, noise, residential appearance, or neighborhood compatibility. The Code already controls those effects for every Group B home occupation: it limits floor area,

[10] Page 5, line 14.1 of Exhibit S.

deliveries, parking, customer volume, appointment spacing, hours, noise, and vehicle idling.[11] If a business follows those rules, its effect on the neighborhood does not turn on whether the provider offers massage, physical therapy, or another service. The City therefore gives no zoning-related reason to treat physical therapy differently from other permitted home occupations.

ii. The City's ordinance does not support its "medical office" distinction.

18. The City says physical therapy resembles a medical office because it may involve treatment rooms, waiting rooms, or consultation areas. But LMC 18.36.060(B) does not regulate a home occupation's interior layout. It says nothing about treatment tables, reception areas, waiting rooms, or office configurations. And many permitted home occupations—including massage practices, hair salons, music studios, and consultant offices—may use dedicated rooms to serve clients. The ordinance regulates the effect of a use on the external neighborhood, not interior floor plans.

iii. The ordinance already regulates traffic and customer activity.

19. The City also suggested that physical therapy generates greater client traffic or waiting-room activity. The ordinance already answers that concern. Every Group B home occupation must meet the same limits on customer activity, parking, floor area, and business scale. A physical therapy practice cannot lawfully generate more traffic than a massage practice, salon, or music studio because each must follow the same operational limits. If a business exceeds those limits, the City may enforce the ordinance regardless of profession.

[11] *See* 18.36.060(B)(1–19) for the full list of limitations on Group B home occupations in the Code.

20. Since 2014, the City has processed several Group B applications that will have the same effect on their neighbors as Ms. Bulow's business. The City approved some of these. Specifically, it has processed six complete or partial Group B applications. In two of the applications, the applicant did not complete the process. One of these applications was for a yoga studio. For the yoga studio, through multiple emails with the City in 2018, the City never told the applicant that yoga was disallowed as a home occupation. The applicant voluntarily withdrew later in the process. A massage therapist was responsible for the other incomplete application. In 2025, the City invited the massage therapist to apply for a Group B license, but the applicant appears not to have followed through with a formal application. Earlier, in 2015, the City approved an applicant for a Group B permit to conduct a massage-and-yoga practice, and in 2024, the City approved a massage therapy home-based practice. Additionally, in 2011, the City approved a Group B permit for a photography studio home business that involved portraits and photography in the home's yard. Finally, in 2018, the City approved a home-based hair salon.[12]

iv. The interpretation provides no objective limiting principle.

21. The City also identifies no objective standard for deciding which licensed professions count as "like or similar" to physicians, dentists, and chiropractors. That omission invites arbitrary enforcement and leaves residents guessing about what the law requires. If licensure, clinical treatment, or patient care makes a profession prohibited, the City could also exclude occupational therapists, speech-language pathologists, psychologists, nurse practitioners, dietitians, lactation consultants, and many other licensed professionals—but it does not. The City instead relies on subjective impressions about how "medical" a profession appears. That

[12] Please see the attached chart for more details about the Group B home businesses.

approach creates exactly the inconsistent and illogical enforcement that objective zoning standards should prevent.

22. Even if the City accurately describes differences between physical therapy and other professions, those differences do not matter unless they create different zoning concerns. The City never makes that connection. It therefore offers no rational basis for classifying home-based physical therapy as a prohibited use.

B. Leavenworth's policy violates the equal protection clause of the Fourteenth Amendment.

23. Under the U.S. Constitution, the government may treat similar businesses differently only when the classification is rationally related to a legitimate governmental interest. Washington law likewise prohibits arbitrary favoritism among similar businesses. The Administrative Interpretation fails both standards.

i. There is no "special hazard" in allowing physical therapy when other equivalent businesses operate.

24. The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 439 (1985). That command means "all persons similarly situated should be treated alike." *Id*. A government may classify businesses differently only when the classification bears a rational relationship to a legitimate state interest.

25. *Cleburne* shows that factual differences matter only when they advance a legitimate zoning interest. In that case, a city classified a group home for people with developmental disabilities as a "hospital for the feebleminded" which required a special use permit. *Id.* at 436–37. The label did not save the classification because the facts demonstrated that the distinction served no legitimate zoning interest.

26. The Supreme Court held that the classification violated equal protection. It emphasized that factual differences between land uses matter only when they create different zoning concerns. Although the group-home residents differed from occupants of other permitted uses, those differences were "largely irrelevant" unless they threatened legitimate municipal interests "in a way that other permitted uses such as boarding houses and hospitals would not." *Id.* at 448.

27. The City of Cleburne offered several justifications for its ordinance, including traffic, population density, flood risks, and proximity to a school. The Supreme Court rejected each because none identified a "special hazard" distinguishing the proposed use from comparable permitted uses. *Id.* at 449–50.

28. The same reasoning controls here. The Administrative Interpretation identifies differences between physical therapy and massage therapy, but it never explains why those differences create any distinct zoning concerns. Specifically, the Administrative Interpretation identifies no "special hazard" caused by physical therapy, especially when the City allows comparable home occupations. Under *Cleburne*, that arbitrary line-drawing violates equal protection.

ii. Leavenworth's code is irrationally applied to physical therapy businesses, and its prohibition of physical therapy does not promote zoning interests.

29. The Ninth Circuit Court of Appeals has likewise recognized that a statutory classification violates the Equal Protection Clause when a classification is so irrational that it undermines the government's asserted justifications.

30. In *Merrifield v. Lockyer*, California required a pest controller to obtain a license for certain pest-control work while exempting materially similar work performed with identical methods. Because the statutory distinctions bore no rational relationship to the government's

asserted purpose, the Ninth Circuit held that the licensing scheme violated equal protection. *Merrifield v. Lockyer,* 547 F.3d 978 (9th Cir. 2008).

31. Although *Merrifield* arose in the context of economic protectionism, it is, at its core, concerned with the rationality of a law's application. The court itself stated, "Although economic rights are at stake, we are not basing our decision today on our personal approach to economics, but on the Equal Protection Clause's requirement that similarly situated persons must be treated equally." *See id.* at 992.

32. The City's interpretation contains the same defect as the court found in the legislation at issue in *Merrifield*. Massage therapists may operate home occupations while physical therapists may not, even though both professions generate comparable traffic, occupy similar spaces, and remain subject to the same limits on customer volume, parking, and floor area. Like the licensing scheme in *Merrifield*, the City's distinction undermines its own stated rationale.

iii. The Equal Protection Clause requires that the government base distinctions on rational distinctions between regulated activities.

33. Other cases have come to the same conclusion. In *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580 (9th Cir. 2008), a Washington corporation submitted the highest bid on Idaho state grazing leases, but the Idaho Land Board awarded the leases to other (in-state, incumbent) ranchers. The plaintiffs sued on Equal Protection grounds.

34. *Lazy Y Ranch* confirms that rational-basis review requires more than a conceivable justification; the asserted rationale must remain grounded in the realities of the regulated activity. *Id.* at 590 (citing *Heller v. Doe ex rel. Doe,* 509 U.S. 312, 321 (1993)). The Ninth Circuit explained that a plaintiff may rebut the factual assumptions underlying a

classification by demonstrating that those assumptions cannot reasonably further the government's stated objective. *Id*.

35. The City's interpretation makes the same error the governments in *Cleburne*, *Merrifield*, and *Lazy Y Ranch* made: The government may not treat similar businesses differently based on unsupported assumptions or irrelevant distinctions. Here, as in *Cleburne*, the City identifies differences without showing why those differences advance a legitimate zoning objective. And as in *Merrifield*, the City's application of the ordinance undermines its own stated rationale. The Administrative Interpretation therefore lacks constitutionally sufficient justification.

C. Leavenworth's policy violates the Privileges or Immunities Clause of the Washington Constitution.

36. Article I, § 12, Washington's privileges or immunities clause, prohibits any law "granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." Differing from the Fourteenth Amendment, "article I, section 12 was intended to prevent favoritism and special treatment for a few to the disadvantage of others." *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 475 P.3d 164, 171 (Wash. 2020). It is recognized as "more protective than the federal equal protection clause and in certain situations, requires an independent analysis." *Id.*

37. Article I, § 12's independent analysis applies "where a law implicates a 'privilege or immunity' as defined in . . . early cases distinguishing the fundamental rights of state citizenship." *Id*. Washington courts have identified specific fundamental rights of state citizenship, but they "have never characterized this list as comprehensive or limited to only those enumerated rights." *Id*. at 172.

38. Once a law implicates a protected privilege or immunity, Washington courts apply a two-step analysis: (1) whether the law grants a privilege or immunity protected by article I, § 12, and (2) if so, whether there is reasonable ground for the distinction. *Id.* This "reasonable grounds" test is more demanding than rational-basis review because courts examine whether the classification actually serves the legislature's stated objective.

39. Here, in a display of favoritism, the City has granted, through its zoning code, a special privilege to one class of professionals by allowing them to provide hands-on therapeutic services in their homes while denying that same opportunity to physical therapy, another similarly licensed profession, thereby burdening the fundamental right to pursue a lawful licensed profession on equal terms.

40. Washington courts consistently invalidate laws that arbitrarily privilege one industry over materially similar competitors. For instance, *Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc*. involved a Washington statute which granted agricultural employers immunity from providing overtime protections guaranteed to dairy workers. *Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc.*, 475 P.3d 164 (Wash. 2020). In that case, the court struck down the overtime exemption, finding it had no reasonable ground in its application to the agricultural industry. *Id*. at 173. For example, as part of its reasoning, it found that "other industries employing seasonal workers, such as retail, [were] not exempt from the overtime protections." *Id*.

41. *Schroeder v. Weighall* further demonstrates that purely hypothetical governmental justifications that are not based in fact cannot survive heightened scrutiny under article I, § 12. 316 P.3d 482, 487 (Wash. 2014). Additionally, Washington has a long line of cases dating back to

the early 20th century in which the courts struck down laws that arbitrarily favored similarly situated competitors under article I, § 12.[13]

42. The City's interpretation gives one class of comparable home occupations a privilege—operating a home-based business—that it denies to another without reasonable grounds. Put another way, LMC 21.03.020(B) allows similar businesses to operate as home occupations, but the City hands that privilege to some businesses and withholds it from physical therapists. Article I, § 12 forbids that kind of arbitrary favoritism.

D. Leavenworth's policy violates the Due Process Clause.

43. The City's interpretation also violates substantive due process because it arbitrarily restricts the lawful use of private property without advancing a legitimate zoning interest. Ms. Bulow seeks to use her home to practice her occupation in a way that does not disrupt the neighborhood or create any rational zoning concern. The City cannot force her into a commercial space merely because it labels physical therapy "medical."

44. A zoning regulation violates substantive due process when it is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Cornwell v. Hamilton*, 80 F. Supp. 2d 1101, 1105–1106 (S.D. Cal. 1999), quoting *Lebbos v. Judges of Superior Court, Santa Clara*, 883 F.2d 810 (9th Cir. 1989) (quoting *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926)). Because LMC 18.36.060(B) regulates

[13] *See, e.g.*, *Ex parte Camp*, 80 P. 547 (Wash. 1905) (striking down a statute that barred retailers from selling goods but exempted producers because the statute favored one class of seller over another); *State v. Robinson Co.*, 146 P. 628 (Wash. 1915) (striking down a feed regulation statute that favored cereal and flour mills over all others selling the same product); *Sherman Clay & Co. v. Brown*, 231 P. 166 (Wash. 1924) (striking down a second-hand-dealer ordinance that exempted favored categories of goods) ; *State ex rel. Bacich v. Huse*, 59 P.2d 1101 (Wash. 1936) (striking down a fishing license regime that protected incumbent license-holders); *Ralph v. City of Wenatchee*, 209 P.2d 270 (1949) (striking down a licensing scheme that burdened nonresident photographers to shield resident ones from competition).

land use, the City must tie its prohibition on home-based physical therapy to a legitimate zoning objective. It does not. The City identifies professional differences between physical therapists and other permitted home occupations, but it never explains how those differences affect traffic, parking, neighborhood character, or any other legitimate zoning concern.

45. Courts reject arbitrary interference with a property owner's lawful use of property. In *Bateson v. Geisse*, a builder met every requirement for a building permit, and Billings, Montana's rules required the building official to issue it. The city nevertheless withheld the permit. *Bateson v. Geisse*, 857 F.2d 1300, 1302 (9th Cir. 1988). The Ninth Circuit held that the city's arbitrary interference with the builder's property right supported a substantive due process claim. *Id.* at 1303. The court also held that the city's refusal to issue the permit represented official policy and caused the constitutional injury. *Id.* at 1304.

46. Although rational-basis review is deferential, it is not meaningless. In *Fink v. Kirchmeyer*, the state tried to force Joel Fink, who helped clients identify spammers, to obtain a private-investigator license. 720 F. Supp. 3d 780, 785 (N.D. Cal. 2024). The court held that the requirement bore no rational relationship to his work or to public protection. It found an "extreme mismatch between the State's interests and the burdens imposed on him, due to the unusually non-sensitive nature of his work." *Id.* at 789. The City's requirement that Ms. Bulow relocate her practice to commercial property creates the same mismatch: it burdens her occupation without advancing the City's interest in preserving residential neighborhood character.

47. Forcing Ms. Bulow into commercial space is no more rational than forcing Fink to obtain a burdensome and unnecessary license. Both requirements impose real burdens, and

neither rationally protects health, safety, welfare, or, in Ms. Bulow's case, neighborhood character.

V. THE CITY SHOULD ALLOW HOME-BASED PHYSICAL THERAPISTS TO OBTAIN GROUP B PERMITS

48. For the reasons set forth above, and for any additional reasons the evidence may demonstrate in any hearing before the Hearing Examiner, the Hearing Examiner should reverse Administrative Interpretation LUA2026-026 and hold that home-based physical therapy qualifies as a permissible Group B Home Occupation under LMC 18.36.060(B).

Dated: July 6, 2026

Respectfully submitted,

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