

Midway City Council  
19 April 2022  
Regular Meeting

Ordinance 2022-03 /  
PUDs and Subdivisions



## **CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** April 19, 2022

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Code Text Amendment of Section 16.16 Planned Unit Developments and Subdivisions

Midway City is proposing an amendment to Section 16.16: “Planned Unit Development and Subdivisions” of the Midway City Municipal Code. The proposed amendment would review the entire ordinance and changes could affect all provisions of the current code including setbacks, open space requirements, density, etc.

### **BACKGROUND:**

Based on the City Council discussion from the February 1, 2022, City Council meeting, staff has prepared a redlined version of the proposed code that is attached to this report. Code text that has been edited since the last meeting is highlighted in yellow. The following is a list of the most recent proposed text amendments to the PUD and standard subdivision code:

- Language has been added that states once a PUD has been approved, it cannot be further subdivided.
- Language has been added that eliminates that ability to modify the external boundary line that affects open space or common area. This includes not allowing adjustments that would take portions of designated open space or common area and move them outside of the plat.

- The Citizen Participation Plan language that was proposed for removal is now proposed to remain.
- Parking areas will now only require screening if required by the City Council based on the specific circumstances of the parking area location.
- The minimum area for a PUD of ten acres has been removed.

**POSSIBLE FINDINGS:**

- The proposed amendments will help fulfill goals in the general plan such as creating openness in the PUD and using smart growth planning tools such as clustering.
- Building pad area will be limited which in turn will limit the size of dwellings.
- Setbacks will increase to create more buffer around the periphery of PUDs from units in the PUD to surrounding properties.
- Areas that qualify as required open space will increase in width to create more openness in the PUD.

**ALTERNATIVE ACTIONS:**

1. Approval. This action can be taken if the City Council finds that the proposed language is an acceptable amendment to the City’s Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
2. Continuance. This action can be taken if the City Council would like to continue exploring potential options for the amendment.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council finds that the proposed amendment is not an acceptable revision to the City’s Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

**The following is the staff report from 2-9-2022.**

Midway City Council has enacted a moratorium that that affects some land use applications. The purpose of the moratorium is to review current code and make amendments, where needed, so that Midway’s code matches the vision as described in the General Plan. The moratorium allows staff more time to pursue preparing potential code text amendments for Planning Commission and City Council to review. One of the proposed sections of code to review is Planned Unit Development (PUD) and Large-Scale Standard Subdivisions. There are some specific items that have been identified by staff that should be reviewed and analyzed. These include the following:

Planned Unit Development Density

Some of the main goals of the General Plan are to promote open space, preserve the rural character of Midway, and reduce densities where appropriate. There is clearly support for protecting open space and analyzing our current code to review allowed densities may help us better to protect open space. Through this review, we can determine if the allowed densities are appropriate for Midway and in harmony with the vision as described in the General Plan. Density has a direct impact our community in several ways which include traffic, student population, demand on services, and even air pollution.

Section 16.16.8 establishes densities for PUDs in all zones where they are allowed.

*A. The following standards, requirements and conditions shall specifically apply to all PUDs:*

*1. The permitted base densities allowed in a PUD for each zoning district are listed below:*

- R-1-7            5.0 units per acre*
- R-1-9            4.0 units per acre*
- R-1-11          3.0 units per acre*
- R-1-15          2.5 units per acre*
- R-1-22          2.0 units per acre*
- RA-1-43        1.25 units per acre*

*2. The minimum land area for a PUD shall be ten acres.*

*3. The minimum number of units in a PUD shall be 40.*

The densities listed above are both higher and lower than what each particular zone allows for a standard subdivision. The following is a list of the densities per acre for a PUD as compared to what zoning would allow for a standard subdivision:

<u>Zone</u>	<u>PUD Density</u>	<u>Standard Subdivision Density</u>
• R-1-7	5.0 units per acre	6.2 (-15% for roads = 5.3)
• R-1-9	4.0 units per acre	4.8 (-15% for roads = 4.1)

- R-1-11            3.0 units per acre                    4.0 (-15% for roads = 3.4)
- R-1-15            2.5 units per acre                    2.9 (-15% for roads = 2.5)
- R-1-22            2.0 units per acre                    2.0 (-15% for roads = 1.7)
- RA-1-43          1.25 units per acre                   1.0 (-15% for roads = 0.9)

One of the zones that has the largest difference in density is the RA-1-43 zone. The other zones, once 15% of the property is subtracted for roads (historically roads are not subtracted for density calculations in PUDs), have similar densities. The disadvantage of a higher relative density in the RA-1-43 zone is that zone falls on the periphery of Midway, so the increased relative density creates more trips per day that must travel through the other zones to access services and stores. Someone could argue that it should be the opposite of this, so the relative density is higher in the zones located near the services to help create the situation where more people could walk to stores and services instead of accessing them by driving. Staff has been given direction to balance density for PUDs and standards subdivisions so one type of development doesn't have an advantage over the other. Regarding density and based on Councilmember Payne's work, the following density would even the density for PUDs and standard subdivisions:

*1. The permitted base densities allowed in a PUD for each zoning district are listed below:*

- R-1-7                5.0 units per acre*
- R-1-9                3.9 units per acre*
- R-1-11              3.2 units per acre*
- R-1-15              2.3 units per acre*
- R-1-22              1.6 units per acre*
- RA-1-43            0.8 units per acre*

There is also another section in the PUD code that gives a formula for density. It is found in the open space section of the code which is not the most logical location for density related items to be located. The formula has never been used and in some cases creates greater density than the previously mentioned code and, in some cases, creates lower density, though in all cases density is not very different using either formula. Basically, it creates less density in the R-1-7, R-1-9, R-1-11, and R-1-15 zones while the code does the opposite in the R-1-22 and RA-1-43 zones. The City Council will need to decide which formula it would like to use for future applications. One of the two formulas should be removed from the code to avoid any confusion with future applications. The two code sections that make up the formula for density are found in Section 16.16.10.B and Section 16.16.10.H and are the following:

*B. Land proposed to be devoted to vehicular streets or roads, parking, and drives shall not be included in the computation of open space and shall not be considered to be density-qualifying acreage, except as provided elsewhere in the open space provisions.*

*H. The permitted maximum density allowed in a development that is subject to the open space requirements of this section shall be calculated by dividing the total density-qualifying acreage of the project by the minimum lot size requirement of the zone in which the development is located, and then adding any density additions or bonuses allowed by this Title.*

#### PUD Required Open Space

The open space requirement for a PUD is 50 percent. Open space areas must be at least 100' wide to count as required open space except for the setback area along the peripheral property line which also counts as required open space. The required open space determines how clustered a development is and clustering is one of the main reasons for allowing PUDs. As staff has reviewed the approved PUDs, it appears that PUDs are not clustered as much as staff feels they should be. By adjusting the area that counts as required open space, more clustering would be required which will help create more open space.

#### PUD Visitor Parking

Currently visitor parking is required in PUDs at the rate of a stall for every two units. There is not a requirement to where the stalls need to be located but staff feels that it would be good to have visitor stalls located within a specific distance from the units in the PUD. This could be a new requirement with the proposed amendment.

#### 10 Acre Minimum Requirement for PUDs

The code requires a minimum of 10 acres for any PUD. The minimum acreage requirement could be adjusted to a higher acreage (this would reduce the number of properties that would meet the requirement) or adjust the to a lower acreage (this would increase the number of properties in Midway that could meet the requirement). If the City would like to have more PUDs developed in the future, then lowering the requirement would make it more likely that other PUDs are developed. If the acreage requirement is increased, then it is unlikely that Midway would have many more PUDs developed.

#### 40 Unit Minimum Requirement for PUDs

The code requires a minimum of 40 units for any PUD. This number could be adjusted lower or higher. The lower the number, more properties that could qualify for a PUD. The higher the number, less properties qualify. For example, in the RA-1-43 zone, 50 acres are required to meet the minimum requirement of 40 units with a density of 1.25 units per acre. If the City would like to have more PUDs developed in the future, then lowering the unit requirement would make it more likely that other PUDs are developed. If the unit requirement is increased, then it is unlikely that Midway would see many more PUDs developed.

Structure Spacing in PUDs

There currently is not a spacing or distance requirement between structures in a PUD. The International Building Code has special fire code requirements if buildings located within 10’ of each other but Midway does not require a minimum distance. If the code were amended and a minimum distance was required, then it possible that more units would be attached, or developers would lower density to accommodate stand alone units.

Planned Performance Development Code

Another option to consider for PUDs is a Planned Performance Development (PPD) type code. A PPD creates a system where developers may receive more density by creating amenities that are optional. For example, if an area is dedicated to the city for a civic site, a density bonus would be granted. Or if more open space is provided greater than the minimum requirement, then more density would be granted. The main problem with a PPD is that the grading of some items is subjective. If items area quantifiable then it is easy to grant a bonus but if they are qualitative then the decision to grant density is subjective. Basically, staff, the Planning Commission, and City Council would most likely be involved in determining the value of the extra amenities and the bonus density that would be granted. Again, this process is very subjective, which is the greatest weakness for PPDs. Another route the city could take is mandating amenities instead of granting bonus densities. The following is an example of a PPD:

**Performance Chart.** Any of the below mentioned items can be used to get up to 1 unit per net acre.

Amenity <sup>1</sup>	RA-1 <sup>2</sup>	Staff grade	Planning Commission grade
Base Density <sup>33</sup>	1 ERU for every 1.3 net <sup>12</sup> acres	72.43/1.3 = 55 units	
30% open space preserved (for public or private use as determined appropriate by the Planning Commission and County Council)	Required (on large scale developments over 15-acres)	N/A	
10% usable open space w/in 30% <sup>4</sup>	1-10%	10%	
Extra (above the 30% requirement) unusable Open Space (over 30% or in flood way) <sup>5</sup>	1-10%	0%	
Public Trails provided (that exceeds minimum requirements)	1-5%	0%	

Extra usable Open Space for public use <sup>6</sup>	1-5%	0%	
Improving public open space with public amenities <sup>7</sup>	1-15%	0%	
Dedication or Building of Large Civic Site <sup>8</sup>	1-20%	1%	
Quality and Quantity of landscaping	1-10%	8%	
Good streetscape design <sup>9</sup>	1-10%	7%	
Allowing large animals as part of the development agreement <sup>10</sup>	1-2%	0%	
Fee-in-lieu (open space) <sup>11</sup>	1-30%	N/A	
Total	Not to exceed 1 unit per net <sup>12</sup> acre	26%	

### PUD Footprint Limitation

Dwelling sizes in all of Midway have increased lately which includes standard subdivision and PUDs. Midway could limit the size of building pads to assure that dwellings built match the vision described in the General Plan.

### Standard Subdivision Open Space

The current code requires 15% open space for standard subdivisions in the R-1-11, R-1-15, and R-1-22 zones on properties six acres or greater. In the RA-1-43 zone 15% open space is required on properties 10 acres or greater. The R-1-7 and R-1-9 zones do not have an open space requirement for any acreage. Any of the requirements could be amended but the most obvious potential amendments are to increase the open space requirement, which would require more clustering, and require open space in all zones.

Based on comments from the Planning Commission meeting when this item was discussed and from comments from the City Council work meeting when the item was also discussed, staff has created some potential revisions that are shown in red in the attached document. The main revisions that have been proposed include the following:

- The setbacks around the periphery of the PUD have been increases from 60' to 100'.
- The maximum building pad in a PUD is limited to 3,000 square feet.



- A limited common area of a maximum of 750 square feet will be allowed for improvements that include pergolas, decks, covered decks, hot tubs, courtyards, etc.
- Hard surface areas of streets and parking would not count as density qualifying acreage. Open space areas would need to be 150' to count as required open space, except for the peripheral property line setback area which will be counted as open space.
- Areas that count as open space will increase from 100' to 150'.

**PLANNING COMMISSION RECOMMENDATION:**

**Motion:** Commissioner Bouwhuis: I make a motion that we recommend approval amendment to Section 16.16: “Planned Unit Development and Subdivisions” of the Midway City Municipal Code. The proposed amendment would review the entire ordinance and changes could affect all provisions of the current code including setbacks, open space requirements, density, etc. We accept staff findings with the changes that are outlined in the staff report, with the following changes to Item 16.16.8 (7) on the side and the rear of the building pad, a minimum area of 750 square feet on each building pad to be left outside of the buildable area footprint and left open for improvements that include pergolas, decks, covered decks, hot tubs, courtyards, and other similar type features. This area does not include any enclosed living space. The maximum covered area of no more than 15’ in height, measured from natural grade. 16.16.10 Item B to be ended the section at open space. Item H to be eliminated. Add a public amenity or structure such as a bus stop can be placed in the 100-foot setback. Add a definition of overall square footage, overall square footage used to calculate density and open space shall be the area of the entire site, minus the sensitive lands area that reduce density

**Seconded:** Commissioner Wardle

**Chairman Nicholas:** Any discussion on the motion?

**Chairman Nicholas:** All in favor.

**Ayes:** Commissioners: Ream, Bouwhuis, Wardle, Garland and Cliften

**Nays:** None

**Motion:** Passed

**CHAPTER 16.16 PLANNED UNIT DEVELOPMENTS AND STANDARD SUBDIVISIONS**

<b>Section 16.16.1</b>	<b>Purpose and Intent</b>
<b>Section 16.16.2</b>	<b>Definitions</b>
<b>Section 16.16.3</b>	<b>Pre-Application Conference with Staff Member</b>
<b>Section 16.16.4</b>	<b>Concept Plan/Master Plan</b>
<b>Section 16.16.5</b>	<b>Preliminary Plan</b>
<b>Section 16.16.6</b>	<b>Permitted Uses</b>
<b>Section 16.16.7</b>	<b>General Standards and Requirements</b>
<b>Section 16.16.8</b>	<b>Standards and Requirements specific to Planned Unit Developments</b>
<b>Section 16.16.9</b>	<b>Standards and Requirements specific to Standard Subdivisions</b>
<b>Section 16.16.10</b>	<b>Open Space General Requirements</b>
<b>Section 16.16.11</b>	<b>Open Space Requirements Specific to PUDs</b>
<b>Section 16.16.12</b>	<b>Open Space Requirements Specific to Standard Subdivisions</b>
<b>Section 16.16.13</b>	<b>Preliminary Planning Commission Action</b>
<b>Section 16.16.14</b>	<b>Recommendation of Preliminary Plan to City Council</b>
<b>Section 16.16.15</b>	<b>Public Hearing</b>
<b>Section 16.16.16</b>	<b>Preliminary Approval of City Council</b>
<b>Section 16.16.17</b>	<b>Time Limit for Preliminary Plan Approval</b>
<b>Section 16.16.18</b>	<b>Final Approval Submittal Package</b>
<b>Section 16.16.19</b>	<b>Development Agreement</b>
<b>Section 16.16.20</b>	<b>Final Plat</b>
<b>Section 16.16.21</b>	<b>Final Approval Recommendation by Planning Commission</b>
<b>Section 16.16.22</b>	<b>Final Approval by City Council</b>
<b>Section 16.16.23</b>	<b>Duration of Final Approval</b>
<b>Section 16.16.24</b>	<b>Plat Recording</b>
<b>Section 16.16.25</b>	<b>Completion of Infrastructure Construction and Issuance of Permits</b>
<b>Section 16.16.26</b>	<b>Landscaping Bond</b>
<b>Section 16.16.27</b>	<b>Construction Bond</b>
<b>Section 16.16.28</b>	<b>Default</b>
<b>Section 16.16.29</b>	<b>Final Disposition and Release</b>
<b>Section 16.16.30</b>	<b>Record Drawing Submittal and Contents</b>
<b>Section 16.16.31</b>	<b>Total Compliance with all Regulations</b>
<b>Section 16.16.32</b>	<b>Warranty Bond</b>

**Section 16.16.1 Purpose and Intent**

The intent of this Chapter is to provide regulations that will further the objectives of the Community Midway Master Plan relating to large scale residential developments Planned Unit Developments (PUD)s and Standard Subdivisions. It is the intent of the City to achieve a balance between open space and buildings, encourage harmony between new development and the surrounding area, promoting a longer life expectancy for buildings, and provide for superior

maintenance and appearance of structures and premises and an overall project atmosphere that concurs with goals for a more attractive City. A developer should demonstrate by the materials submitted for approval that the objectives and goals of the Midway Vision Statement and the General Plan have been fostered. ~~It is further intended to create regulations that encourage the use of Swiss/Alpine architecture and native bedrock in the design of fences and permanent structures. Upon approval of a Planned Unit Development (hereinafter referred to as "PUD") or standard subdivision, the approved site plan shall then constitute the zoning restrictions and regulations of the zoning district as applied to the territory shown on the plan.~~

(2012-04, Section Amended, eff. 4/11/12)

## **Section 16.16.2 Definitions**

A. Common Area. Property that is owned, regulated or maintained by the Homeowners Association but that is provided for the common use and enjoyment of the owners of the facility through an easement granted to association members which defines the member's rights and responsibilities This includes complementary structures, roads and other improvements.

B. Condominium Plat. An instrument that is used to convey real property, known as units, in three dimensions to individuals who use undivided or common properties and other elements to maintain and use their property. Condominiums are defined in State law, nothing in this definition is meant to limit or change the effects of Utah State Law.

C. Home Owners Association. A lawfully incorporated organization which is created to serve the common interests, and hold the common property of, more than one property owner within a PUD or a Subdivision.

D. Master Plan. A plan approved by Midway City for a PUD or Standard Subdivision that maps the boundaries of the property, pads, units and the location of all common areas, open space, common amenities, roadways, parking areas, landscape features, including irrigation systems, water, sewer, power and other public utilities prepared at the ~~Concept~~ Master Plan standards. The Master Plan is usually used when the project is built in phases that require more than one site plan and is built over time.

E. Pad. The building area of land in a PUD upon which a residential building may be built in accordance with the standards of this chapter wherein ownership is separate from the common areas. Pads are specified areas of property prepared and graded for the erection of structures and sold by deed. Pads will not have frontage on any public or private street. Often Pads are sold on subdivision maps as lots within common area.

F. Planned Unit Development. A residential project which consists of individually owned units which whose owners are part of a property owners association which holds title to certain common areas, provides services to their constituent property owners, enforces and administers certain covenants and restrictions common to the project. ~~The PUD regulations are intended to create residential development which offers a better more aesthetic and efficient living environment than obtained through standard lot by lot development.~~ Once a PUD has been

approved by the City Council and recorded, no further subdivision of that plat will be approved by the City of Midway, except as may be required by Utah law.

G. Standard Subdivisions. Any proposal to create four or more residential dwelling units and/or building lots from one or more existing lots of record. Once a standard subdivision has been approved by the City Council and recorded, no further subdivision of that plat will be approved by the City of Midway, except as may be required by ~~allowed under~~ Utah law.

H. Subdivision Lot. A parcel of property occupying a specific piece of real estate as defined on a subdivision plat and sold to individual owners who own the property within the boundaries of their lot. Subdivision lots are ~~almost~~ always burdened with public utility easements and often carry with them the responsibilities and privileges associated with a Home Owners Association and covenants governing the use of the lots.

I. Unit. A particularly described place in a PUD that represents property to be sold individually to separate owners as shown on a Plat. It is possible that there may be more than one unit sold on a particular building pad.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.3                    Pre-Application Conference with Staff Member**

Any person wishing to construct a PUD or standard subdivision shall meet with a Planning staff member, check and review the zone information, obtain application and review procedures, obtain information from the City regarding the City's plan of land use, streets, water, sewer, traffic, trails and parks, and public facilities; and have discussion about public participation meetings and other requirements affecting the land to be developed. The developer shall then prepare plans and seek approval based on the written information received and the process outlined below in this Chapter.

### **Section 16.16.4                    Concept Plan**

The purpose of the Concept Plan Review is to explore general feasibility early in the planning process. The Concept Plan helps avoid unnecessary and costly delays when information or necessary resources are not available because they were not addressed until later in the process. While the Concept Plan procedure is not required, and is not an approval, and does not grant any vesting or entitlement, it can ~~is still~~ be a helpful tool to discover any issues for the project in the planning process. ~~an important part of the overall approval process. While more flexible in nature than the subsequent steps of preliminary and final approvals, it still needs to be carefully prepared and thoroughly reviewed to be useful~~

## ~~Section 16.16.4~~ Section 16.16.5 ~~Concept Plan~~/Master Plan

~~The purpose of the Concept Plan Review is to explore general feasibility early in the planning process. The Concept Plan helps avoid unnecessary and costly delays when information or necessary resources are not available because they were not addressed until later in the process. While the Concept Plan procedure is not an approval, it is still an important part of the overall approval process. While more flexible in nature than the subsequent steps of preliminary and final approvals, it still needs to be carefully prepared and thoroughly reviewed to be useful.~~ The purpose of the Master Plan is to break a project into multiple phases. A Master Plan demonstrates that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, roads, sensitive lands protection, and open space are proposed with every phase to allow the project to function without subsequent phases. As part of the ~~Concept~~ Master Plan, the developer shall submit:

- A. An application for development with the following elements:
  1. The names, addresses and contact information of the applicant and owners of the property.
  - ~~2. Written description of how the development will comply with and promote Midway City's Vision and Land Use Ordinance (Title 16).~~
  3. A declaration about whether this application is for a PUD or a Standard Subdivision and the project name.
  4. A site plan prepared to scale on a topographic base by a professional planning team which shows the concept of the major features of the project, including roads in relation to existing conditions and developments within one-fourth of a mile of the outside boundaries of the development. Handwritten plans will not be accepted. Twenty Three hard copies and one digital copy of the ~~Concept~~ Master Plan on 11"x 17" size paper shall be submitted to the Planning Department for review by the Planning Commission.
  5. Applicant entity name, primary contact name, and civil engineer, ~~architect and attorney~~, with respective contact addresses, phone numbers, ~~fax numbers~~, and email addresses for each.
  6. Development plan showing lot, pad or unit location and size(s).
  - ~~7. Number of lots, pads, or units and how they conform to the underlying zone.~~
  - ~~8. The types of buildings in the project by use and by architectural style, accompanied by conceptual architectural renderings.~~
  9. All proposed common areas, open space, and/or amenities.
  10. Any proposed public dedications proposals.
  11. Conceptual Landscape Plan.
  12. Open space provisions including the following information:
    - a. Location.
    - b. Size.
    - ~~c. Description of how the open space plan conforms to the standards for open space.~~
    - d. Proposal for the final disposition and management of common area and open space property.
    - e. Any off-site open space trading provisions as allowed by this Code shall be approved by the City Council before applying for preliminary plan approval; however, any proposals for this purpose should be disclosed as much as possible now.
  13. Any trails proposed within the project including an analysis that shows how this trail plan works in conjunction with the City Trails Master Plan.

~~14. A topographic map that is suitable for GIS and CAD analysis or another acceptable digital format.~~

15. Sensitive Lands.

a. Topographic information.

b. Identify potential sensitive land issues and a plan for how to address these issues.

c. Potential wildlife issues with the project and on the site.

16. A description of how public participation will be conducted consistent with the Citizen Participation requirements of the City, as outlined in Title 16.

~~17. A summary of the water needed for the proposed project showing how much is owned now compared to how much is estimated to be needed to complete the project.~~

~~18. Letter of submittal for the concept plans to the Heber Valley Fire Special Service District that transmits the plans to them.~~

~~19. Plans for Swiss/Alpine architecture, as applicable.~~

20. ~~The Concept Plan may be used as a guide to request a~~ A Master Plan Development Agreement ~~that will shall~~ be used to guide the development of a PUD or subdivision in phases over more than one building season and which will require recording of more than one subdivision or condominium plat. ~~Master Plan Development Agreements may be requested prior to Preliminary and Final Approval because they provide the basis for the portion of the Development Agreement that describes the zoning entitlements of the property.~~ A Master Plan request shall have the following characteristics:

a. The maximum number of phases/plats in a development shall be determined by the number of lots/units in the development. One phase/plat is allowed for each 15 units/lots or portion thereof, in the development. The maximum number of lots shall be calculated by the Planning Department who shall determine the total number of lots/units in the development and divide that number by 15. That number, plus one additional phase/plat, shall be the total number of phases/plats allowed. If the total number of units/lots in the development is 15 or less, only one phase/plat will be allowed. Once the total number of phases/plats allowed in a development has been determined, the developer may choose the number of units/lots in each phase/plat. For example, a 61-lot development would be allowed a maximum of five phases/plats. The developer could have 12 lots in the first phase, four lots in the second, 14 in the third, 23 in the fourth and eight in the fifth and final phase. Each Phase shall have a separate plat.

b. ~~In addition to the utility requirements for Concept Plans, the~~ The Master Plan application must be prepared in sufficient additional detail to receive preliminary approval from the Midway City Water Board and the Midway Sanitation District, provide for the scheduling of all necessary water mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.

c. No entitlement rights shall vest until a Master Plan ~~Development~~ Agreement is signed and recorded against the development property. The Master Plan ~~Development~~ Agreement shall not be recorded until water rights (including shares of stock) sufficient for all phases of the development are delivered to the City to be held in escrow for so long as the Master Plan ~~Development~~ Agreement is enforceable. This is to ensure that the water rights are not sold separately from the development property after the City has granted development entitlements through the Master Plan ~~Development~~ Agreement.

The water rights shall remain in escrow until: 1) they are deeded to the City as part of a final approval for each phase; 2) the Master Plan ~~Development~~ Agreement lapses in accordance with its terms, thus terminating any entitlement on the development property; or 3) if, prior to any phase of the development receiving final approval, the Developer informs the City in writing of its intent to abandon the entitlements received in the Master Plan ~~Development~~ Agreement. If the Master Plan ~~Development~~ Agreement is abandoned, the water rights will be returned to the land owner.

d. Under no circumstances will the water rights be released from escrow to the developer or lending institution once the first phase of the development receives final approval.

e. In the situation where an amendment to the Master Plan ~~Development~~ Agreement is approved for an unrecorded phase, and the amendment reduces the amount of water rights necessary for that phase, the extra water rights for that phase only, will be returned to the land owner.

f. The developer's, or any other parties, remaining joint interest in the water rights for each phase shall be deeded in its entirety to the City prior to the recording of the final plat of each phase. Following such transfer of interest, no other party, including the developer shall hold any right, title or interest in the water rights so transferred. In no event shall a final plat for any development, subdivision, or phase thereof, be recorded prior to the transfer of all the right, title and interest in the required water rights to the City.

g. In the event that any portion of the water right required for Master Plan approval pursuant to the Midway City Code has been pledged to a lending institution as partial security for a loan on the property, the lending institution must agree, in writing (through an escrow agreement), to the escrow of the water rights with the City according to the terms and conditions set forth in Master Plan ~~Development~~ Agreement. The lending institution may be listed as a joint owner with the developer of the water right held in escrow. Should the lending institution need to foreclose the developer's interest in the water rights, Midway City will release the shares for the sole purpose of removing the developer's name and having the shares re-issued solely in the financial institution's name. Once done, the shares shall be submitted back to Midway City to remain in escrow. Failure to return the shares to the City for escrow shall constitute a breach of the Master Plan ~~Development~~ Agreement, and all entitlements associated with the Master Plan ~~Development~~ Agreement shall become null and void.

h. Prior to the final approval and recording of any plat for any development, subdivision, or phase thereof, it shall be the developer's sole responsibility to secure a release of any lien or ownership interest in the water right owned by a lending institution or any other party, and to deed or transfer 100% ownership interest in that water right required for that development, subdivision, or phase thereof, to Midway City. Prior to recording a final plat, the water right associated therewith shall be unencumbered, and shall be transferred to the City free and clear of any title encumbrance.

- i. A Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, lots/units, roads, sensitive lands protection, and open space are proposed with the first phase, and all successive phases, to allow the project to function without subsequent phases.
- j. Special information must also be prepared for Master Plan applications to demonstrate that all facilities necessary to implement all life safety codes in effect at the time of application will be constructed and be maintained at the time the first phase, and all successive phases, is requested of the City.
- k. Master Plan applications must be reviewed by the Planning Commission and approved by the City Council.
- l. No City Council approval may be considered until after a public hearing has been held to consider the recommendation of the Planning Commission with regard to the Master Plan.
- m. The Planning Commission and City Council may schedule such public hearings and extra meetings as they deem necessary to find the information necessary to make a recommendation to the City Council for a Master Plan.
- n. After approval of the Master Plan by the City Council, a Master Plan Development Agreement must be prepared and executed by the applicant and the City, sufficient to describe the entitlement granted to implement the Master Plan. The Agreement must be signed by the applicant within 45 90 days of Final Approval of the Master Plan by the City Council. If the Agreement is not fully executed within 45 90 days of Final Approval of the Master Plan, then all Master Plan approvals shall become null and void.

(2012-04, Section Amended, eff. 4/11/12; 2018-14, Section Amended, eff. 5/9/18; 2019-14, Section Amended, eff. 2/24/2021)

#### Section 16.16.5 Section 16.16.6 Preliminary Plan

After review of the Concept Master Plan by the Planning Commission, the developer shall prepare a Preliminary Plan and shall submit 20 three copies of the plan on 11" x 17" size paper to the Planning Department, to then be sent to the Planning Commission for its review and recommendation. The purpose of the Preliminary Plan is to demonstrate how the proposed development plan will be able to meet the standards required under the Land Use Title and other applicable laws or regulations after considering the issues and recommendations found during the Concept Master Plan Review phase. While the Preliminary Plan is not expected to contain construction drawings, it is expected that the Preliminary Plan will demonstrate compliance with this Title.



The Preliminary Plan shall contain the following information (If any of the following information has been satisfied by the information submitted during the ~~Concept Master Plan~~ Review, that same information must be included again with the Preliminary Plan Application.)

~~A. Description of how the development will implement Midway City's Vision.~~

~~B. Type of development.~~

C. Name of development.

D. Applicant entity name, primary contact name, and civil engineer, ~~architect, designer and attorney~~, with respective contact addresses, phone numbers, ~~fax numbers~~, and email addresses for each.

E. Legal description with section tie.

F. Zone boundaries and designations.

G. North point and a scale consistent with a scale that is on a standard engineering scale ruler.

~~H. A statement that lists the issues discussed during the Concept Review and reconciles those issues with the Preliminary Application being submitted at this time. If this Preliminary Application is to implement part of a previously approved Master Plan, this application must:~~

~~1. Disclose the approved Master Plan that is being implemented;~~

~~2. Disclose all conditions that were attached to that Master Plan for subsequent implementation;~~

~~3. Contain a reconciliation between the Development Agreement approved for the Master Plan and this application that shows how this application conforms to the previous approval.~~

~~If the applicant wishes to amend the Master Plan approval, then the applicant may not submit a Preliminary Application alone but must submit a Master Plan amendment request consistent with the requirements of this Chapter for a new Master Plan.~~

~~I. A site plan showing location of all buildings, building pads, and lots, ~~or structures~~, the elevation view of all structures including a description of building materials to be used in the construction of all units.~~

~~J. Dimensions of side, rear and front yards, and the location of all building pads for residential and all other building sites.~~

K. Location and description of all common areas, sensitive lands, recreational and open space areas and facilities. (Note: Any off-site open space trading provisions allowed by this Title shall have been taken directly to the City Council for potential approval before applying for Preliminary Plan recommendation. ~~to the City Council by the Planning Commission submitting an application for preliminary approval.~~)

L. Topography shown by contours at no greater interval than 2 two feet except that a greater interval may be permitted when the property is outside the survey boundary, ~~if specifically authorized by the City Council.~~

~~M. The outside boundary of the project.~~

N. Tabulation of land use by acres or other applicable units:

1. Total area, common area, limited common area, open space, building area, and dedicated streets.

~~2. Drives and parking (all the above shown in acreage and percentage).~~

~~3. Number of units, pads or lots and project density.~~

~~4. Types of units by number of bedrooms, where applicable.~~

5. Parking spaces (covered and uncovered).

~~a. All Internal Accessory Dwelling Units proposed in a PUD shall have one parking space in addition to the two stalls required for the preliminary dwelling. The parking space shall not be in tandem with any other parking and shall not be in a required visitor parking stall.~~

6. The identification of all sensitive lands and a preliminary proposal to protect such lands for damage due to development during and after construction.

O. Schedule and description for ownership of title for any open space property, open space easements, or conservation easements.

~~P. Adjacent property owners.~~

Q. Proposed circulation pattern including private and public streets and sidewalks.

R. A detailed statement and illustration of how the project will meet sensitive lands requirements.

S. Existing and proposed easements, waterways, utility lines, canals and ditches.

T. A plan for accommodating waterways, ditches and canals.

U. Proposed and existing sewage disposal facilities.

V. Existing and proposed storm drain system with the related run-off calculations for the development site including routing the runoff water that leaves the site to a City storm drain or natural drainage approved by the City to accept the water.

W. Existing and proposed water systems indicating size of water lines and fire hydrant locations. Indications as to the capacity of the water system as it relates to the project.

X. More detailed (than concept) landscape plan indicating areas of landscaping and irrigation and the various types of landscape materials, coordinated with a preliminary grading plan and all the sensitive lands.

Y. A preliminary noxious weed control plan showing which noxious weed species need to be controlled during construction, up to completion of the project and after construction with the County Weed Supervisor as evidenced by a dated acknowledgement on the plan.

~~Z. Letter of intent signed by the applicant stating the following information, when applicable:~~

~~1. Design theme of project.~~

~~2. Description of common areas and amenities.~~

~~3. Time schedule for completion of common areas and amenities.~~

AA. When the project contains 15 or more lots/units, traffic analysis survey results and proposed response must be discussed.

BB. Environmental Assessment Review, as outlined in this Title.

CC. Any other information Staff, the Planning Commission, or the City Council may determine necessary relating to the particular site of the proposed project. ~~as a result of the Concept Review.~~

~~DD. Evidence of sending digital copies of the proposed subdivision to the following service providers: telecom; natural gas; irrigation; sanitary sewer; power cable postmaster; Wasatch County Fire District; Wasatch County Solid Waste Special Service District. an 11" x 17" copy of the Preliminary Plan to US West, Questar Gas, Heber Light & Power, Comeast (Cable Company), Midway Post Master, Heber Valley Fire Protection Special Service District, Wasatch County Solid Waste Disposal District.~~

~~EE. A title report as of the date of the Preliminary Application.~~

~~FF. A list of the documentation that will be required at Final Approval to implement the plans for the development and keep it maintained after approval.~~

**GG. A written Citizen Participation Plan as described in this Title which documents the information supplied to the public, the issues addressed with the attendees at the first Citizen Participation Meeting and other written or verbally communicated comments received from the public as a result of the Citizen Participation Plan.**

~~HH. Preliminary approval Recommendation from the Midway City Water Advisory Board.~~

II. Preliminary approval from the Midway Sanitation District.

~~JJ. A completed Fiscal Analysis Checklist.~~

~~KK. Disposition of requests for Swiss/Alpine architecture bonus as applicable.~~

~~LL. Preliminary recommendation from the Trails Advisory Committee, the Historic Preservation Committee, and Vision Architectural Committee (VAC), where applicable.~~

MM. A geotechnical report as requested by City staff.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.6 — Permitted Uses**

~~A. The principal land use permitted in PUDs and standard subdivisions is the residential living unit. Other uses may be permitted where it can be shown they are an accessory and incidental to the project. All uses permitted shall be reviewed and then recommended by the Planning Commission and approved by the City Council. They shall then be identified on the site plan and mentioned and approved as part of the application process. Uses not approved specifically by the City Council are prohibited.~~

~~B. Where the size, location and scope of a proposed development are such that a convenience center would add to the convenience of the people living in the development, the City Council may authorize the construction of such a convenience center when the size of the project so justifies. The convenience center may only be constructed after the residential units have been completed. The acreage of the project used to determine density shall be decreased by the amount of property used for the convenience center and its associated parking.~~

### **Section 16.16.7            General Standards and Requirements**

A. The following standards and requirements shall apply to all PUDs and standard subdivisions:

~~1. The project must be prepared by a design team composed of at least a civil engineer, an architect and an attorney, all of whom must be licensed to practice in the State of Utah.~~

2. All dwelling units shall be served by a public sewer and a City-approved water supply. All utilities within the development shall be placed underground, including telephone, power and television. All dwelling units shall have separate utility connections and metering.

3. The area proposed for a PUD or standard subdivision shall be in one ownership during development to provide for full supervision and control of said development and to insure conformance with these provisions and all other conditions recommended by the Planning Commission and set by the City Council upon the preliminary and final development plans.

4. In the event that the land contained within a development is traversed by a proposed street, the development shall be designed in accordance therewith and the right-of-way across the development for the class of the proposed street. If the proposed street is one of the collector or arterial streets the appropriate right-of-way width shall be dedicated to the public, with improvements.

5. All areas not covered by buildings, parking areas, streets or drives shall be developed according to a grading plan which integrates the developed areas with the natural landscape, streets, buildings, sensitive lands and landscape area.

6. All areas not covered by buildings, parking, streets or drives shall be planted with grass, trees, shrubs or other plant materials to preserve and protect the final grading plan and the drainage plan proposed are part of the project as part of the submittal of the final landscape plan. Areas may be allowed to be left in a natural state, or xeriscaped, if the Planning Commission and City

Council find this more desirable than traditional landscaping; also, a permanent sprinkler system shall be installed in all landscaped areas to provide irrigation of planted areas.

7. The landscaping plan must also provide for a noxious weed control plan applicable before, during, and after construction of the development. All landscaped areas in standard subdivisions not located within a building lot and all landscaped areas in PUD not located within 50' of a building pad shall be planted and landscaped within one year after posting the landscape bond.

~~8. The required yard space as a result of setbacks from public streets shall not be used for parking but shall be landscaped as required in item 5 above.~~

~~9. The maximum height of buildings within a PUD shall be 35 feet above natural grade as outlined in this Title unless otherwise provided in this Title.~~

10. All parking spaces, parking areas and driveways must be hard-surfaced and properly drained with no drainage running across public or private sidewalks.

11. The developer shall install all public improvements on-site and off-site as identified by the City Council.

12. All street construction improvements in PUDs and standard subdivisions shall be constructed according to public street construction widths and cross-section standards.

13. All parking areas shall be screened from public view when possible with berms and landscaped features: as required by the City Council based on specific circumstances of the parking area location.

14. Provisions of the Sensitive Lands section Chapter of this Title shall be adhered to within all PUDs and standard subdivisions.

15. The project shall connect any trails shown on the City Trails Master Plan for the area. ~~A favorable recommendation from the Midway City Trails Advisory Committee shall be required before final approval shall be granted.~~

~~16. When it is necessary in order to implement the intent of this Chapter, the City may impose development standards in excess of the minimums identified herein.~~

17. Gated communities shall not be permitted.

18. The developer shall be responsible to pay all costs incurred by the City in processing and reviewing the development proposal, including but not limited to all engineering, attorney, and outside consultant fees.

19. The applicant must demonstrate that the development proposed will be able to meet the water provision requirements set forth in Title 10.

20. Once a standard subdivision or a PUD is recorded no external boundary line adjustments that affect designated open space or common area or sale of designated open space or common area that alters an external boundary, including boundary line adjustments that would take portions of the designated open space or common area and move it outside of the recorded plat.

## **Section 16.16.8                      Standards and Requirements Specific to Planned Unit Developments**

A. The following standards, requirements and conditions shall specifically apply to all PUDs:

1. The permitted base densities allowed in a PUD for each zoning district are listed below:

R-1-7                      5.0 units per acre

R-1-9                      ~~4.0~~ 3.9 units per acre

R-1-11	<del>3.0</del> <u>3.2</u> units per acre
R-1-15	<del>2.5</del> <u>2.3</u> units per acre
R-1-22	<del>2.0</del> <u>1.6</u> units per acre
RA-1-43	<del>1.25</del> <u>0.8</u> units per acre

~~2. The minimum land area for a PUD shall be ten acres.~~

3. The minimum number of units in a PUD shall be 40.

4. All streets in a PUD will be privately owned and maintained except for any street that the City Council specifically agrees will be owned and maintained publicly. Public streets will generally be Collector Roads and will most likely be listed in the Capitol Facilities Plan.

~~5. Setbacks: With the following exceptions, dwelling and permitted structures may be located as approved by the City Council in the final development plans. Buildings should be arranged as to best comply with the intent of this Title. These exceptions shall be considered, as minimum requirements as they apply:~~

a. Setbacks along the peripheral property lines of the PUD shall be a minimum of ~~60~~ 100 feet. For pads located within ~~80~~ 120 feet of the peripheral property line, setbacks shall be staggered at ten (10) foot intervals with one-third of the structures having a ~~60~~ 100 foot setback, one-third having a ~~70~~ 110 foot setback, and one-third having an ~~80~~ 120 foot setback. No structure within 50' of another structure shall have the same setback.

b. Setbacks from the following streets shall be a minimum of 130 feet for all structures and parking. This setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads.

- i. Burgi Lane;
- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

No accesses to individual dwelling units within a PUD shall be allowed directly from the above streets. Access must be made from streets within the development.

c. Front setbacks for buildings from all private streets within the PUD shall be staggered at seven and one-half feet variances, with 30 feet the minimum setback. One-third of the buildings containing dwelling units shall be at each of at least three different setbacks as recommended by the Planning Commission and approved by the City Council. For example, one-third at 30 feet, one-third at 37 ½ feet and one-third ~~at 45~~ at 45 feet. Setbacks for accessory buildings shall be as recommended by the Planning Commission and approved by the City Council. Setbacks from private streets shall be measured from top-back of curb or back of sidewalk or trail, whichever is further from the street centerline. The City Council may waive this requirement when a curvilinear street design is used and shown to create the same varying setback effect.

5. Two parking spaces per unit shall be provided for all units within the project. One space per unit shall be covered. One-half space for every unit shall be provided for guest parking. All Internal Accessory Dwelling Units proposed in a PUD shall have one parking space in addition to the two-stalls required for the primary dwelling. The parking space shall not be in tandem with any other parking and shall not be in a required visitor parking stall.

6. ~~Building sizes~~ The maximum number of units per building shall be limited to four units, per structure unless a larger number of units per structure are specifically approved by the City Council following a recommendation by the Planning Commission. The Planning Commission and City Council shall make this determination based on specific site considerations regarding open space, building height and mass, and the geography of the site.

7. The maximum area of a building pad is limited to 3,000 square feet. An area of limited common area may be attached to the building pad that would allow for a pergola, covered deck, hot tub, courtyard, or other similar type feature. This area may not contain any enclosed living space. The maximum area of the limited common area is 750 square feet, and the maximum depth of the limited common area is 15'. The maximum height of any improvements in the limited common area is 15' measured from natural grade. The limited common area shall be located to the side or rear of the building pad.

7. In all PUDs, all portions of all structures, whether on the ground, above the ground, or below the ground, must be contained within the confines of the building pad identified on the plat. This restriction shall apply to all protrusions, protuberances, and overhangs, including but not limited to all portions of all walls, roofs, doors, windows, bay windows, cantilevers, fireplaces, chimneys, support posts or structures, window wells, and/or decks.

(2012-04, Section Amended, eff. 4/11/12; Omission corrected in Subsection 16.16.8(A)(5)(b) with "streets" changed to "collector streets", eff. 1/19/16; 2018-07, Section Amended, eff. 2/28/18; 2018-06, Section Amended, eff. 3/28/18.)

## **Section 16.16.9 Standards and Requirements specific to Standard Subdivisions**

A. The following standards, requirements and conditions shall apply specifically to all standard subdivisions:

1. The minimum permitted lot size allowed in a standard subdivision for each zone shall be as specified in the zoning requirements set forth in this Title., except as modified by the open space and/or affordable housing provisions of this Chapter.

2. Dwellings and permitted structures shall be located so as to best comply with the intent of this Title and shall meet the following standards:

~~a. Setbacks along the peripheral property lines of the subdivision shall be a minimum of 30 feet except for side setbacks for lots that front a street that will be extended to a neighboring property. The side setback for those lots will need to comply with the minimum for the zone in which the property is located. For safety reasons, the City may require buildings in any subdivision to be set back further from certain areas, such as sensitive lands or combustible native vegetation.~~

b. Setbacks from the following streets shall be a minimum of 100' (with the exception of a shelter for a bus stop not to exceed 200' square feet or as approved by the City Council).

i. Burgi Lane;

ii. River Road;

iii. Pine Canyon Road;

- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

Standard subdivisions that have at least 250' of frontage on the roads listed in this section and require a 100' setback may reduce lot size and frontage proportionally as provided in the Open Space Requirements Specific to Standard Subdivisions. Standard subdivisions that do not require a 100' setback can only reduce lot size and frontage proportionally for open space provided above the 15% requirement as provided in the Open Space Requirements Specific to Standard Subdivisions.

c. This setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads.

d. Notwithstanding the setback requirement noted earlier in this Section, no accesses directly to individual dwelling units within a standard subdivision shall be allowed directly from the following streets; rather, access must be made from streets within the development, unless this is a practical impossibility.

- i. Burgi Lane;
- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

(2012-04, Section Amended, eff. 4/11/12) (2018-06, Section Amended, eff.3/28/18)

## **Section 16.16.10            Open Space General Requirements**

A. Open space is defined as a portion of a development site that is permanently set aside for public or private use and that will not be developed or sold to individual owners. Open space shall not contain residences. Improvements such as club houses, shelters, covered swimming pools, and gazebos may be included within the open space requirement along with uncovered recreational facilities such as football fields, baseball diamonds, basketball courts and playgrounds. Open space shall be planned and designed to encourage and promote its proper use, care and ongoing maintenance. Specifics of vegetation, landscaping, amenities, improvements,



recreational facilities, etc. within the open space shall be proposed by the applicant, approved by the Planning Commission and City Council, and then set forth in detail in the development agreement for the project.

(2012-04, Sub-section Amended, eff. 4/11/12; 2013-16, Sub-section Amended, eff. 03/18/15)

B. Land proposed to be devoted to vehicular streets or roads, parking, and drives shall not be included in the computation of open space. ~~and shall not be considered to be density-qualifying acreage, except as provided elsewhere in the open space provisions.~~

C. Entry features such as roundabouts, median planter strips, fountains, etc. may count as open space if the design of such features is recommended by the Planning Commission and approved by the City Council.

D. Sensitive lands, as defined elsewhere in this Title, may be counted as open space, provided the lands also satisfy the other characteristics of open space set forth herein and shall be protected by the proposed development plan. For developments with sensitive lands that comprise less than 50% of the entire (gross) acreage, no sensitive lands may be counted as required open space. For developments with sensitive lands that exceed 50% of the entire (gross) acreage, a maximum of 10% of those sensitive lands which are in excess of 50% of the entire (gross) acreage may be counted as required open space. Development alterations of any sensitive lands shall be prohibited except as allowed and defined elsewhere in this Title.

(2021-27, Sub-section amended, eff. 11/3/2021)

E. The open space areas required by this Section shall not be satisfied by any areas contained within a designated building lot. This provision is subject to the following exception: on a building lot of two or more acres, areas contained within the lot boundaries may be counted as open space provided that those areas are designated on the plat as unbuildable areas permanently preserved as open space pursuant to the standards specified in this Title.

F. A minimum of 50' open space area is required along the following listed roads. Any other required open space may be placed in other areas of the development.

- i. Burgi Lane;
- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

G. Open space areas shall not be fenced with sight obtrusive fencing.

~~H. The permitted maximum density allowed in a development that is subject to the open space requirements of this section shall be calculated by dividing the total density-qualifying acreage of the project by the minimum lot size requirement of the zone in which the development is located, and then adding any density additions or bonuses allowed by this Title.~~

I. The open space area requirements may be met by purchasing or providing property, development rights, or conservation easements on other properties deemed of value to the community and approved by the City Council on a value for value ratio. Such areas may not be sensitive lands as defined by this title, unless approved by the City Council, but may include hillsides, stream corridors, agricultural lands, fields along Main Street and other open space areas, within the City limits or annexation area, as may be approved by the City Council. Approval of open space exchanges must be made by the City Council before the applicant applies for preliminary approval. Upon approval by the City Council, such offsite open space areas shall be included in calculating the development's density-qualifying acreage, and, in addition, a density bonus of one unit per acre of offsite open space will be allowed to encourage creation of such offsite open space areas.

J. Developments subject to the open space requirements of this Chapter shall be required to either:

1. Deed to each owner in the development an undivided ownership interest in the open space contained within the development and form a homeowners' association which shall be responsible for maintaining such open space common area according to Covenants, Conditions and Restrictions recorded with the Condominium Record of Survey map or subdivision plat; or,
2. Place the open space in a perpetual conservation easement granted to an established conservation organization, as approved by the City Council. If the open space is placed in a conservation easement, a maintenance agreement shall be entered into with the conservation organization to guarantee proper maintenance of the open space. Open space included within the boundaries of two (2) acre or larger building lots shall not be subject to the restrictions of this paragraph.

K. Open space shall be either appropriately and attractively landscaped or actively used for agricultural purposes.

L. An acceptable landscaping plan as defined elsewhere in this Title, including a noxious weed plan, must be submitted before preliminary approval of the development and complied with thereafter. The landscaping plan shall protect the grading plan elevations from unreasonable degradation, help implement the storm drainage plan where appropriate, protect sensitive lands from degradation, protect the project and surrounding properties from unreasonable infestations of noxious weeds and promote a clean, neat and restful natural setting for the project and surrounding properties.

M. If the homeowners' association or conservation organization fails to adequately maintain the open space, the City, after 15 days prior written notice, may perform the necessary maintenance and bill the homeowners or conservation organization for the expense. In addition, the City shall be authorized in the covenants, conditions and restrictions of the development to place and

record a lien on the open space property for the amount of the maintenance cost and, if necessary, to maintain legal action against the homeowners' association or conservation organization to collect on the debt and foreclose against the liened property. This provision shall be included in the recorded declaration of covenants, conditions and restrictions for the development.

(2012-04, Sub-section Amended, eff. 4/11/12; 2013-16, Sub-section Amended, eff. 03/18/15; 2018-08, Section Amended, eff. 2/28/18; 2018-06, Section Amended, eff. 3/28/18)

### **Section 16.16.11            Open Space Requirements Specific to PUDs**

A. Not less than 50 percent of the area of the PUD shall be retained in permanent open space, parks, and playgrounds.

B. Common areas and other open space areas with a width smaller than ~~100~~ 150 feet in any direction shall not be counted as open space, except for the peripheral property line setback area which will be counted as open space.

C. At least one-half of the required open space shall be retained in a single open space area. Area qualifying for open space shall not contain parking stalls; however, structures which enhance the protection and approved uses of the open space by the HOA may be included in open space areas so long as they do not occupy more than 10 percent of the open space area. A single open space area shall be defined as an open area not broken into small portions with the large majority of its land mass in as much of a square as possible. ~~Because of the increased density afforded to PUDs, open space areas shall be placed so as to benefit the health, safety and general welfare of the whole community and not merely the development. Due to the various configurations of property in the City, the Planning Commission and City Council shall determine the extent of compliance with this standard.~~

(2018-08, Section Amended, eff. 2/28/18; 2018-06, Section Amended, eff. 3/28/18)

### **Section 16.16.12            Open Space Requirements Specific to Standard Subdivisions**

A. All standard subdivisions six or more acres in size located in the R-1-11, R-1-15, R-1-22 zones, and all standard subdivisions ten or more acres in size located in the RA-1-43 zone shall reserve a minimum of 15 per cent of the total acreage of the subdivision in open space. Any subdivision that provides more than 15 percent open space can reduce lot size, width, and frontage proportionally as provided in part ~~C~~ D. of this section. The reduction is based on the percentage of open space provided above the 15 percent requirement. For example, a subdivision that provides 35 percent open space can reduce lot frontage, width, and acreage by 20 percent. The maximum amount of reduction is ~~35~~ 50 percent. ~~50 percent open space is required to attain a 35 percent reduction.~~ This proportional reduction cannot be combined with the proportional reduction allowed when a 100' setback is required. Standard subdivisions that require a 100' setback can reduce lot size and frontage proportionally as provided in the Open Space Requirements Specific to Standard Subdivisions. To qualify for proportionally reduced lot

acreage, frontage, and width because of provided open space as previously described, the applicant must complete the following items:

1. To determine maximum density on a property, a concept plan must be designed that complies with all land use requirements and shall include roads and road right-of-way, lot acreage, lot frontage, and lot width, but does not include open space.

2. A preliminary plan shall be designed that may not include any more lots than the maximum number established in the concept plan. The lots may be proportionally reduced for frontage, acreage, and width, as previously described.

B. Standard subdivisions that do not require a 100' setback can only reduce lot size and frontage proportionally for open space provided above the 15% requirement as provided in the Open Space Requirements Specific to Standard Subdivisions. To prevent circumvention of this requirement, a subdivision less than six acres in the R-1-11, R-1-15, R-1-22 zones, and a subdivision less than ten acres in the RA-1-43 zone, shall not be approved without complying with the 15 percent open space requirements of this section if there is a reasonable basis to believe that:

1. Both the land comprising the subdivision and the land comprising a contiguous subdivision of less than 6 six acres (10 acres in the RA-1-43 zone) that did not reserve open space and that was approved less than five years earlier was owned by the same or a related individual, person, entity or group as the current applicant or owner at the time the earlier subdivision was approved, or

2. A contiguous parcel of less than 6 six acres (10 acres in the RA-1-43 zone) owned by the same or a related individual, person, entity or group as the current applicant or owner is simultaneously under a pending standard subdivision application and is not proposing to meet the open space requirements of this section. This provision shall have prospective application only and shall not take into account any approvals granted prior to the enactment of this section.

B.C. Areas with a width less than 50 feet in any direction shall not be counted as open space.

C.D. Due to the open space requirements imposed herein, lot size in standard subdivisions subject to the open space requirements of this section may be reduced to 50 percent of the minimum lot size required in the zone in which the subdivision is located. This provision therefore explicitly allows for the creation of building lots smaller than the minimum lot size required in the zone in which the subdivision subject to open space requirements is located. The permitted reduction in lot size shall be directly proportional to the total amount of non-developable open space reserved in the subdivision. For example, a subdivision that is required a 100' setback that reserves the minimum 15 percent open space required by this section shall be allowed to reduce any of its lots to 85 percent of the size required in the zone. A subdivision that is required a 100' setback that reserves 30 percent of its total acreage for open space shall be allowed to reduce any of its lots to 70 percent of the required size in the zone. Frontage and width requirements will also be reduced by the same percent as explained above.

<b>Standard subdivision examples of open space and proportional frontage and acreage reduction</b>		
	Open Space Provided	Proportional reduction allowed

Subdivision along listed streets with a 100' setback	15%	15%
Subdivision not requiring a 100' setback	15%	0%
Subdivision along listed streets with a 100' setback	35%	35%
Subdivision not requiring a 100' setback	35%	20%

(2012-04, Section Amended, eff. 4/11/12; 2013-16, Section Amended, eff. 03/18/15; 2018-05, Section Amended, eff. 2/28/18)

### **Section 16.16.13 Preliminary Planning Commission Action**

A. Upon presentation of the Preliminary Plan and documents, the Planning Commission shall recommend approval as submitted, recommend approval with conditions or may refer them back to the developer for one or more of the following reasons:

1. Due to the type of buildings, layout of structures, design of plan, or other aspects of the preliminary submittal, the Planning Commission determines the project to be inconsistent with the ~~Ordinance. intent of this Code or the City General Plan.~~
2. The Planning Commission recommends that certain specific changes be made within the plans.
3. The plans or documents have not been completed.
4. All applicable fees have not been paid by the developer.

~~B. This project is in substantial compliance with the intent of this Section as stated previously. The Planning Commission may recommend to the City Council such conditions on preliminary development plans as it may deem appropriate to meet the goals and objectives of this Chapter. The Planning Commission may recommend disapproval of a large scale residential development which is found to be deficient in meeting the intent of these provisions. Any such disapproval may be appealed to the City Council within ten days after the decision of the Planning Commission.~~

~~C. Before recommending approval of the Preliminary Plan, the Planning Commission must also make the following findings in PUDs:~~

- ~~1. That the proposed PUD will provide a more aesthetic and efficient living environment than a conventional residential development.~~
- ~~2. That the proposed development will create no detriment to adjacent properties or to the general area in which it is located.~~
- ~~3. That the project will provide more efficient use of the land and more usable open space than a standard subdivision permitted in the surrounding area.~~
- ~~4. That increased densities allowed within the proposed PUD will be compensated by better site design and by increased amenities and recreational facilities.~~
- ~~5. That the development will not create hazards above those of a standard type development to the health, safety, and general welfare of the residents of the proposed PUD or adjacent areas.~~

**Section 16.16.14 Recommendation of Preliminary Plan to City Council**

Upon the Planning Commission's completed review and recommended approval of a Preliminary Plan of a PUD or standard subdivision, the Planning Commission shall recommend the Preliminary Plan to the City Council for approval or denial, with or without conditions.

**Section 16.16.15 Public Hearing**

~~After receiving notice of Planning Commission recommended approval of the Preliminary Plan, or upon the City Council's reversing on appeal the Planning Commission's recommended disapproval of a Preliminary Plan, the City Council shall set and hold a public hearing to consider preliminary approval of the project. The hearing shall be completed as set forth in Title 16. After receiving notice of the Planning Commission's recommendation of approval, or denial, the City Council shall set and hold a public hearing to consider preliminary/final approval or denial of the project.~~

**Section 16.16.16 Preliminary Approval of City Council**

After holding the public hearing, the City Council shall approve, approve with conditions, or deny the Preliminary Plan based on the same standards as required above for preliminary approval by the Planning Commission.

**Section 16.16.17 Time Limit for Preliminary Plan Approval**

Any failure to submit a proposed final plan and final approval submittal package within one year of the approval of the Preliminary Plan by the City Council shall terminate all proceedings and render the Preliminary Plan null and void.

**Section 16.16.18 Final Approval Submittal Package**

If the Preliminary Plan is approved by the City Council, the developer shall submit ~~three~~ one full size copies and ~~fifteen~~ three 11" x 17" copies of the proposed final plat and a final approval submittal package to the Planning Commission composed of the following:

A. All material, studies and requirements as requested by the Planning Commission or City Council as conditions of preliminary approval.

B. A final plat map in compliance with the approved Preliminary Plan (~~in PUDs, this includes a final Record of Survey Map in compliance with the approved Preliminary Plan and the State Condominium Ownership Act~~). This plat is to implement among other things, the approved site

plan, ~~buildings~~, proposed ownership areas, utility easements, public dedications, open space, limited common areas, common areas, roads and private areas.

C. Detailed landscaping plan and sprinkler plan that implements the approved Preliminary Plan.

D. Final engineering drawings (plans and profiles) for all public and private improvements, final grading plan, and final drainage and run-off plan with run-off calculations.

E. All documents and legal material necessary to implement the application for Final Approval as well as those to be recorded.

F. Deeds of dedication for all public lands as required by the City or other public entity, when such dedications are not shown on a final plat.

~~G. An updated title report for all land within the boundary of the final plat.~~

H. Provisions for bonding of all improvements including landscaping in a form acceptable to the City. The bond amount is to be 110 per cent of the City Engineer's estimated cost for improvements.

I. Payment of all required final plat fees and any other outstanding fees.

~~J. Phasing plan for final plats.~~

~~K. In the event the project will not be divided into separate ownership, the developer shall submit the same information as requested above except for the Record of Survey Map. A final site plan shall be submitted totally dimensioned conforming to the approved Preliminary Plan.~~

~~L. Will serve letters from Qwest, Questar Gas, Midway Sanitation District, Heber Light & Power, Comcast (cable company), and Midway Post Master.~~

~~M. Final Approval letters from the Midway Water Advisory Board and the Midway Sanitation District. Final approval letters from the Vision Architectural Committee (VAC), Historic Preservation Committee and the Trails Advisory Committee shall be required at this time, when applicable.~~

N. Declaration of Covenants, Conditions and Restrictions for said development (if any) to be recorded with the Wasatch County Recorder's Office with the Final Plat. The following standards shall apply to the Declaration of Covenants, Conditions, and Restrictions recorded in conjunction with any subdivision development:

1. The Declaration may provide for the creation and perpetual provision of an architectural committee, the number of members and composition of which shall be clearly stipulated. The Declaration shall also establish design guidelines governing the appearance of the site buildings, signs, lighting, landscaping, street furniture, fencing, and mechanical equipment.

2. The Declaration shall stipulate the method and procedure by which the declaration may be amended.

~~3. The Declaration shall specify the final conditions of approval of the Planning Commission and City Council.~~

4. The Declaration may also contain use restrictions which are more restrictive than the City's zoning provisions, but in no case shall they be more permissive.

5. The Declaration shall set up the provisions for maintenance of all open space, common areas and private streets and utilities.

6. The Declaration shall state the following: Midway City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal, as applicable, within the common areas and open space if the Association fails adequately to perform such. In the event Midway City exercises this right, the City shall be entitled to recover any associated costs and attorney fees from the Association. This section shall not be amended or deleted without the approval of Midway City.

~~7. Transient Rental Declaration. Midway City has established a Transient Rental Overlay District (TROD) to regulate short term rental. Units in a PUD or standard subdivision may not be offered for transient rental unless it is within a TROD. The Homeowners Association is required to declare in its Declaration of Covenants, Conditions and Restrictions (CC&R's) whether or not transient rentals will be allowed as part of the development's final application. Midway City will not allow transient rental in a PUD or standard subdivision, even if it is in a TROD, if the development's CC&R's do not specifically permit such rental.~~

### **Section 16.16.19                      Development Agreement**

An agreement between the developer and the City stating among other things:

A. That the property owners association created by the developer shall in the event of failure of the owners, successors or assigns to maintain the water and sewage facilities, common areas, open space, landscaping or other improvements in good condition, the City may perform the necessary work and for that purpose may enter upon the land and do the work and recover the cost thereof, including reasonable attorney fees, to the owners or their successors or assigns.

B. The obligations of the developer and or other parties under the approval and the obligations of the City under the approval.

C. That the terms of the contract shall be binding upon the heirs, assigns, receivers, and successors of the project for the life of the project or building.

D. If the development is to be phased, a phasing plan showing construction schedule of streets, infrastructure, amenities and other improvements. Said plan shall be made to make each phase stand alone in all requirements of this Title, including, but not limited to open space, traffic safety and circulation, infrastructure requirements and so forth.

E. A development and maintenance schedule for all undeveloped land within any approved Master Plan and throughout the City under the approval.

F. Any other agreements between the developer and the City.



G. An agreement for the developer to provide financial assurances to ensure completion of all required improvements, including landscaping.

**Section 16.16.20            Final Plat**

In addition to all other requirements, the proposed final subdivision or condominium plat shall show an address block containing addresses for each dwelling unit and for each main building within the plat, subject to approval by the Wasatch County Recorder's office.

**Section 16.16.21            Final Approval Recommendation by Planning Commission**

After receiving a complete proposed final plat and final approval submittal package, the Planning Commission shall consider the development for final approval. If the Planning Commission finds that all of the requirements of this Title and all the conditions of preliminary approval of the development imposed by the City have been met, the Planning Commission shall recommend final approval of the development to the City Council. If the Planning Commission finds that any requirements or conditions have not been met, the Planning Commission shall continue the matter until such requirements or conditions have been met or forward such information on to the City Council with a recommendation as to how the City Council should act with respect to final approval of the development.

**Section 16.16.22            Final Approval by City Council**

A. After receiving the recommendation of the Planning Commission with respect to final approval, the City Council shall consider the development for final approval.

B. The City Council shall determine whether the proposed final plat and final submittal package meet all requirements of this Ordinance Title and the conditions of the development's preliminary approval by the City. The City Council shall consider the information and recommendation forwarded to it by the Planning Commission with respect to final approval. Based on all of these criteria, the City Council shall approve, approve the conditions, or deny final approval of the development.

C. If the City Council denies final approval, the City Council shall state in detail the basis for its denial, referring specifically to the requirements of this ordinance Title and the conditions of preliminary approval.

D. For no more than a one-year period after such denial of final approval by the City Council, the applicant may re-apply to the Planning Commission and then to the City Council for final approval pursuant to the above described process, but only if the City Council's reasons for denial have been resolved.

**Section 16.16.23            Duration of Final Approval**

The duration of final approval shall be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within the one-year period of time, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that: (a) construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded; (b) the property must be maintained in a clean, dust-free, and weed-free condition at all times; (c) each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or (d) no more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Section amended, eff. 12/14/2011, 2012-04, Section Amended, eff. 04/11/12)

**Section 16.16.24            Plat Recording**

No plat shall be recorded until all required water rights and/or water shares have been tendered to the City and assurances are provided to the City to ensure completion of all required improvements, including landscaping.

(2016-09, Section Amended, eff. 05/11/2016)

**Section 16.16.25            No Building Permits Issued Prior to Plat Recording**

No building permit application shall be submitted prior to the recording of the plat by the County Recorder.

**Section 16.16.25            Completion of Infrastructure Construction and Issuance of Permits**

No building permits application shall be submitted until the infrastructure construction of the development is substantially complete; provided, however, that the developer in whose name the bond for the project is issued may submit a building permit application once the fire flow mechanisms are installed, operating and approved by the City Engineer. Once installed, operating and approved, fire flows must remain operating continuously thereafter. No certificate of occupancy will be issued until infrastructure construction on the development reaches final completion as determined by the City Engineer.

(2016-09, Section Amended, eff. 05/11/2016)

### **Section 16.16.26            Landscaping Bond**

Before recording any plat or condominium record of survey of map, a bond equal to 110 per cent of the cost for construction and completion of the landscape plan shall be posted.

### **Section 16.16.27            Construction Bond**

Prior to construction of a development and plat recordation, the developer shall submit a Construction Bond to the City in the amount of 110 percent of the cost of all improvements and inspections as determined by the City Engineer. The Construction Bond will include a line item for a weed control plan that has been approved by the City.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.28            Default**

In the event the developer defaults, fails or neglects to satisfactorily install the required improvements within one year from the date ~~construction begins, the plat is recorded~~ation, the City Council may declare the bond forfeited and the City may install or cause the required improvements to be installed using the proceeds from the collection of the bond or other assurances to defray the expense thereof.

### **Section 16.16.29            Final Disposition and Release**

The developer shall be responsible for the quality of all materials and workmanship. At the completion of the work, or not less than ten days prior to the release date of the bond or other assurance, the City ~~representatives~~ Engineer shall make a preliminary inspection of the improvements and shall submit a letter to the City Council setting forth the conditions of such facilities. If conditions thereof are found to be satisfactory, the City Council shall release the bond or other assurance. If the condition of materials or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, the City Council may declare the developer in default.

### **Section 16.16.30            Record Drawing Submittal and Contents**

A. Prior to final bond release, an electronic copy of the final drawings in the latest version of AutoCAD or DXF ~~or another acceptable~~ format shall be submitted to the City Engineer. This drawing file needs to include adequate information regarding position and basis of bearing tied to established control as approved by the City Engineer.

B. As-built information shall be overlaid on this final drawing. The as-built drawing must be based upon actual field survey of the items on the following list:

A-1. Established survey monuments, benchmark, and permanent horizontal and vertical control.

B-2. Water: valves, laterals, fire hydrants, blow-offs, flush valves, and water meters (culinary and secondary).

C-3. Sewer: laterals and manholes with rim and inverts elevations.

D-4. Storm drain: Catch basins, curb inlets, and manholes with rim and inverts elevations, size and type of pipe, storm outlets and detention / retention systems.

E-5. Miscellaneous: light pole locations, street sign locations, and utility box/transformer locations.

F-6. Pressurized irrigation: valves, blow-offs, flush valves, drains, meters, and water lateral locations.

### **Section 16.16.31 Total Compliance with all Regulations**

In case of failure or neglect to comply with ~~any and~~ all conditions as established during the approval process or regulations as identified in this Title Section, the City may refuse additional building permits and stop construction of all work at the site until such violations or non-compliant conditions have been eliminated.

### **Section 16.16.32 Warranty Bond**

The City Council shall authorize the release of 100 percent of the bond amount all but 10 percent of the Construction and Landscaping Bond amount, including the weed control plan line item, upon ~~written~~ verification by the City Engineer that all work is complete and acceptable. The remaining 10 percent of the Construction Bond amount shall be retained by the City for a period of ~~two one~~ years in order to insure quality of improvements ~~as a Warranty Bond~~. If improvements are found to be unacceptable to the City at any time during the ~~two one~~-year period, the City may use the bonding funds to replace or repair any improvements not installed acceptably.

(2012-04, Section Amended, eff. 4/11/12)



## ORDINANCE 2022-03

### **AN ORDINANCE TO AMEND CHAPTER 16.16 OF THE MIDWAY CITY LAND USE CODE TO CLARIFY PROVISIONS RELATING TO PLANNED UNIT DEVELOPMENTS AND STANDARD SUBDIVISIONS.**

**WHEREAS**, pursuant to Utah Code Section 10-9a-509 the Midway City Council may formally initiate proceedings to amend city ordinances; and

**WHEREAS**, Midway City staff members have undertaken the process of cleaning up and clarifying sections of the Midway City Land Use Code that are outdated or in need of revision; and

**WHEREAS**, Midway City Staff has updated and made clarifications within Chapter 16.16 of the Land Use Code concerning planned unit developments and standard subdivisions; and

**WHEREAS**, the Midway City Council now desires to formally adopt these updates and changes to Chapter 16.16 into the Midway City Land Use Code; and

**NOW THEREFORE**, be it ordained by the City Council of Midway City, Utah, as follows:

**Chapter 16.16** shall be amended to read as follows:

#### **CHAPTER 16.16 PLANNED UNIT DEVELOPMENTS AND STANDARD SUBDIVISIONS**

<b>Section 16.16.1</b>	<b>Purpose and Intent</b>
<b>Section 16.16.2</b>	<b>Definitions</b>
<b>Section 16.16.3</b>	<b>Pre-Application Conference with Staff Member</b>
<b>Section 16.16.4</b>	<b>Concept Plan</b>
<b>Section 16.16.5</b>	<b>Master Plan</b>

<b>Section 16.16.6</b>	<b>Preliminary Plan</b>
<b>Section 16.16.7</b>	<b>General Standards and Requirements</b>
<b>Section 16.16.8</b>	<b>Standards and Requirements specific to Planned Unit Developments</b>
<b>Section 16.16.9</b>	<b>Standards and Requirements specific to Standard Subdivisions</b>
<b>Section 16.16.10</b>	<b>Open Space General Requirements</b>
<b>Section 16.16.11</b>	<b>Open Space Requirements Specific to PUDs</b>
<b>Section 16.16.12</b>	<b>Open Space Requirements Specific to Standard Subdivisions</b>
<b>Section 16.16.13</b>	<b>Preliminary Planning Commission Action</b>
<b>Section 16.16.14</b>	<b>Recommendation of Preliminary Plan to City Council</b>
<b>Section 16.16.15</b>	<b>Public Hearing</b>
<b>Section 16.16.16</b>	<b>Preliminary Approval of City Council</b>
<b>Section 16.16.17</b>	<b>Time Limit for Preliminary Plan Approval</b>
<b>Section 16.16.18</b>	<b>Final Approval Submittal Package</b>
<b>Section 16.16.19</b>	<b>Development Agreement</b>
<b>Section 16.16.20</b>	<b>Final Plat</b>
<b>Section 16.16.21</b>	<b>Final Approval Recommendation by Planning Commission</b>
<b>Section 16.16.22</b>	<b>Final Approval by City Council</b>
<b>Section 16.16.23</b>	<b>Duration of Final Approval</b>
<b>Section 16.16.24</b>	<b>Plat Recording</b>
<b>Section 16.16.25</b>	<b>Completion of Infrastructure Construction and Issuance of Permits</b>
<b>Section 16.16.26</b>	<b>Landscaping Bond</b>
<b>Section 16.16.27</b>	<b>Construction Bond</b>
<b>Section 16.16.28</b>	<b>Default</b>
<b>Section 16.16.29</b>	<b>Final Disposition and Release</b>
<b>Section 16.16.30</b>	<b>Record Drawing Submittal and Contents</b>
<b>Section 16.16.31</b>	<b>Total Compliance with all Regulations</b>
<b>Section 16.16.32</b>	<b>Warranty Bond</b>

### **Section 16.16.1 Purpose and Intent**

The intent of this Chapter is to provide regulations that will further the objectives of the Midway Master Plan relating to large scale residential developments Planned Unit Developments (PUD)s and Standard Subdivisions. It is the intent of the City to achieve a balance between open space and buildings, encourage harmony between new development and the surrounding area, promoting a longer life expectancy for buildings, and provide for superior maintenance and appearance of structures and premises and an overall project atmosphere that concurs with goals for a more attractive City. A developer should demonstrate by the materials submitted for approval that the objectives and goals of the Midway Vision Statement and the General Plan have been fostered.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.2 Definitions**

A. Common Area. Property that is owned, regulated or maintained by the Homeowners Association but that is provided for the common use and enjoyment of the owners of the facility

through an easement granted to association members which defines the member's rights and responsibilities This includes complementary structures, roads and other improvements.

B. Condominium Plat. An instrument that is used to convey real property, known as units, in three dimensions to individuals who use undivided or common properties and other elements to maintain and use their property. Condominiums are defined in State law, nothing in this definition is meant to limit or change the effects of Utah State Law.

C. Homeowners Association. A lawfully incorporated organization which is created to serve the common interests, and hold the common property of, more than one property owner within a PUD or a Subdivision.

D. Master Plan. A plan approved by Midway City for a PUD or Standard Subdivision that maps the boundaries of the property, pads, units and the location of all common areas, open space, common amenities, roadways, parking areas, landscape features, including irrigation systems, water, sewer, power and other public utilities prepared at the Master Plan standards. The Master Plan is usually used when the project is built in phases that require more than one site plan and is built over time.

E. Pad. The building area of land in a PUD upon which a residential building may be built in accordance with the standards of this chapter wherein ownership is separate from the common areas. Pads are specified areas of property prepared and graded for the erection of structures and sold by deed. Pads will not have frontage on any public or private street. Often Pads are sold on subdivision maps as lots within common area.

F. Planned Unit Development. A residential project which consists of individually owned units which whose owners are part of a property owners association which holds title to certain common areas, provides services to their constituent property owners, enforces and administers certain covenants and restrictions common to the project. Once a PUD has been approved by the City Council and recorded, no further subdivision of that plat will be approved by the City of Midway, except as may be required by Utah law.

G. Standard Subdivisions. Any proposal to create four or more residential dwelling units and/or building lots from one or more existing lots of record. Once a standard subdivision has been approved by the City Council and recorded, no further subdivision of that plat will be approved by the City of Midway, except as may be required by Utah law.

H. Subdivision Lot. A parcel of property occupying a specific piece of real estate as defined on a subdivision plat and sold to individual owners who own the property within the boundaries of their lot. Subdivision lots are always burdened with public utility easements and often carry with them the responsibilities and privileges associated with a Homeowners Association and covenants governing the use of the lots.

I. Unit. A particularly described place in a PUD that represents property to be sold individually to separate owners as shown on a Plat. It is possible that there may be more than one unit sold on a particular building pad.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.3            Pre-Application Conference with Staff Member**

Any person wishing to construct a PUD or standard subdivision shall meet with a Planning staff member, check and review the zone information, obtain application and review procedures, obtain information from the City regarding the City's plan of land use, streets, water, sewer, traffic, trails and parks, and public facilities; and have discussion about public participation meetings and other requirements affecting the land to be developed. The developer shall then prepare plans and seek approval based on the written information received and the process outlined below in this Chapter.

### **Section 16.16.4            Concept Plan**

The purpose of the Concept Plan Review is to explore general feasibility early in the planning process. The Concept Plan helps avoid unnecessary and costly delays when information or necessary resources are not available because they were not addressed until later in the process. While the Concept Plan procedure is not required, and is not an approval, and does not grant any vesting or entitlement, it can be a helpful tool to discover any issues for the project in the planning process.

### **Section 16.16.5            Master Plan**

The purpose of the Master Plan is to break a project into multiple phases. A Master Plan demonstrates that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, roads, sensitive lands protection, and open space are proposed with every phase to allow the project to function without subsequent phases. As part of the Master Plan, the developer shall submit:

A. An application for development with the following elements:

1. The names, addresses and contact information of the applicant and owners of the property.
2. A declaration about whether this application is for a PUD or a Standard Subdivision and the project name.
3. A site plan prepared to scale on a topographic base by a professional planning team which shows the concept of the major features of the project, including roads in relation to existing conditions and developments within one-fourth of a mile of the outside boundaries of the development. Handwritten plans will not be accepted. Three hard copies and one digital copy of the Master Plan on 11"x 17" size paper shall be submitted to the Planning Department for review by the Planning Commission.
4. Applicant entity name, primary contact name, and civil engineer, with respective contact addresses, phone numbers, and email addresses for each.
5. Development plan showing lot, pad or unit location and size(s).
9. All proposed common areas, open space, and amenities.



6. Any proposed public dedications proposals.
7. Conceptual Landscape Plan.
8. Open space provisions including the following information:
  - a. Location.
  - b. Size.
  - c. Proposal for the final disposition and management of common area and open space property.
  - d. Any off-site open space trading provisions as allowed by this Code shall be approved by the City Council before applying for preliminary plan approval; however, any proposals for this purpose should be disclosed as much as possible now.
9. Any trails proposed within the project including an analysis that shows how this trail plan works in conjunction with the City Trails Master Plan.
10. Sensitive Lands.
  - a. Topographic information.
  - b. Identify potential sensitive land issues and a plan for how to address these issues.
  - c. Potential wildlife issues with the project and on the site.
11. A description of how public participation will be conducted consistent with the Citizen Participation requirements of the City, as outlined in Title 16.
12. A Master Plan Agreement shall be used to guide the development of a PUD or subdivision in phases over more than one building season and which will require recording of more than one subdivision or condominium plat. A Master Plan request shall have the following characteristics:
  - a. The maximum number of phases/plats in a development shall be determined by the number of lots/units in the development. One phase/plat is allowed for each 15 units/lots or portion thereof, in the development. The maximum number of lots shall be calculated by the Planning Department who shall determine the total number of lots/units in the development and divide that number by 15. That number, plus one additional phase/plat, shall be the total number of phases/plats allowed. If the total number of units/lots in the development is 15 or less, only one phase/plat will be allowed. Once the total number of phases/plats allowed in a development has been determined, the developer may choose the number of units/lots in each phase/plat. For example, a 61-lot development would be allowed a maximum of five phases/plats. The developer could have 12 lots in the first phase, four lots in the second, 14 in the third, 23 in the fourth and eight in the fifth and final phase. Each Phase shall have a separate plat.
  - b. The Master Plan application must be prepared in sufficient additional detail to receive preliminary approval from the Midway City Water Board and the Midway Sanitation

District, provide for the scheduling of all necessary water mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.

c. No entitlement rights shall vest until a Master Plan Agreement is signed and recorded against the development property. The Master Plan Agreement shall not be recorded until water rights (including shares of stock) sufficient for all phases of the development are delivered to the City to be held in escrow for so long as the Master Plan Agreement is enforceable. This is to ensure that the water rights are not sold separately from the development property after the City has granted development entitlements through the Master Plan Agreement. The water rights shall remain in escrow until: 1) they are deeded to the City as part of a final approval for each phase; 2) the Master Plan Agreement lapses in accordance with its terms, thus terminating any entitlement on the development property; or 3) if, prior to any phase of the development receiving final approval, the Developer informs the City in writing of its intent to abandon the entitlements received in the Master Plan Agreement. If the Master Plan Agreement is abandoned, the water rights will be returned to the landowner.

d. Under no circumstances will the water rights be released from escrow to the developer or lending institution once the first phase of the development receives final approval.

e. In the situation where an amendment to the Master Plan Agreement is approved for an unrecorded phase, and the amendment reduces the amount of water rights necessary for that phase, the extra water rights for that phase only, will be returned to the landowner.

f. The developers, or any other parties, remaining joint interest in the water rights for each phase shall be deeded in its entirety to the City prior to the recording of the final plat of each phase. Following such transfer of interest, no other party, including the developer shall hold any right, title or interest in the water rights so transferred. In no event shall a final plat for any development, subdivision, or phase thereof, be recorded prior to the transfer of all the right, title and interest in the required water rights to the City.

g. In the event that any portion of the water right required for Master Plan approval pursuant to the Midway City Code has been pledged to a lending institution as partial security for a loan on the property, the lending institution must agree, in writing (through an escrow agreement), to the escrow of the water rights with the City according to the terms and conditions set forth in Master Plan Agreement. The lending institution may be listed as a joint owner with the developer of the water right held in escrow. Should the lending institution need to foreclose the developer's interest in the water rights, Midway City will release the shares for the sole purpose of removing the developer's name and having the shares re-issued solely in the financial institution's name. Once done, the shares shall be submitted back to Midway City to remain in escrow. Failure to return the shares to the City for escrow shall constitute a breach of the Master Plan Agreement, and all entitlements associated with the Master Plan Agreement shall become null and void.

h. Prior to the final approval and recording of any plat for any development, subdivision, or phase thereof, it shall be the developer's sole responsibility to secure a release of any lien or ownership interest in the water right owned by a lending institution or any other party, and to deed or transfer 100% ownership interest in that water right required for that

development, subdivision, or phase thereof, to Midway City. Prior to recording a final plat, the water right associated therewith shall be unencumbered, and shall be transferred to the City free and clear of any title encumbrance.

- i. A Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, lots/units, roads, sensitive lands protection, and open space are proposed with the first phase, and all successive phases, to allow the project to function without subsequent phases.
- j. Special information must also be prepared for Master Plan applications to demonstrate that all facilities necessary to implement all life safety codes in effect at the time of application will be constructed and be maintained at the time the first phase, and all successive phases, is requested of the City.
- k. Master Plan applications must be reviewed by the Planning Commission and approved by the City Council.
- l. No City Council approval may be considered until after a public hearing has been held to consider the recommendation of the Planning Commission with regard to the Master Plan.
- m. The Planning Commission and City Council may schedule such public hearings and extra meetings as they deem necessary to find the information necessary to make a recommendation to the City Council for a Master Plan.
- n. After approval of the Master Plan by the City Council, a Master Plan Agreement must be prepared and executed by the applicant and the City, sufficient to describe the entitlement granted to implement the Master Plan. The Agreement must be signed by the applicant within 90 days of Final Approval of the Master Plan by the City Council. If the Agreement is not fully executed within 90 days of Final Approval of the Master Plan, then all Master Plan approvals shall become null and void.

(2012-04, Section Amended, eff. 4/11/12; 2018-14, Section Amended, eff. 5/9/18; 2019-14, Section Amended, eff. 2/24/2021)

### **Section 16.16.6 Preliminary Plan**

After review of the Master Plan by the Planning Commission, the developer shall prepare a Preliminary Plan and shall submit three copies of the plan on 11" x 17" size paper to the Planning Department, to then be sent to the Planning Commission for its review and recommendation. The purpose of the Preliminary Plan is to demonstrate how the proposed development plan will be able to meet the standards required under the Land Use Title and other applicable laws or regulations after considering the issues and recommendations found during the Master Plan Review phase. While the Preliminary Plan is not expected to contain construction drawings, it is expected that the Preliminary Plan will demonstrate compliance with this Title.

The Preliminary Plan shall contain the following information (If any of the following information has been satisfied by the information submitted during the Master Plan Review, that same information must be included again with the Preliminary Plan Application.)

A. Name of development.

B. Applicant entity name, primary contact name, and civil engineer with respective contact addresses, phone numbers, and email addresses for each.

C. Legal description with section tie.

D. Zone boundaries and designations.

E. North point and a scale consistent with a scale that is on a standard engineering scale ruler.

F. A site plan showing location of all buildings, building pads, and lots.,

G. Location and description of all common areas, sensitive lands, recreational and open space areas and facilities. (Note: Any off-site open space trading provisions allowed by this Title shall have been taken directly to the City Council for potential approval before applying for Preliminary Plan recommendation.)

H. Topography shown by contours at no greater interval than two feet except that a greater interval may be permitted when the property is outside the survey boundary.

I. Tabulation of land use by acres or other applicable units:

1. Total area, common area, limited common area, open space, building area, and dedicated streets.

2. Parking spaces (covered and uncovered). 6. The identification of all sensitive lands and a preliminary proposal to protect such lands for damage due to development during and after construction.

J. Schedule and description for ownership of title for any open space property, open space easements, or conservation easements.

K. Proposed circulation pattern including private and public streets and sidewalks.

L. A detailed statement and illustration of how the project will meet sensitive lands requirements.

M. Existing and proposed easements, waterways, utility lines, canals and ditches.

N. A plan for accommodating waterways, ditches and canals.

O. Proposed and existing sewage disposal facilities.

P. Existing and proposed storm drain system with the related run-off calculations for the development site including routing the runoff water that leaves the site to a City storm drain or natural drainage approved by the City to accept the water.

Q. Existing and proposed water systems indicating size of water lines and fire hydrant locations. Indications as to the capacity of the water system as it relates to the project.

R. More detailed (than concept) landscape plan indicating areas of landscaping and irrigation and the various types of landscape materials, coordinated with a preliminary grading plan and all the sensitive lands.

S. A preliminary noxious weed control plan showing which noxious weed species need to be controlled during construction, up to completion of the project and after construction with the County Weed Supervisor as evidenced by a dated acknowledgement on the plan.

T. When the project contains 15 or more lots/units, traffic analysis survey results and proposed response must be discussed.

U. Environmental Assessment Review, as outlined in this Title.

V. Any other information Staff, the Planning Commission, or the City Council may determine necessary relating to the particular site of the proposed project.

W. Evidence of sending digital copies of the proposed subdivision to the following service providers: telecom; natural gas; irrigation; sanitary sewer; power cable postmaster; Wasatch County Fire District; Wasatch County Solid Waste Special Service District.

X. A written Citizen Participation Plan as described in this Title which documents the information supplied to the public, the issues addressed with the attendees at the first Citizen Participation Meeting and other written or verbally communicated comments received from the public as a result of the Citizen Participation Plan.

Y. Recommendation from the Midway City Water Advisory Board.

Z. Preliminary approval from the Midway Sanitation District.

AA. A geotechnical report as requested by City staff.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.7                    General Standards and Requirements**

A. The following standards and requirements shall apply to all PUDs and standard subdivisions:

1. All dwelling units shall be served by a public sewer and a City-approved water supply. All utilities within the development shall be placed underground, including telephone, power and television. All dwelling units shall have separate utility connections and metering.

2. The area proposed for a PUD or standard subdivision shall be in one ownership during development to provide for full supervision and control of said development and to insure conformance with these provisions and all other conditions recommended by the Planning Commission and set by the City Council upon the preliminary and final development plans.
3. In the event that the land contained within a development is traversed by a proposed street, the development shall be designed in accordance therewith and the right-of-way across the development for the class of the proposed street. If the proposed street is one of the collector or arterial streets the appropriate right-of-way width shall be dedicated to the public, with improvements.
4. All areas not covered by buildings, parking areas, streets or drives shall be developed according to a grading plan which integrates the developed areas with the natural landscape, streets, buildings, sensitive lands and landscape area.
5. All areas not covered by buildings, parking, streets or drives shall be planted with grass, trees, shrubs or other plant materials to preserve and protect the final grading plan and the drainage plan proposed are part of the project as part of the submittal of the final landscape plan. Areas may be allowed to be left in a natural state, or xeriscaped, if the Planning Commission and City Council find this more desirable than traditional landscaping; also, a permanent sprinkler system shall be installed in all landscaped areas to provide irrigation of planted areas.
6. The landscaping plan must also provide for a noxious weed control plan applicable before, during, and after construction of the development. All landscaped areas in standard subdivisions not located within a building lot and all landscaped areas in PUD not located within 50' of a building pad shall be planted and landscaped within one year after posting the landscape bond.
7. All parking spaces, parking areas and driveways must be hard-surfaced and properly drained with no drainage running across public or private sidewalks.
8. The developer shall install all public improvements on-site and off-site as identified by the City Council.
9. All street construction improvements in PUDs and standard subdivisions shall be constructed according to public street construction widths and cross-section standards.
10. All parking areas shall be screened from public view when possible, with berms and landscaped features as required by the City Council based on specific circumstances of the parking area location.
11. Provisions of the Sensitive Lands section Chapter of this Title shall be adhered to within all PUDs and standard subdivisions.
12. The project shall connect any trails shown on the City Trails Master Plan for the area.
13. Gated communities shall not be permitted.
14. The developer shall be responsible to pay all costs incurred by the City in processing and reviewing the development proposal, including but not limited to all engineering, attorney, and outside consultant fees.

15. The applicant must demonstrate that the development proposed will be able to meet the water provision requirements set forth in Title 10.

16. Once a standard subdivision or a PUD is recorded no external boundary line adjustments that affect designated open space or common area or sale of designated open space or common area that alters an external boundary, including boundary line adjustments that would take portions of the designated open space or common area and move it outside of the recorded plat.

### **Section 16.16.8 Standards and Requirements Specific to Planned Unit Developments**

A. The following standards, requirements and conditions shall specifically apply to all PUDs:

1. The permitted base densities allowed in a PUD for each zoning district are listed below:

R-1-7	5.0 units per acre
R-1-9	3.9 units per acre
R-1-11	3.2 units per acre
R-1-15	2.3 units per acre
R-1-22	1.6 units per acre
RA-1-43	0.8 units per acre

2. The minimum number of units in a PUD shall be 40.

3. All streets in a PUD will be privately owned and maintained except for any street that the City Council specifically agrees will be owned and maintained publicly. Public streets will generally be Collector Roads and will most likely be listed in the Capitol Facilities Plan.

4. Setbacks:

a. Setbacks along the peripheral property lines of the PUD shall be a minimum of 100 feet. For pads located within 120 feet of the peripheral property line, setbacks shall be staggered at ten (10) foot intervals with one-third of the structures having a 100 foot setback, one-third having a 110 foot setback, and one-third having an 120 foot setback. No structure within 50' of another structure shall have the same setback.

b. Setbacks from the following streets shall be a minimum of 130 feet for all structures and parking. This setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads.

i. Burgi Lane;

ii. River Road;

iii. Pine Canyon Road;

iv. Homestead Drive;

v. Michie Lane, east of Center;

vi. Center Street, south of Main Street (SR 113);

- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

No accesses to individual dwelling units within a PUD shall be allowed directly from the above streets. Access must be made from streets within the development.

c. Front setbacks for buildings from all private streets within the PUD shall be staggered at seven and one-half feet variances, with 30 feet the minimum setback. One-third of the buildings containing dwelling units shall be at each of at least three different setbacks as recommended by the Planning Commission and approved by the City Council. For example, one-third at 30 feet, one-third at 37 ½ feet and one-third at 45 feet. Setbacks for accessory buildings shall be as recommended by the Planning Commission and approved by the City Council. Setbacks from private streets shall be measured from top-back of curb or back of sidewalk or trail, whichever is further from the street centerline. The City Council may waive this requirement when a curvilinear street design is used and shown to create the same varying setback effect.

5. Two parking spaces per unit shall be provided for all units within the project. One space per unit shall be covered. One-half space for every unit shall be provided for guest parking. All Internal Accessory Dwelling Units proposed in a PUD shall have one parking space in addition to the two-stalls required for the primary dwelling. The parking space shall not be in tandem with any other parking and shall not be in a required visitor parking stall.

6. The maximum number of units per building shall be limited to four units.

7. The maximum area of a building pad is limited to 3,000 square feet. An area of limited common area may be attached to the building pad that would allow for a pergola, covered deck, hot tub, courtyard, or other similar type feature. This area may not contain any enclosed living space. The maximum area of the limited common area is 750 square feet, and the maximum depth of the limited common area is 15'. The maximum height of any improvements in the limited common area is 15' measured from natural grade. The limited common area shall be located to the side or rear of the building pad.

8. In all PUDs, all portions of all structures, whether on the ground, above the ground, or below the ground, must be contained within the confines of the building pad identified on the plat. This restriction shall apply to all protrusions, protuberances, and overhangs, including but not limited to all portions of all walls, roofs, doors, windows, bay windows, cantilevers, fireplaces, chimneys, support posts or structures, window wells, and/or decks.

(2012-04, Section Amended, eff. 4/11/12; Omission corrected in Subsection 16.16.8(A)(5)(b) with "streets" changed to "collector streets", eff. 1/19/16; 2018-07, Section Amended, eff. 2/28/18; 2018-06, Section Amended, eff. 3/28/18.)



## Section 16.16.9

## Standards and Requirements specific to Standard Subdivisions

A. The following standards, requirements and conditions shall apply specifically to all standard subdivisions:

1. The minimum permitted lot size allowed in a standard subdivision for each zone shall be as specified in the zoning requirements set forth in this Title., except as modified by the open space and/or affordable housing provisions of this Chapter.

2. Dwellings and permitted structures shall be located so as to best comply with the intent of this Title and shall meet the following standards:

a. Setbacks from the following streets shall be a minimum of 100' (with the exception of a shelter for a bus stop not to exceed 200' square feet or as approved by the City Council).

- i. Burgi Lane;
- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

Standard subdivisions that have at least 250' of frontage on the roads listed in this section and require a 100' setback may reduce lot size and frontage proportionally as provided in the Open Space Requirements Specific to Standard Subdivisions. Standard subdivisions that do not require a 100' setback can only reduce lot size and frontage proportionally for open space provided above the 15% requirement as provided in the Open Space Requirements Specific to Standard Subdivisions.

b. This setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads.

c. Notwithstanding the setback requirement noted earlier in this Section, no accesses directly to individual dwelling units within a standard subdivision shall be allowed directly from the following streets; rather, access must be made from streets within the development, unless this is a practical impossibility.

- i. Burgi Lane;
- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;

- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

(2012-04, Section Amended, eff. 4/11/12) (2018-06, Section Amended, eff.3/28/18)

## **Section 16.16.10            Open Space General Requirements**

A. Open space is defined as a portion of a development site that is permanently set aside for public or private use and that will not be developed or sold to individual owners. Open space shall not contain residences. Improvements such as club houses, shelters, covered swimming pools, and gazebos may be included within the open space requirement along with uncovered recreational facilities such as football fields, baseball diamonds, basketball courts and playgrounds. Open space shall be planned and designed to encourage and promote its proper use, care and ongoing maintenance. Specifics of vegetation, landscaping, amenities, improvements, recreational facilities, etc. within the open space shall be proposed by the applicant, approved by the Planning Commission and City Council, and then set forth in detail in the development agreement for the project.

(2012-04, Sub-section Amended, eff. 4/11/12; 2013-16, Sub-section Amended, eff. 03/18/15)

B. Land proposed to be devoted to vehicular streets or roads, parking, and drives shall not be included in the computation of open space.

C. Entry features such as roundabouts, median planter strips, fountains, etc. may count as open space if the design of such features is recommended by the Planning Commission and approved by the City Council.

D. Sensitive lands, as defined elsewhere in this Title, may be counted as open space, provided the lands also satisfy the other characteristics of open space set forth herein and shall be protected by the proposed development plan. For developments with sensitive lands that comprise less than 50% of the entire (gross) acreage, no sensitive lands may be counted as required open space. For developments with sensitive lands that exceed 50% of the entire (gross) acreage, a maximum of 10% of those sensitive lands which are in excess of 50% of the entire (gross) acreage may be counted as required open space. Development alterations of any sensitive lands shall be prohibited except as allowed and defined elsewhere in this Title.

(2021-27, Sub-section amended, eff. 11/3/2021)

E. The open space areas required by this Section shall not be satisfied by any areas contained within a designated building lot. This provision is subject to the following exception: on a building lot of two or more acres, areas contained within the lot boundaries may be counted as open space provided that those areas are designated on the plat as unbuildable areas permanently preserved as open space pursuant to the standards specified in this Title.

F. A minimum of 50' open space area is required along the following listed roads. Any other required open space may be placed in other areas of the development.

- i. Burgi Lane;

- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane, east of Center;
- vi. Center Street, south of Main Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

G. Open space areas shall not be fenced with sight obtrusive fencing.

H. The open space area requirements may be met by purchasing or providing property, development rights, or conservation easements on other properties deemed of value to the community and approved by the City Council on a value for value ratio. Such areas may not be sensitive lands as defined by this title, unless approved by the City Council, but may include agricultural lands, fields along Main Street and other open space areas, within the City limits or annexation area, as may be approved by the City Council. Approval of open space exchanges must be made by the City Council before the applicant applies for preliminary approval. Upon approval by the City Council, such offsite open space areas shall be included in calculating the development's density-qualifying acreage.

I. Developments subject to the open space requirements of this Chapter shall be required to either:

1. Deed to each owner in the development an undivided ownership interest in the open space contained within the development and form a homeowners' association which shall be responsible for maintaining such common area according to Covenants, Conditions and Restrictions recorded with the Condominium Record of Survey map or subdivision plat; or,
2. Place the open space in a perpetual conservation easement granted to an established conservation organization, as approved by the City Council. If the open space is placed in a conservation easement, a maintenance agreement shall be entered into with the conservation organization to guarantee proper maintenance of the open space. Open space included within the boundaries of two (2) acre or larger building lots shall not be subject to the restrictions of this paragraph.

J. Open space shall be either appropriately and attractively landscaped or actively used for agricultural purposes.

K. An acceptable landscaping plan as defined elsewhere in this Title, including a noxious weed plan, must be submitted before preliminary approval of the development and complied with thereafter. The landscaping plan shall protect the grading plan elevations from unreasonable degradation, help implement the storm drainage plan where appropriate, protect sensitive lands from degradation, protect the project and surrounding properties from unreasonable infestations of noxious weeds and promote a clean, neat and restful natural setting for the project and surrounding properties.

L. If the homeowners' association or conservation organization fails to adequately maintain the open space, the City, after 15 days prior written notice, may perform the necessary maintenance and bill the homeowners or conservation organization for the expense. In addition, the City shall be authorized in the covenants, conditions and restrictions of the development to place and record a lien on the open space property for the amount of the maintenance cost and, if necessary, to maintain legal action against the homeowners' association or conservation organization to collect on the debt and foreclose against the lien property. This provision shall be included in the recorded declaration of covenants, conditions and restrictions for the development.

(2012-04, Sub-section Amended, eff. 4/11/12; 2013-16, Sub-section Amended, eff. 03/18/15; 2018-08, Section Amended, eff. 2/28/18; 2018-06, Section Amended, eff. 3/28/18)

### **Section 16.16.11 Open Space Requirements Specific to PUDs**

A. Not less than 50 percent of the area of the PUD shall be retained in permanent open space, parks, and playgrounds.

B. Common areas and other open space areas with a width smaller than 150 feet in any direction shall not be counted as open space, except for the peripheral property line setback area which will be counted as open space.

C. At least one-half of the required open space shall be retained in a single open space area. Area qualifying for open space shall not contain parking stalls; however, structures which enhance the protection and approved uses of the open space by the HOA may be included in open space areas so long as they do not occupy more than 10 percent of the open space area. A single open space area shall be defined as an open area not broken into small portions with the large majority of its land mass in as much of a square as possible.

(2018-08, Section Amended, eff. 2/28/18; 2018-06, Section Amended, eff. 3/28/18)

### **Section 16.16.12 Open Space Requirements Specific to Standard Subdivisions**

A. All standard subdivisions six or more acres in size located in the R-1-11, R-1-15, R-1-22 zones, and all standard subdivisions ten or more acres in size located in the RA-1-43 zone shall reserve a minimum of 15 per cent of the total acreage of the subdivision in open space. Any subdivision that provides more than 15 percent open space can reduce lot size, width, and frontage proportionally as provided in part C. of this section. The reduction is based on the percentage of open space provided above the 15 percent requirement. For example, a subdivision that provides 35 percent open space can reduce lot frontage, width, and acreage by 20 percent. The maximum amount of reduction is 50 percent. This proportional reduction cannot be combined with the proportional reduction allowed when a 100' setback is required. Standard subdivisions that require a 100' setback can reduce lot size and frontage proportionally as provided in the Open Space Requirements Specific to Standard Subdivisions. Standard subdivisions that do not require a 100' setback can only reduce lot size and frontage proportionally for open space provided above the 15% requirement as provided in the Open Space Requirements Specific to Standard Subdivisions. To prevent circumvention of this

requirement, a subdivision less than six acres in the R-1-11, R-1-15, R-1-22 zones, and a subdivision less than ten acres in the RA-1-43 zone, shall not be approved without complying with the 15 percent open space requirements of this section if there is a reasonable basis to believe that:

1. Both the land comprising the subdivision and the land comprising a contiguous subdivision of less than six acres (10 acres in the RA-1-43 zone) that did not reserve open space and that was approved less than five years earlier was owned by the same or a related individual, person, entity or group as the current applicant or owner at the time the earlier subdivision was approved, or

2. A contiguous parcel of less than six acres (10 acres in the RA-1-43 zone) owned by the same or a related individual, person, entity or group as the current applicant or owner is simultaneously under a pending standard subdivision application and is not proposing to meet the open space requirements of this section. This provision shall have prospective application only and shall not take into account any approvals granted prior to the enactment of this section.

B. Areas with a width less than 50 feet in any direction shall not be counted as open space.

C. Due to the open space requirements imposed herein, lot size in standard subdivisions subject to the open space requirements of this section may be reduced to 50 percent of the minimum lot size required in the zone in which the subdivision is located. This provision therefore explicitly allows for the creation of building lots smaller than the minimum lot size required in the zone in which the subdivision subject to open space requirements is located. The permitted reduction in lot size shall be directly proportional to the total amount of non-developable open space reserved in the subdivision. For example, a subdivision that is required a 100' setback that reserves the minimum 15 percent open space required by this section shall be allowed to reduce any of its lots to 85 percent of the size required in the zone. A subdivision that is required a 100' setback that reserves 30 percent of its total acreage for open space shall be allowed to reduce any of its lots to 70 percent of the required size in the zone. Frontage and width requirements will also be reduced by the same percent as explained above.

<b>Standard subdivision examples of open space and proportional frontage and acreage reduction</b>		
	<b>Open Space Provided</b>	<b>Proportional reduction allowed</b>
Subdivision along listed streets with a 100' setback	15%	15%
Subdivision not requiring a 100' setback	15%	0%
Subdivision along listed streets with a 100' setback	35%	35%
Subdivision not requiring a 100' setback	35%	20%

(2012-04, Section Amended, eff. 4/11/12; 2013-16, Section Amended, eff. 03/18/15; 2018-05, Section Amended, eff. 2/28/18)

**Section 16.16.13 Preliminary Planning Commission Action**

A. Upon presentation of the Preliminary Plan and documents, the Planning Commission shall recommend approval as submitted, recommend approval with conditions or may refer them back to the developer for one or more of the following reasons:

1. Due to the type of buildings, layout of structures, design of plan, or other aspects of the preliminary submittal, the Planning Commission determines the project to be inconsistent with the Ordinance.
2. The Planning Commission recommends that certain specific changes be made within the plans.
3. The plans or documents have not been completed.
4. All applicable fees have not been paid by the developer.

**Section 16.16.14 Recommendation of Preliminary Plan to City Council**

Upon the Planning Commission’s completed review and recommended approval of a Preliminary Plan of a PUD or standard subdivision, the Planning Commission shall recommend the Preliminary Plan to the City Council for approval or denial, with or without conditions.

**Section 16.16.15 Public Hearing**

After receiving notice of the Planning Commission’s recommendation of approval, or denial, the City Council shall set and hold a public hearing to consider preliminary/final approval or denial of the project.

**Section 16.16.16 Preliminary Approval of City Council**

After holding the public hearing, the City Council shall approve, approve with conditions, or deny the Preliminary Plan based on the same standards as required above for preliminary approval by the Planning Commission.

**Section 16.16.17 Time Limit for Preliminary Plan Approval**

Any failure to submit a proposed final plan and final approval submittal package within one year of the approval of the Preliminary Plan by the City Council shall terminate all proceedings and render the Preliminary Plan null and void.

## **Section 16.16.18 Final Approval Submittal Package**

If the Preliminary Plan is approved by the City Council, the developer shall submit one full size copies and three 11" x 17" copies of the proposed final plat and a final approval submittal package to the Planning Commission composed of the following:

- A. All material, studies and requirements as requested by the Planning Commission or City Council as conditions of preliminary approval.
- B. A final plat map in compliance with the approved Preliminary Plan. This plat is to implement among other things, the approved site plan, proposed ownership areas, utility easements, public dedications, open space, limited common areas, common areas, roads and private areas.
- C. Detailed landscaping plan and sprinkler plan that implements the approved Preliminary Plan.
- D. Final engineering drawings (plans and profiles) for all public and private improvements, final grading plan, and final drainage and run-off plan with run-off calculations.
- E. All documents and legal material necessary to implement the application for Final Approval as well as those to be recorded.
- F. Deeds of dedication for all public lands as required by the City or other public entity, when such dedications are not shown on a final plat.
- G. Provisions for bonding of all improvements including landscaping in a form acceptable to the City. The bond amount is to be 110 per cent of the City Engineer's estimated cost for improvements.
- H. Payment of all required final plat fees and any other outstanding fees.
- I. Declaration of Covenants, Conditions and Restrictions for said development (if any) to be recorded with the Wasatch County Recorder's Office with the Final Plat. The following standards shall apply to the Declaration of Covenants, Conditions, and Restrictions recorded in conjunction with any subdivision development:
  - 1. The Declaration may provide for the creation and perpetual provision of an architectural committee, the number of members and composition of which shall be clearly stipulated. The Declaration shall also establish design guidelines governing the appearance of the site buildings, signs, lighting, landscaping, street furniture, fencing, and mechanical equipment.
  - 2. The Declaration shall stipulate the method and procedure by which the declaration may be amended.
  - 3. The Declaration may also contain use restrictions which are more restrictive than the City's zoning provisions, but in no case shall they be more permissive.
  - 4. The Declaration shall set up the provisions for maintenance of all open space, common areas and private streets and utilities.

5. The Declaration shall state the following: Midway City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal, as applicable, within the common areas and open space if the Association fails adequately to perform such. In the event Midway City exercises this right, the City shall be entitled to recover any associated costs and attorney fees from the Association. This section shall not be amended or deleted without the approval of Midway City.

#### **Section 16.16.19            Development Agreement**

An agreement between the developer and the City stating among other things:

A. That the property owners association created by the developer shall in the event of failure of the owners, successors or assigns to maintain the water and sewage facilities, common areas, open space, landscaping or other improvements in good condition, the City may perform the necessary work and for that purpose may enter upon the land and do the work and recover the cost thereof, including reasonable attorney fees, to the owners or their successors or assigns.

B. The obligations of the developer and or other parties under the approval and the obligations of the City under the approval.

C. That the terms of the contract shall be binding upon the heirs, assigns, receivers, and successors of the project for the life of the project or building.

D. If the development is to be phased, a phasing plan showing construction schedule of streets, infrastructure, amenities and other improvements. Said plan shall be made to make each phase stand alone in all requirements of this Title, including, but not limited to open space, traffic safety and circulation, infrastructure requirements and so forth.

E. A development and maintenance schedule for all undeveloped land within any approved Master Plan and throughout the City under the approval.

F. Any other agreements between the developer and the City.

G. An agreement for the developer to provide financial assurances to ensure completion of all required improvements, including landscaping.

#### **Section 16.16.20            Final Plat**

In addition to all other requirements, the proposed final subdivision or condominium plat shall show an address block containing addresses for each dwelling unit and for each main building within the plat, subject to approval by the Wasatch County Recorder's office.

#### **Section 16.16.21            Final Approval Recommendation by Planning Commission**

After receiving a complete proposed final plat and final approval submittal package, the Planning Commission shall consider the development for final approval. If the Planning Commission finds



that all of the requirements of this Title and all the conditions of preliminary approval of the development imposed by the City have been met, the Planning Commission shall recommend final approval of the development to the City Council. If the Planning Commission finds that any requirements or conditions have not been met, the Planning Commission shall continue the matter until such requirements or conditions have been met or forward such information on to the City Council with a recommendation as to how the City Council should act with respect to final approval of the development.

### **Section 16.16.22            Final Approval by City Council**

A. After receiving the recommendation of the Planning Commission with respect to final approval, the City Council shall consider the development for final approval.

B. The City Council shall determine whether the proposed final plat and final submittal package meet all requirements of this Ordinance Title and the conditions of the development's preliminary approval by the City. The City Council shall consider the information and recommendation forwarded to it by the Planning Commission with respect to final approval. Based on all of these criteria, the City Council shall approve, approve the conditions, or deny final approval of the development.

C. If the City Council denies final approval, the City Council shall state in detail the basis for its denial, referring specifically to the requirements of this ordinance Title and the conditions of preliminary approval.

D. For no more than a one-year period after such denial of final approval by the City Council, the applicant may re-apply to the Planning Commission and then to the City Council for final approval pursuant to the above described process, but only if the City Council's reasons for denial have been resolved.

### **Section 16.16.23            Duration of Final Approval**

The duration of final approval shall be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within the one-year period of time, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that: (a) construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded; (b) the property must be maintained in a clean, dust-free, and weed-free condition at all times; (c) each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or (d) no more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Section amended, eff. 12/14/2011, 2012-04, Section Amended, eff. 04/11/12)

#### **Section 16.16.24      Plat Recording**

No plat shall be recorded until all required water rights and/or water shares have been tendered to the City and assurances are provided to the City to ensure completion of all required improvements, including landscaping.

(2016-09, Section Amended, eff. 05/11/2016)

#### **Section 16.16.25      No Building Permits Issued Prior to Plat Recording**

No building permit application shall be submitted prior to the recording of the plat by the County Recorder.

#### **Section 16.16.25      Completion of Infrastructure Construction and Issuance of Permits**

No building permits application shall be submitted until the infrastructure construction of the development is substantially complete; provided, however, that the developer in whose name the bond for the project is issued may submit a building permit application once the fire flow mechanisms are installed, operating, and approved by the City Engineer. Once installed, operating, and approved, fire flows must remain operating continuously thereafter. No certificate of occupancy will be issued until infrastructure construction on the development reaches final completion as determined by the City Engineer.

(2016-09, Section Amended, eff. 05/11/2016)

#### **Section 16.16.26      Landscaping Bond**

Before recording any plat or condominium record of survey of map, a bond equal to 110 per cent of the cost for construction and completion of the landscape plan shall be posted.

#### **Section 16.16.27      Construction Bond**

Prior to construction of a development and plat recordation, the developer shall submit a Construction Bond to the City in the amount of 110 percent of the cost of all improvements and inspections as determined by the City Engineer. The Construction Bond will include a line item for a weed control plan that has been approved by the City.

(2012-04, Section Amended, eff. 4/11/12)

#### **Section 16.16.28      Default**

In the event the developer defaults, fails or neglects to satisfactorily install the required improvements within one year from the date the plat is recorded, the City Council may declare the bond forfeited and the City may install or cause the required improvements to be installed

using the proceeds from the collection of the bond or other assurances to defray the expense thereof.

### **Section 16.16.29 Final Disposition and Release**

The developer shall be responsible for the quality of all materials and workmanship. At the completion of the work, or not less than ten days prior to the release date of the bond or other assurance, the City Engineer shall make a preliminary inspection of the improvements and shall submit a letter to the City Council setting forth the conditions of such facilities. If conditions thereof are found to be satisfactory, the City Council shall release the bond or other assurance. If the condition of materials or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, the City Council may declare the developer in default.

### **Section 16.16.30 Record Drawing Submittal and Contents**

A. Prior to final bond release, an electronic copy of the final drawings in the latest version of AutoCAD or DXF format shall be submitted to the City Engineer. This drawing file needs to include adequate information regarding position and basis of bearing tied to established control as approved by the City Engineer.

B. As-built information shall be overlaid on this final drawing. The as-built drawing must be based upon actual field survey of the items on the following list:

1. Established survey monuments, benchmark, and permanent horizontal and vertical control.
2. Water: valves, laterals, fire hydrants, blow-offs, flush valves, and water meters (culinary and secondary).
3. Sewer: laterals and manholes with rim and inverts elevations.
4. Storm drain: Catch basins, curb inlets, and manholes with rim and inverts elevations, size and type of pipe, storm outlets and detention / retention systems.
5. Miscellaneous: light pole locations, street sign locations, and utility box/transformer locations.
6. Pressurized irrigation: valves, blow-offs, flush valves, drains, meters, and water lateral locations.

### **Section 16.16.31 Total Compliance with all Regulations**

In case of failure or neglect to comply with all conditions as established during the approval process or regulations as identified in this Section, the City may refuse additional building permits and stop construction of all work at the site until such violations or non-compliant conditions have been eliminated.

**Section 16.16.32            Warranty Bond**

The City Council shall authorize the release of 100 percent of the bond amount upon verification by the City Engineer that all work is complete and acceptable. The remaining 10 percent of the Construction Bond amount shall be retained by the City for a period of one year in order to insure quality of improvements. If improvements are found to be unacceptable to the City at any time during the one-year period, the City may use the bonding funds to replace or repair any improvements not installed acceptably.

(2012-04, Section Amended, eff. 4/11)

This Ordinance shall take effect upon publication as required by law.

**PASSED AND ADOPTED** by the City Council of Midway City, Wasatch County, Utah  
this                    day of                    2022.

Council Member Steve Dougherty \_\_\_\_\_  
Council Member Jeff Drury \_\_\_\_\_  
Council Member Lisa Orme \_\_\_\_\_  
Council Member Kevin Payne \_\_\_\_\_  
Council Member JC Simonsen \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Celeste Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Brad Wilson, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Corbin Gordon, City Attorney

(SEAL)