

Midway City Council
2 February 2021
Regular Meeting

Ordinance 2021-03 /
Vested Rights



Midway

CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: February 2, 2021

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Addition of Sections 16.26.13: Vested Rights

ITEM: 7

Midway City is proposing a code text amendment of Section 16.26.13: Vested Rights of the Midway City Municipal Code. The proposed amendment would clarify vesting rights for land use applications. The proposal would also clarify the requirements for the validity of a land use application if the application has ceased to progress through the approval process.

BACKGROUND:

The proposed amendment would clarify vesting rights for land use applications by amending Section 16.26.13: Vested Rights, of the Midway Municipal Code. There are two parts in the proposed amendment. The first clarifies and defines when approval is not possible for a land use application because the City has formally initiated proceedings to amend its ordinance. If the City has begun the process to amend its ordinance, then a land use application may not be approved. The second part of the proposed amendment clarifies and defines that an applicant of a land use application must, with reasonable diligence, pursue approval or the application will lapse.

ANALYSIS:

Regarding the first item of vested rights of a land use application, the proposed amendment adds language that defines “formally initiated proceedings”. The current code states the following in Section 16.26.13 (A):

A. An applicant is entitled to approval of a land use application if the application conforms to the requirements of the City’s zoning map and applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:

1. The City Council, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

2. In the manner provided by local ordinance and before the application is submitted, the City has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

The proposed amendment will add language to Section 16.26.13 (A) (2) that will define “formally initiated proceedings” with the following language:

a. The City has “formally initiated proceedings” when:

i. a proposed ordinance is pending on the City Council’s agenda that would prohibit approval of the application as submitted and was placed on the agenda prior to the applicant’s submission; or

ii. a proposed code provision is on the City Planning Commission’s agenda that would prohibit approval of the application as submitted and was placed on the agenda prior to the applicant’s submission.

Staff feels the proposed language will clarify the ambiguity of the current language and give clearer guidelines of what formal proceedings are.

Regarding the second item of an application proceeding with reasonable diligence for it to be considered valid, the proposed language will define reasonable diligence and will clearly describe when an application has lapsed. The current code states the following and Section 16.26.13 (D):

D. The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

Staff feels it is important to clarify the wording in this section of code because the current language is ambiguous and subjective. Periodically, a land use application is submitted to the City and then the applicant fails to progress the application through the approval process. There are several reasons why this might happen with the most common reasons being the following:

- The applicant submits a land use application because the applicant believes the City will amend its code and wants to vest the application before the code is amended.
- Issues arise with the application and progress is completely halted and no progress is made to resolve the issues.
- The applicant does not have the funds to complete the proposal and does not pursue progress or approval of the application.

The most common of the aforementioned situations is the first. In recent years, the City has received a couple of large mixed use land applications that were submitted because the applicants believed a moratorium may be enacted or the City would amend its code. Both applications were idle for about two years and both were eventually pulled by the applicants. Several provisions of the land use code have been amended since the applications were submitted. If a complete application is submitted (an application must be determined to be complete for the application to be vested per state law which includes all required documents are submitted and all fees paid among other requirements listed in the code) then the application is vested under the current code and is not subject to any revisions the City may have enacted. Currently, there is not an expiration on applications that fail to progress, and staff feels that it is important to create a system of expiring inactive applications that are vested, in some cases, under older code provisions.

Staff is proposing the following text is added to Section 16.26.13 (D):

- A. The continuing validity of ~~an approval~~ a land use application ~~that has been deemed complete~~ is conditioned upon the applicant proceeding ~~substantively forward after the applicant proceeding after approval to implement seek approval of the approval~~ completed application with reasonable diligence.*
- 1. "Reasonable diligence" shall mean placing the completed application and/or project on the City Council agenda or Planning Commission agenda every 180 days to move the application substantively forward towards final approval.*
 - 2. Failure to appear on the City Council or Planning Commission agenda as outlined in (D)(1)(a) and/or failure to show specific evidence that the project is moving substantively forward will result in a lapsed application.*

3. After an application lapses, the applicant must restart the application process under the applicable land use ordinances in effect at the time of reapplication including paying all fees applicable to a new application.

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Bouwhuis: I make a motion that we recommend approval of the code text amendment of Section 16.26.13: Vested Rights of the Midway City Municipal Code. The proposed amendment would clarify vesting rights for land use applications. The proposal would also clarify the requirements for the validity of a land use application if the application has ceased to progress through the approval process. We accept the possible findings and with the small minor changes discussed in this meeting.

Seconded: Commissioner Simons

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners: Bouwhuis, Ream, Simons, McKeon, Whitney, Crawford, Clifton

Nays: None

Motion: Passed

POSSIBLE FINDINGS:

- The proposed amendment will assure that applications that fail to progress will lapse
- The City does not want applications to sit idle for months or years and vested on outdated codes
- The proposal will help assure that developments are developed under the most current codes and requirements

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