

**MINUTES OF THE
MIDWAY CITY COUNCIL
(Regular Meeting)**

**Tuesday, 3 August 2021, 6:00 p.m.
Midway Community Center, Council Chambers
160 West Main Street, Midway, Utah**

Note: Notices/agendas were posted at 7-Eleven, Ridley's Express, the United States Post Office, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City's website. A copy of the public notice/agenda is contained in the supplemental file.

1. Call to Order; Pledge of Allegiance; Prayer and/or Inspirational Message

Mayor Johnson called the meeting to order at 6:09 p.m. She excused Council Member Payne.

Members Present:

Celeste Johnson, Mayor
Steve Dougherty, Council Member
Jeff Drury, Council Member
Lisa Orme, Council Member
JC Simonsen, Council Member

Staff Present:

Corbin Gordon, Attorney
Michael Henke, Planning Director
Wes Johnson, Engineer
Brad Wilson, Recorder/Financial Officer

Members Excused:

Kevin Payne, Council Member

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. Council Member Drury gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 3 August 2021 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 20 July 2021 City Council Work Meeting
- d. Minutes of the 20 July 2021 City Council Regular Meeting
- e. Resolution 2021-21 adopting a development agreement for Phase 2 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22)
- f. Resolution 2021-22 adopting a development agreement for Phase 3 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22)
- g. Resolution 2021-23 adopting a development agreement for Phase 2 of The Reserve at Midway located at 285 West Luzern Road (Zoning is RA-1-43)

Note: Copies of items 2a – 2g are contained in the supplemental file.

Motion: Council Member Orme moved to approve the consent calendar with no changes.

Second: Council Member Simonsen seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

3. Public Comment – Comments were taken for items not on the agenda.

Mayor Johnson asked if there were any comments from the public for items not on the agenda. No comments were offered.

4. Department Reports

DUP / New Space

Council Member Orme reported that the Daughters of the Utah Pioneers had completed their move to a new space which was in the Community Center.

Cemetery / Moratorium

Council Member Orme reported on the burial space moratorium and issues that needed to be addressed at the City's cemetery.

Parks, Trails, and Trees Committee / Event

Council Member Simonsen indicated that the Midway Parks, Trails, and Trees Advisory Committee would hold an event on September 25th.

Trails / Signage

Mayor Johnson suggested that signage be install at least on the trails that had been built with grant money.

River Road Project / Main Street Intersection / Swiss Days / Winter

Wes Johnson reported on the River Road Project. He noted that crossing Main Street had been completed. He also noted that he was working with the Swiss Days Committee Chair regarding access to River Road. He indicated that contingency plans were being prepared in case the project was not completed by winter.

HVRR / Tour by Legislator

Mayor Johnson reported that another legislator toured the Heber Valley Railroad (HVRR).

HVSSD / Long-Term Planning

Mayor Johnson reported that the Heber Valley Special Service District (HVSSD) was working on long-term planning.

5. Toolmaking Shop / Conditional Use Permit (Brian Haslam – Approximately 30 minutes) – Discuss and possibly grant a conditional use permit for a toolmaking shop located at 295 West Killowen Drive (Zoning is R-1-22). Recommended for approval with conditions by the Midway City Planning Commission. **Public Hearing**

Michael Henke gave a presentation regarding the conditional use permit and reviewed the following items:

- Location of the proposed business
- Overview
- Site plan
- Elevations of the proposed building

Mr. Henke also made the following comments:

- The Municipal Code did not prohibit an accessory building from being built before a house.
- It did say that a house had to be built before there could be a cottage industry on the property.
- Approval could be granted with the condition that the house be built before a business license could be issued.
- The applicant wanted to start the business before the house was built.
- The business space had to be temperature controlled.
- The Planning Commission recommended that the air conditioning units not be next to the neighboring lot.
- The applicant had not yet arrived at the meeting.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

Motion: Council Member Dougherty moved to table the item to see if the applicant would come to the meeting so that the attendees could hear from him.

Second: Council Member Orme seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

- 6. Saddle Creek Subdivision, Phase 4 / Preliminary Approval** (Berg Engineering - Approximately 20 minutes) – Discuss and possibly grant preliminary approval for Phase 4 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22). Recommended for approval with conditions by the Midway City Planning Commission.
Public Hearing

Michael Henke gave a presentation regarding the requested approval and reviewed the following items:

- Land use summary
- Location of the development
- Pictures of the development
- Master plan
- Trails
- Letter from the City Engineer
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed condition

Mr. Henke also made the following comments:

- The developer would rebuild 970 South and half of the width of 250 West
- A sewer line would be rerouted.

Note: A copy of Mr. Henke’s presentation is contained in the supplemental file.

Wes Johnson indicated that the owner of the property, to the west of the development, would use the applicant’s contractor to do the other half of 250 West. Mr. Henke added that a development application for that property had been received.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

Motion: Council Member Simonsen moved to approve the Saddle Creek Subdivision, Phase 4 for preliminary approval with the following findings and conditions:

- The proposed plan for Phase 4 complied with the requirements of the land use code.
- The proposal met the vision as described in the General Plan for the R-1-22 zone.
- 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 would terminate all proceedings and render the Preliminary Plan null and void.
- Adjusted sewer easements would be in place before the proposed plat was recorded. This included the release of any easements that crossed building lots.

Second: Council Member Drury seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

7. Ordinance 2021-23 / Wireless Communications (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2021-23 amending Section 16.22 (Wireless Communications) of the Midway City Municipal Code regarding wireless communications. Recommended for approval without conditions by the Midway City Planning Commission. **Public Hearing**

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Background
- Proposed language
- Existing towers and facilities
- Planning commission motion
- Possible findings

Mr. Henke also made the following comments:

- The ordinance clarified what a wireless communications tower should look like.
- The Municipal Code currently inferred that such towers would be stealth.
- Received a lot of calls about installing towers.
- Co-location was required first, then locating towers on public property, and finally they were allowed on private property if the other options were not possible.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

Council Member Dougherty asked if a permit was required for co-location. Michael Henke responded that a permit was required and approved administratively. He added that new tower permits were approved by the Council.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

Motion: Council Member Drury moved to approve Ordinance 2021-23 regarding wireless communications with no conditions and the following findings:

- Federal and State requirements required that the City adopt a code if it wished to regulate wireless telecommunication facilities.
- The General Plan promoted careful consideration of improvements along Main Street and in the entire community.
- The City could establish reasonable design standards.
- Telecommunication facilities benefited residents, tourists, and businesses in Midway.

Second: Council Member Simonsen seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

Toolmaking Shop / Conditional Use Permit (Continued)

Michael Henke continued his presentation regarding the conditional use permit and reviewed the following items:

- Possible findings
- Planning commission motion
- Proposed conditions
- Definition and requirements for a cottage business

Mr. Henke also made the following comments:

- There would be one delivery per week.
- Notices had been sent to the neighbors.
- Received some comments from the neighbors.
- There was a concern with how much power the business would use.
- There was also a concern with the business operating before the house was built.
- The license could be revoked or not renewed if the business violated the nuisance regulations.
- The permit would be transferrable if unchanged.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- Was the use industrial?
- The applicant gave a good presentation to the Planning Commission. The building was insulated and had a controlled environment. The business would have one employee.
- The request was allowed only if the applicant lived in a house on the lot.
- More should be known about the manufacturing process. Would solvents be used? What was wasted?
- The owner of the business had to occupy the house.
- Did the Wasatch County Fire District have any input on the request?

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public.

Tony Hull

Mr. Hull made the following comments:

- Lived next door to the proposed business.
- Met with the applicant who was polite and eloquent.
- Did not oppose the request if it was safe and there were no problems with noise, power, fire, etc.
- He had children.
- Did not understand what would be done inside the building.
- Supported home based businesses except manufacturing, daycare, etc.
- The business owner should live in the house.

Mayor Johnson closed the hearing when no further public comment was offered.

Motion: Council Member Dougherty moved to deny the request without prejudice and credit the already paid application fee.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Orme thought that the request should be denied because there was not an existing house. She said that the applicant could reapply when the house was built, and he occupied it.

Withdrawal: Council Member Dougherty withdrew his motion.

Motion: Council Member Dougherty moved to deny the request without crediting the already paid application fee.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Simonsen thought that the applicant had been given some indication that his request was valid. Mayor Johnson responded that the applicant first applied to build a garage, but the Planning Department stopped the application when it learned the building would include a business.

Council Member Drury asked if a permit had been requested for the house. Michael Henke responded that one was close to being submitted.

Council Member Simonsen asked if the applicant knew his request did not meet code requirements. Michael Henke responded that he thought the issue could be addressed with a condition to the motion.

Amended Motion: Council Member Dougherty moved to deny the request, without crediting the already paid application fee, because there was not a house on the lot.

Second: Council Member Orme seconded the amended motion.

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

8. The Reserve at Midway, Phase 1 / Plat Map Amendment (Berg Engineering – Approximately 10 minutes) – Discuss and possibly approve a plat map amendment for Phase 1 of The Reserve at Midway located at 285 West Luzern Road (Zoning is RA-1-43).
Public Hearing

Michael Henke gave a presentation regarding the proposed amendment and reviewed the following items:

- Land use summary
- Possible findings
- Proposed condition.

Mr. Henke also made the following comments:

- The amendment was minor.
- The request would change the road names on the plat map.
- Some of the lots had already been sold.
- The road names could be changed without an amendment, but an amendment eliminated confusion.
- The request did not go before the Planning Commission.
- The applicant should speak with the County Recorder to determine who should sign the plat map.
- Ivan Spencer, who assigned road names and addresses, approved of the request.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

Motion: Council Member Simonsen moved to approve the plat map amendment for Phase 1 of The Reserve at Midway for the name changes of the roads as stated with the following findings and conditions:

- Some lots had been sold, but the development was still under construction, so adjusting the road names on the plat did not appear to create a significant impact on the City or property owners.
- The duration of a plat amendment approval would be for one year from the date of approval of the amendment by the City Council. Should the amended plat not be recorded by the County Recorder within the one-year period of time, the plat amendment's approval would be voided, and approval would have to be re-obtained, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extended the time limit for recording, with or without conditions. Such conditions might include, but were not limited to, provisions requiring that: (a) each extension would be for a one-year period only, after which time an annual review would be requested by the applicant and presented before the City Council; and/or (b) no more than three one-year extensions would be allowed. The granting or denying of any extension, with or without conditions, was within the sole discretion of the City Council, and an applicant had no right to receive such an extension.
- Any costs associated with the name changes would be borne by the applicant.
- The recording of the plat map would meet the requirements of the County Recorder's office.
- The request did not vacate any public roads or easements.

Second: Council Member Drury seconded the motion.

Discussion: None

Note: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

Motion: Without objection, Mayor Johnson recessed the meeting at 7:29 p.m. She reconvened the meeting at 7:38 p.m.

9. Ordinance 2021-22 / Events (City Planner – Approximately 45 minutes) – Discuss and possibly adopt Ordinance 2021-22 amending the Midway City Municipal Code regarding events.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Proposed language
- Definitions

Mr. Henke also made the following comments:

- A recent event in the City prompted the ordinance.
- The Municipal Code already included noise restrictions.
- The capacity of a restaurant was based on its seating.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- How would noise restrictions be applied if they were included in the ordinance? Would a permit be needed every time someone performed at a restaurant? Should multiple permits be approved administratively, or a blanket approval granted? One permit had previously been granted for multiple theater performances.
- The proposal was good for events that exceeded a restaurant's approved capacity.
- Noise was regulated in a different section of the Municipal Code.
- Problematic businesses should not be left unregulated.
- Public parking had been blocked off for another recent event. The Sheriff's Department had to intervene.
- The proposal addressed events that were beyond a business's capacity.
- It was difficult to require permits for nuisances.
- The proposal needed to be clear on which events it applied to.
- What actions could the City take if the ordinance was violated?
- A business would get the permit, but the event host should also know the regulations.
- The permit should be tied to the property owner.
- What prevented a business from having multiple violations? Revoking a permit might not

be enough.

- What if a business did not get an event permit? Should a violation also effect the business's license? It should not be tied to a liquor license.
- The owner should intervene if an event violated the restrictions.
- Suspending a license would mean letting employees go and then having to rehire them.
- There should be a warning period before a business's income was cut off.
- Events could be prohibited during a probation period.
- A business should not be closed after a first offense.
- The ordinance should be adopted even if enforcement still needed to be addressed.

Motion: Council Member Drury moved to approve Ordinance 2021-22 for events within the City making the adjustments to Section 7.07 – Definitions and Section 7.07.050 – Standards for License Approval with the following findings and conditions:

- The proposed code would clarify what a special event was and required organizers to apply for and obtain a permit for a special event.
- By requiring a special event permit, Midway City could ensure that impacts created by special events were reasonably mitigated.
- By requiring a special event permit, Midway City would know the quantity of events taking place each day throughout the City. With this understanding, the City could limit the number of approved events happening at any given time.
- By requiring a special event permit, Midway City would be provided with contact information for event organizers, allowing it to have access to them if there were concerns that need to be addressed before or during an event.
- Staff would work on enforcement in that section of the Code with direction on enforcement, possible probation, and outlining the process on how the City could tie enforcement of the Code to business licenses within state law.

Corbin Gordon proposed the following language under the enforcement section:

A special event was an extension of a business license and not separate therefrom. If a business owner violated a provision of the special event license, by not getting a permit or violating a permit, the City might take action against its business license as follows:

- Place the owner on probation for a period of six months, during which time the owner could have no further special events.
- If there was another violation during probation, then the owner would lose their license.
- If the owner was put on probation two times, then they would lose their license.

Mr. Gordon asked that staff be allowed to look at and include a civil fine if allowed.

Amended Motion: Council Member Drury moved to approve Ordinance 2021-22 for events within the City making the adjustments to Section 7.07 – Definitions and Section 7.07.050 – Standards for License Approval with the following findings and conditions:

- The proposed code would clarify what a special event was and required organizers to apply for and obtain a permit for a special event.
- By requiring a special event permit, Midway City could ensure that impacts created by special events were reasonably mitigated.

- By requiring a special event permit, Midway City would know the quantity of events taking place each day throughout the City. With this understanding, the City could limit the number of approved events happening at any given time.
- By requiring a special event permit, Midway City would be provided with contact information for event organizers, allowing it to have access to them if there were concerns that needed to be addressed before or during an event.
- Staff would work on enforcement in that section of the Code with direction on enforcement, possible probation, and outlining the process on how the City could tie enforcement of the Code to business licenses within state law.
- The additional language proposed by the City Attorney and regulations on enforcement would be presented as a separate ordinance on the next consent calendar.
- Hosting be defined as occurring on the applicant's property.

Discussion: Council Member Dougherty recommended that the regulations also be in the business license section of the Code.

Second: Council Member Dougherty seconded the motion.

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

10. Ordinance 2021-18 / One-Family Dwellings (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2021-18 amending the Midway City Municipal Code regarding one-family dwellings.

Michael Henke gave a presentation regarding the request and reviewed the following items:

- Overview
- Difference between accessory dwelling units (ADUs) and duplexes
- Option 1
- Option 2

Mr. Henke also made the following comments:

- Duplexes required impact fees and water rights for both units.
- A home could be converted into something that was a lot like a duplex.
- The proposed ordinance would specify if something was a duplex.
- Duplexes had a different impact than single family houses.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- State law legalized some ADUs.
- Why did the City care how many kitchens were in a house?
- The real question was if someone rented out living space. It should be an ADU if they did.
- There was not a problem with two kitchens in a house if they were not in a part of the structure that was rented.
- A large home, with possibly a child and their spouse in the basement, should not have to use the same kitchen as the parents.
- The Municipal Code had to address new construction.
- Duplexes should not be allowed in zones where they were prohibited.
- There should be a policy purpose for a code change. Ease of administration was not such a purpose.
- A separate living space in a basement was not a duplex.
- If someone bought a home in a zone that prohibited duplexes, they should not have a duplex next to them in the zone.
- An owner should be allowed to put a kitchen in their basement.
- Was the problem aesthetics? Did people not like the look of multi-unit houses?
- Staff needed a clear definition for a one-family dwelling.
- There could be multiple kitchens so long as they could not be completely isolated from each other.
- The only justification for the proposal was that the City did not want to hear complaints from neighbors.
- The proposal should not block attainable housing.
- The proposal would not affect attainable housing.
- Attainable housing needed to be defined before it could be regulated.

Motion: Council Member Drury moved to approve Ordinance 2021-18, for one-family dwellings, with the following conditions and findings:

- Approved option two that defined a one-family dwelling.
- Made the changes in Chapter 16.13.14 to define a single-family dwelling as indicated in the staff report.
- The proposed amendment would define one-family and single-family dwellings.
- The proposed code would define if, and under what circumstances, second kitchens were allowed.
- The proposed amendment would help staff to better administer the City's code.
- The proposed amendment would help the public to understand the options available when building in Midway.
- The definition state that there was not a door, wall, or physical barrier between the two kitchens.

Second: Council Member Simonsen seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Mayor Johnson	Aye
Council Member Dougherty	Nay

Council Member Drury	Aye
Council Member Orme	Nay
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

11. Ordinance 2021-19 / Accessory Structures (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2021-19 amending the Midway City Municipal Code regarding accessory structures.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Current language
- Living space
- Nonliving space

Mr. Henke also made the following comments:

- There was a definition for agricultural parcel.
- The proposed ordinance would regulate accessory structures.

Note: A copy of Mr. Henke’s presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- Accessory structures could be problematic.
- Some other municipalities allowed a garage to be built before the house.
- Allowing an accessory building, before the house, depended upon how the building would be used.
- Was aesthetics the problem with accessory buildings?
- A plan should be required that showed the location of the house.
- The concern was building something that was not subordinate to a house.
- Would the accessory structure have to be modified if it was a residence that become subordinate to a house? Modifications would be required.
- The proposed ordinance removed the need for a breezeway.
- The proposal was a good compromise.
- The proposal was strict. Should it be further adjusted?

Motion: Council Member Simonsen moved to approve Ordinance 2021-19 regarding accessory structures as presented by staff with the following findings and conditions:

- The proposed code would define living space and what was allowed in accessory structures.
- Allowed and prohibited uses were clearly stated for accessory buildings.
- The proposed amendment would help staff to better administer the City’s code.
- The proposed amendment would help the public to understand the options available

when building in Midway.

- The proposed code increased options for citizens.
- The Council was concerned about restricting the order of buildings and this should be brought back with language that would allow greater flexibility.

Second: Council Member Drury seconded the motion.

Discussion: None

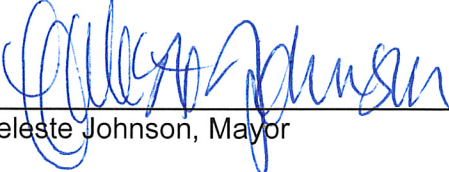
Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Nay
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Excused from the Meeting
Council Member Simonsen	Aye

12. Adjournment

Motion: Council Member Orme moved to adjourn the meeting. Council Member Drury seconded the motion. The motion passed unanimously.

The meeting was adjourned at 9:12 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder