

# MINUTES OF THE MIDWAY CITY COUNCIL

## (Regular Meeting)

Tuesday, 16 November 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 6:02 p.m.

#### Members Present:

Celeste Johnson, Mayor  
Steve Dougherty, Council Member  
(Participated Electronically)  
Jeff Drury, Council Member  
Lisa Orme, Council Member  
Kevin Payne, Council Member  
JC Simonsen, Council Member

#### Staff Present:

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

**Note:** A copy of the meeting roll is contained in the supplemental file.

Troop 216 of the Boy Scouts of America led the Council and meeting attendees in a flag ceremony and the pledge of allegiance. Council Member Orme gave the prayer and/or inspirational message.

Mayor Johnson indicated that she was honored to serve another four years as Midway City Mayor.

### 2. Consent Calendar

- a. Agenda for the 16 November 2021 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 19 October 2021 City Council Work Meeting
- d. Minutes of the 19 October 2021 City Council Regular Meeting

- e. Nicholas Cook as a Full Member of the Midway City Parks, Trails, and Trees Advisory Committee
- f. Paulette Tillman as a Full Member of the Midway City Parks, Trails, and Trees Advisory Committee
- g. Krista Lewis as a Full Member of the Midway City Parks, Trails, and Trees Advisory Committee
- h. Cristine Tuttle as an Alternate Member of the Midway City Parks, Trails, and Trees Advisory Committee
- i. David Paskoski as an Alternate Member of the Midway City Parks, Trails, and Trees Advisory Committee
- j. Change Order #1 for the River Road Utility and Road Improvements: 60 South to 300 North Project
- k. Resolution 2021-34 amending the Midway City Policies and Procedures regarding waiving facility fees for arts, cultural, and charitable organizations

**Note:** Copies of items 2a through 2k are contained in the supplemental file.

Council Member Drury asked about the change order for the River Road Project. Wes Johnson responded that it increased the timeframe by 120 days but did not increase the cost. He added that excavating at the location was becoming easier. He indicated that progress would also depend on the weather.

Council Member Drury indicated that there would be road work and detours on River Road for three years. He asked if penalties could be assessed? Council Member Simonsen responded that the dense potrock was not projected and there was no better way to do the work. He noted that the contractor also had to work around a lot of utilities. He added that the City received good pricing because it worked well with contractors. Wes Johnson thought that the City would not be able to prove liquidated damages. Council Member Simonsen indicated that the contractor could argue that the cost needed to be increased.

Council Member Drury explained that construction of The Village would also impact River Road and the area. He pointed out that the project would be done by a developer and not the City. He recommended that the City enforce deadlines moving forward. Council Member Payne agreed that the City would not be served well by seeking liquidated damages. Council Member Simonsen said that no contract would solve the problem of excavating in potrock.

Council Member Simonsen explained that the contractor was working extra hours to complete the project.

Council Member Drury recommended that the City pay more for projects on its main roads to be completed in good time.

Council Member Drury asked about the warrant for Griswold Industries. He asked what had been purchased and why it had been split between five invoices.

**Motion:** Council Member Drury moved to approve the consent calendar with the agenda, warrants (With the exception of Griswold Industries), the minutes, Nicholas Cook, Paulette Tillman, Krista Lewis, Cristine Tuttle, David Paskoski, change order number one for the River Road improvements, and Resolution 2021-34. He added that the warrant for Griswold Industries

could be approved if more detail was received before the end of the meeting.

**Second:** Council Member Payne 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     | Aye |
| 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**

Community Center / Power Boxes

Council Member Orme reported that new power boxes were being installed at the Community Center at the request of the City's insurer.

Community Center / Roof Repair

Council Member Orme reported that the City was still looking for a contractor to repair the roof on the Community Center.

Cemetery / Fence / Software / Moratorium

Council Member Orme reported that a fence would be removed at the City's cemetery. She reported that all the cemetery records had been entered into the new computer system. She also reported that the City Attorney was still working on items during the cemetery moratorium.

Chamber of Commerce / Gala

Council Member Orme reported on the gala to be held by the Heber Valley Chamber of Commerce.

HVRR / North Pole Express

Council Member Orme reported that the Heber Valley Railroad's (HVRR) North Pole Express

was sold out.

### Sidewalks & Trails / Clearing Snow

Council Member Simonsen asked if the City should clear snow from certain sidewalks and trails that winter. He asked which ones should be cleared. He suggested the sidewalks going to the elementary school, then certain trails in recreational areas like the Valais Park, and the Homestead Trail when it was completed.

### Speeding / Speed Trailers

Council Member Simonsen reported that the average vehicle speed in Midway was above the posted limit. He asked if the City was going to purchase more speed trailers. Mayor Johnson responded that two would be purchased in the spring when snowplowing had ceased.

### HVRR / Funding

Mayor Johnson reported that the HVRR felt confident that it would receive more funding from the State of Utah.

### Trail / Provo Canyon

Mayor Johnson reported that it would cost \$30 million to construct the trail down Provo Canyon from the Deer Creek Dam to Vivian Park.

### HVSSD / MSD / Rate Increases

Mayor Johnson reported that the Heber Valley Special Service District (HVSSD) was planning for new growth and would increase the amounts of its rates and impact fees. She added that the Midway Sanitation District (MSD) would therefore have to raise its rates.

### Cemetery Ridge Property / Open Space

Mayor Johnson reported that the Cemetery Ridge property, which was going to be purchased for open space, had been sold to someone else.

- 5. Heber Bypass Road / Letter** (Open Space Committee – Approximately 15 minutes) – Discuss and possibly approve a letter regarding the Heber bypass road (Heber Valley Parkway Corridor). Recommended by the Midway City Open Space Advisory Committee.

Michael Henke gave a presentation regarding the proposed letter and bypass routes on the West side of Heber City. He also made the following comments:

- The Open Space Advisory Committee recommended the letter.

- Heber City was working on the bypass road to reduce traffic on its Main Street.
- 13 routes for the road were presented. Those on the west side of Heber City were discussed the most. The letter focused on these routes.
- The Committee felt that the west routes would reduce open space.

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

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

- Midway was being used as a bypass for Heber City. This would be eliminated with the proposed bypass road.
- The bypass road should be as usable as possible.
- A highway going through large areas of open space was a concern. This would encourage development in the area.
- Roads should not be built in undeveloped areas.
- The Wasatch County Open Lands Board also opposed the west side routes.
- The Council should not tell Heber City what to do but it should support what was best for all of Wasatch County.

**Motion:** Council Member Payne moved to adopt the letter as drafted and recommended by the Open Space Advisory Committee.

**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     | Aye |
| Council Member Simonsen  | Aye |

**6. Performing Arts / Letter of Support** (Mayor Johnson – Approximately 15 minutes) – Discuss and possibly approve a letter of support regarding the performing arts.

Mayor Johnson made the following comments regarding a letter of support for the performing arts:

- Multiple people had spoken at the Council’s meetings regarding a performing arts center.
- The Council said that it would consider a letter of support.
- Both Council Member Dougherty and Council Member Simonsen had drafted letters.

Council Member Simonsen made the following comments:

- Distributed his letter that day.
- Supported a letter of support for a performing arts center, at the Utah Valley University Heber Campus, because he liked the arts in the area and the proposal merited further review. He felt the same way about an arts center in Midway.
- His letter recommended that an organization apply for an arts center in Midway.
- Recommended approving a letter of support.
- The criteria in his letter were important. They told an applicant what they needed to address.
- Was concerned about an arts center next to Memorial Hill. Feedback should be sought from Wasatch County, which owned the Hill, and local veterans.
- Other locations would have issues.

Council Member Dougherty made the following comments:

- The Midway Arts Center Foundation was not proposing an arts center at a particular location or of a particular size. They wanted a statement of support for the performing arts in Midway.
- Council Member Simonsen's letter included qualifications for an arts center that his letter did not include.
- The letter of support did not need to be the same as the letter for the Heber Campus proposal.
- His letter supported the performing arts in Midway.
- The matter was not yet a planning or zoning issue.

Council Member Orme made the following comments:

- Approved of Council Member Simonsen's letter.
- Was concerned that High Valley Arts (HVA) wanted a letter to encourage support and donations.
- There was support for the performing arts, but the issue of an arts center could be contentious.

Council Member Payne made the following comments:

- Liked Council Member Dougherty's letter which did not have too many conditions.
- The Council would have to approve the location of any arts center in Midway. This would most likely require an amendment to the Municipal Code.
- A letter of support would be used to secure funding.
- A simple and succinct letter was the best.

Council Member Drury made the following comments:

- The Council supported the performing arts.
- The City had not received an application for an arts center while he was on the Council.
- The Council was bound to consider and approve, as a conditional use, an application for an arts center in an allowed zone. It could be approved in the resort zone.
- The letter of support did not discuss a location.

Corbin Gordon indicated that a letter of support did not ultimately guarantee council approval of an arts center in Midway. Council Member Payne agreed.

Council Member Simonsen supported a simpler letter of support. He added that the Council was not obligated to approve an arts center in a zone where it was not allowed.

**Motion:** Council Member Drury moved to approve and authorize the Mayor to sign the performing arts letter of support, as written on page two of the council meeting packet, and include Council Member Simonsen's letter as part of the public record.

**Second:** Council Member Payne 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     | Aye |
| Council Member Simonsen  | Aye |

#### **Consent Calendar / Warrants (Continued)**

Wes Johnson reported that the warrant for Griswold Industries was for parts to rebuild the City's pressure reducing valves.

Council Member Drury questioned why there were five invoices instead of one for the parts. Brad Wilson responded that the City's purchasing policy prohibited breaking out purchases to avoid purchasing requirements.

**Motion:** Council Member Drury moved to approve the expenses for Griswold Industries, insure moving forward that purchasing procedures were followed, and warrant descriptions had sufficient detail.

**Second:** Council Member Dougherty 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     | Aye |
| Council Member Simonsen  | Aye |

- 7. Midway Lane Equestrian Trail / Letter of Support** (City Planner – Approximately 10 minutes) – Discuss and possibly approve a letter supporting an equestrian trail along Midway Lane. Recommended by the Midway City Parks, Trails, and Trees Advisory

Committee.

- 8. Equestrian Use of Memorial Hill / Letter of Support** (City Planner – Approximately 10 minutes) – Discuss and possibly approve a letter of support for equestrian use of the Memorial Hill. Recommended by the Midway City Parks, Trails, and Trees Advisory Committee.

Council Member Simonsen made the following comments regarding the proposed letters of support:

- An equestrian was a member of the Midway City Parks, Trails, and Trees Advisory Committee. She wanted to maintain equestrian use and formalize equestrian use along Midway Lane.
- Supported equestrian use.
- Some trails should be mixed use.
- The Parks, Trails, and Trees Advisory Committee also supported her request.
- The letters would be sent to Wasatch County and facilitate discussion of the issue.
- Asked that the letters be approved by the Council.
- They would be sent to a subcommittee of Wasatch County.
- The City was interested in its trails and how they connected to surrounding areas.

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

- A typo in the last paragraph, of the letter regarding Midway Lane, needed to be corrected.
- The equestrian access along Midway Lane would be unpaved and next to the current asphalt trail.
- One type of user should not be preferred over another.
- Bicyclists should not be excluded and that portion of the letter, regarding Memorial Hill, should be removed.
- Wasatch County would maintain the trails and would have to deal with the issues of animal waste, etc.
- The letters should not commit the City to building the Midway Lane equestrian trail.
- The letters did not bind the City to any approval or action.
- The Midway Lane trail was desirable but the City would not support it financially.
- The City was asking the County to build the trail along Midway Lane.

**Motion:** Council Member Orme moved to approve sending the letter of support to the Wasatch County Parks and Recreation Special Service District, regarding the equestrian trail along Midway Lane, with the following conditions:

- It was clear that Midway would not build the requested trail.
- Council Member Simonsen would revise the letter and distribute it to the Council for its approval.
- Correct the typo in the last paragraph.
- Authorize the Mayor to sign it once the corrections were made.

**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     | Aye |
| Council Member Simonsen  | Aye |

**Motion:** Council Member Drury moved to approve the letter of support, for equestrian use of Memorial Hill, eliminating the language in paragraph four regarding blocking bikes.

**Second:** Council Member Simonsen seconded the motion.

**Discussion:** Council Member Payne asked if the letter committed the City to paying for trail construction. Council Member Orme responded that it did not.

Council Member Orme asked if the issue of horse manure needed to be addressed. Council Member Simonsen responded that the County, not Midway, might have to address that issue.

**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     | Aye |
| Council Member Simonsen  | Aye |

**9. Resolution 2021-25 / Scotch Fields PUD, Phases 3, 4, and 5 Amended Development Agreements** (City Attorney – Approximately 30 minutes) – Discuss and possibly approve Resolution 2021-25 adopting amended development agreements for Phases 3, 4, and 5 of the Scotch Fields PUD located at approximately 1400 North Canyon View Road (Zoning is R-1-22).

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

- Background
- Summary
- Items to consider
- Location of the PUD
- Approved plan
- Proposed amendment
- Possible findings

Mr. Henke also made the following comments:

- The amendment to the approved landscaping plan had been considered six months earlier by the Council. A public hearing was held at that time and there were a lot of public comments.
- All but two of the property owners in phases three through five had responded. They all supported the amendment.
- Did not know if the developer contacted the owners in phases one and two. Many in those phases opposed the change.

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

Wes Johnson reported that he and the developer met with several of the homeowners. He indicated that the developer addressed their concerns pursuant to their desires.

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

- There was no evidence that the developer addressed the concerns of those that opposed the amendment.
- The agreement being amended was between the City and the homeowners.
- It was not wise to replace mulch with grass when trying to conserve water.
- The developer should reach out to all the homeowners in the project.
- The CC&Rs for the project would also be amended to address the issue.
- The developer still controlled the HOA.
- The City could not hold up the request until every homeowner supported it.
- The concerns of homeowners who opposed the amendment should be addressed.
- Some homeowners in the first two phases did not want to pay the cost to maintain the additional mulch.
- The landscaping plan, which was proposed to be amended, was part of an approved and recorded agreement.
- The developer did not do what the Council asked when the issue was first considered.
- The letters from the homeowners did not state what had been agreed upon. They inferred that they received what they wanted.
- The landscaping for the first two phases had not been installed as shown on the approved plan.
- There was at least one person in phases one and two that was still unhappy with the amendment.
- What a person bought is what they should get.
- It was fine for the developer to give each homeowner a choice regarding installing mulch.
- The amendment did not apply to the first two phases.
- No one opposing the amendment contacted the City since the last time it was considered.
- Individual unit aesthetics, costs for the entire HOA, and protection of the City's water resources needed to be considered.
- City staff had not reviewed the amended CC&Rs.
- The landscaping plan only allowed mulch around the houses.
- The developer would not oppose someone else paying the cost for additional landscaping.

**Motion:** Council Member Orme moved to approve Resolution 2021-25 adopting amended development agreements for phases three, four, and five of the Scotch Fields PUD regarding landscaping with the following findings:

- The proposed amendments would remove all bark mulch from phases three, four, and five that included an area of 85,688 square feet (1.97 acres) and replace it with Kentucky Bluegrass.
- Water rights had been dedicated to the City for the entire 1.97 acres that had been approved for bark mulch.
- The City Code did not require that bark mulch be included in landscaping plans.
- Amending the development agreements was discretionary and the City was under no obligation to approve the proposal even if it complied with the land use code.

**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     | Aye |
| Council Member Simonsen  | Aye |

**Motion:** Without objection, Mayor Johnson recessed the meeting at 8:05 p.m. She reconvened the meeting at 8:12 p.m.

**10. Swiss Creek PUD, Plat "A" / Fifth Amendment** (Rodan Luo and William Prather – Approximately 15 minutes) – Discuss and possibly approve a fifth amendment to the Swiss Creek PUD, Plat "A" located at 555 Mountain Springs Drive (Zoning is R-1-15 / TROD).  
**Public Hearing**

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

- Land use summary
- Location of the development
- Possible findings

Mr. Henke also made the following comments:

- The driveway for the house, located at 555 Mountain Springs Drive, extended onto property owned by the Homestead.
- The amendment would adjust the lot to include the entire driveway.
- It would not affect the master plan for the Homestead and would not require that the plan be amended.

- No other plat maps would need to be amended.

**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 Payne moved to approve the fifth amendment to the plat map for the Swiss Creek PUD, Plat “A” located at 555 Mountain Springs Drive with the following findings:

- Regarding acreage, Swiss Creek lot one currently conformed to the code and would continue to be so if the amendment was approved.
- The property that was being exchanged came from an undeveloped parcel owned by the Homestead Group. Because the parcel was undeveloped, no property rights were being harmed by the reduction of the property.
- An existing encroachment issue from a private driveway and landscaping would be resolved.
- State law allowed the adjustment of a lot line regardless of whether the lots were located in the same subdivision.
- State law required a land use authority to approve a lot line adjustment if the exchange would not result in a violation of any land use ordinance.
- State law stated a plat amendment may be considered by the land use authority at a public meeting.
- No public street, right-of-way, or easement would be vacated or altered.
- The duration of the 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 could 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 have to 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.

**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 |

**11. Ordinance 2021-38 / Power Distribution Lines** (City Planner – Approximately 30 minutes)  
– Discuss and possibly adopt Ordinance 2021-38 amending Title 16 (Land Use) of the Midway City Municipal Code regarding the burial of power distribution lines. Recommended by the Midway City Planning Commission. **Public Hearing**

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

- Background
- Pictures
- Proposed code
- Additional considerations
- Possible findings

Mr. Henke also made the following comments:

- In some cases, the City ended up with new power poles on one side of a street and old poles, with communication lines, on the other side.
- Power distribution lines were buried in new developments.
- It was debatable if distribution lines created a rural atmosphere.
- Wanted to preserve view corridors by requiring that all distribution lines be buried.
- The proposal would not affect existing transmission lines.
- The cost was less for burying distribution lines as opposed to transmission lines.
- It would be difficult to run new services from newly buried transmission lines to existing houses. There could still be a service pole.
- You could have two poles to eliminate one.
- The burial costs would be added to the price of the lots or units.
- Heber City already required that all distribution lines be buried.
- The City needed to focus on its commercial zones.
- The applicable distribution line should be buried if the use of a building was changed.
- The Planning Commission recommended approval, but additional information had been received since then.

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

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

- A fee in lieu should be paid if three or less poles needed to be buried.
- The City should have discretion when to require a fee in lieu.
- The problem would not be solved if service poles remained.
- It cost less to bury a new rather than an old line.
- The lines along the main corridors should be buried first.
- The proposal could penalize owners and force them to raze existing houses.
- There should be a city-wide fee to pay for burying lines.

- The City would bury the lines between subdivisions.
- It was normal in other communities for developers to bury the lines fronting their projects.
- Burying a line could be burdensome for a residential lot.
- The burial cost would depend on the site, landscaping, and other utilities. It could be \$100 to \$150 per linear foot.
- A more accurate cost should be determined for a standard vacant lot.

### **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.

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

- There were details that needed to be worked through.
- The proposal should be fair and avoid unintended consequences.
- It should not be burdensome.
- Some types of developments, like rural preservation subdivisions and density reduction subdivisions, should be exempted.
- It was good to bury utility lines, but the question was how to pay for it.
- There would be a lot of infrastructure money available.
- The City could establish a special improvement district along Main Street to bury the lines.
- An inventory should be done to determine the scope of the effort.
- The proposal should align with the City's priorities for setbacks.
- All franchise agreements should be reviewed in relation to the proposal.
- The City should determine the most cost-effective length of line to replace.

**Motion:** Council Member Drury moved to continue the item, until before the end of the moratorium, and that staff consider the recommendations and issues from that evening.

**Second:** Council Member Payne 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     | Aye |
| Council Member Simonsen  | Aye |

**12. Ordinance 2021-39 / Small Subdivisions** (City Planner – Approximately 20 minutes) – Discuss and possibly adopt Ordinance 2021-39 amending Chapter 16.17 (Small Subdivisions) of the Midway City Municipal Code regarding small subdivisions.

Recommended by the Midway City Planning Commission. **Public Hearing**

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

- Background
- Highlights
- Possible findings
- Planning commission recommendation

Mr. Henke also made the following comments:

- It addressed a lot of minor problems.
- References to overhead powerlines needed to be removed until the ordinance for distribution lines was adopted.

**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 Payne moved to adopt Ordinance 2021-39, amending Chapter 16.17 (Small Subdivisions) of the Midway City Municipal Code regarding small subdivisions, with the following findings and changes:

- The proposed adjustment would update the small subdivision code to reflect current processes and requirements.
- The language on burying overhead powerlines be removed.

**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     | Aye |
| Council Member Simonsen  | Aye |

**13. Ordinance 2021-37 / Water Rights** (City Planner – Approximately 20 minutes) – Discuss and possibly adopt Ordinance 2021-37 amending Chapter 10.07 (Development within the City) of the Midway City Municipal Code regarding water rights for new developments containing wetlands. Recommended by the Midway City Planning Commission.

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

- History
- Background
- Proposed language
- Possible findings
- Planning commission recommendation
- Water board recommendation

Mr. Henke also made the following comments:

- The ordinance was recommended by both the Planning Commission and Water Advisory Board.
- The Council could require water rights whenever and wherever it wanted.
- Watts Remund Farms was an example of water rights sold off irrigated wetlands.
- The LaBarge Subdivision no longer had wetlands.

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

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

- The second sentence should say "may" instead of "will".
- The water hydrology had changed dramatically at Watts Remund Farms.
- Someone would use all the water rights that they owned.
- It was better to say that areas not historically irrigated did not need water rights. If the owner wanted to irrigate the area, then they had to request that from the City. This would require more enforcement.
- Meters on the pressurized irrigation system would prevent overwatering. The wealthy would not mind paying overage fees to use more water.

**Motion:** Council Member Drury moved to approve Ordinance 2021-37 as contained in the packet with the following findings and changes:

- The proposed amendment would require water rights to be turned over for the continued irrigation of delineated wetlands that had been historically irrigated along with areas that had water rights.
- The proposed amendment would allow the City to require water rights for any area that it felt a future property owner might want to irrigate, regardless of whether it had been historically irrigated or not.
- The proposed amendment would ensure that adequate irrigation was provided in the event a wetland boundary changed, allowing a former wetland to be landscaped.
- "Will" be changed to "may" in the second paragraph.

**Second:** Council Member Payne 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     | Aye |
| Council Member Simonsen  | Aye |

**14. The Village Development / Wilson Water Right** (Dan Luster – Approximately 10 minutes)  
– Discuss and possibly approve a change application, for 33 acre feet of water, for The Village Development located at 541 East Main Street.

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

- Background
- Overview
- Water board recommendation

Mr. Henke also made the following comments:

- The water rights would go directly from the current owner to the City.
- They would be put into escrow until recording.
- Impact fees paid for the drilling and construction of the Alpenhof-Weber well.

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

Corbin Gordon made the following comments:

- The water rights would come from property condemned for the restoration of the Provo River.
- The State Engineer would decide how much water could be transferred.
- It would be transferred to the Alpenhof-Weber well.
- Any approval motion should tie it to The Village.
- It would be deeded to the City when the associated plat maps were recorded.
- The change or transfer would be reversed if The Village was not built.
- Would have to verify that the City could refuse to transfer the water into one of its wells.

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

- It was a concern that people, who did not require foreign water for their houses, were helping pay for water infrastructure that would benefit The Village.
- The State annually reviewed a well's capacity including a contingency.
- Should an approval be conditioned on the signing of the change application or the water right deed? The City should not accept the deed until the plat map was recorded.
- A contract should be completed for the transfer of the water right pursuant to certain conditions.

**Motion:** Council Member Drury moved to approve the change application for the Wilson water right with the following conditions:

- The City Attorney drew up a contract for the transaction.
- The contract stated that the City would only accept or sign the change application if the applicant signed the contract.
- The contract limited the use of the water rights to The Village development.
- The water rights could only be used for The Village project or returned to the original point of diversion from the Alpenhof-Weber well.
- The Mayor could sign the application and contract if the developer had signed the contract.

**Second:** Council Member Payne 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     | Aye |
| Council Member Simonsen  | Aye |

**15. The Village Development / Holmes Western Deer Springs, LLC Water Right** (Dan Luster – Approximately 10 minutes) – Discuss and possibly approve a change application, for 32.07 acre feet of water, for The Village Development located at 541 East Main Street.

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

- Background
- Overview
- Water board recommendation

Mr. Henke also made the following comments:

- The Midway Irrigation Company wanted the water to go through its system.
- A person purchased property near the Provo River and provided their own water right. The water right for the property, prior to its sale, was what was being discussed.
- The water right would be changed to the River Ditch and then changed to the Alpenhof-Weber well.

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

Corbin Gordon made the following comments:

- The change application addressed the adjudication being performed by the State Engineer.
- The Council was not endorsing anything.

**Motion:** Council Member Drury moved to authorize the Mayor to sign the change application with the following conditions:

- The applicant signed a contract prepared by the City Attorney.
- The water rights could only be used for The Village project or returned to the original point of diversion from the Alpenhof-Weber well.
- The Mayor would only sign if the water right was changed to the River Ditch diversion point as stipulated by the Midway Irrigation Company.

**Second:** Council Member Payne 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     | Aye |
| Council Member Simonsen  | Aye |

**Motion:** Council Member Drury moved to continue the meeting to consider the next item on the agenda.

**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     | Aye |
| Council Member Simonsen  | Aye |

**16. Age of Water / Project** (City Engineer – Approximately 20 minutes) – Discuss and possibly approve a project to determine the age of the water in Midway City’s culinary water sources.

Wes Johnson gave a presentation regarding the proposed project and reviewed the following items:

- Proposal

Mr. Johnson also made the following comments:

- Expressed to the United States Geological Survey (USGS) his concern about the cost. They reduced it from \$107,000 to \$59,000 with an administrative letter replacing a published document.
- The USGS increased its contribution to 40% of the cost.
- The data and interpretation would not change.
- Proposed that the Indian Spring be included.
- The City could always pay for the published document at a later date.

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

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

- The water rights from the Indian Spring could be changed to the Alpenhof-Weber well.
- The City had enough money in its Water Fund to pay for the project.
- The Indian Spring should be tested.

Council Member Drury noted that he knew some hydrogeologists and would confirm with them that the published document was not needed.

**Motion:** Council Member Simonsen moved to approve the City Engineer moving forward with the project to get the report done and authorized the Mayor to sign the contract.

**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     | Aye |
| Council Member Simonsen  | Aye |

**Motion:** Council Member Drury moved to continue the meeting to consider the next item on the agenda.

**Second:** Council Member Payne 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    | Aye |
| Council Member Simonsen | Aye |

**17. 2021 General Election / Canvass Ballots** (City Recorder – Approximately 5 minutes) –  
Canvass the Ballots for the 2021 Municipal General Election.

Brad Wilson gave a presentation on the 2021 General Election including the vote totals and proposed canvass report.

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

**Motion:** Council Member Drury moved to certify the 2021 election results and canvass of the ballots.

**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     | Aye |
| Council Member Simonsen  | Aye |


**18. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation and the Purchase, Exchange, or Lease of Real Property.**

A closed meeting was not held.

**19. Adjournment**

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

The meeting was adjourned at 10:28 p.m.

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

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