

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

**Tuesday, 21 April 2020, 6:00 p.m.
Electronic Meeting**

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, Public Works Assistant Crew Chief, 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 6:05 p.m.

Members Present:

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

Staff Present:

Corbin Gordon, Attorney (Began
Participating at 8:14 p.m.)
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.

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

2. Consent Calendar

- a. Agenda for the 21 April 2020 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 17 March 2020 City Council Closed Meeting
- d. Minutes of the 31 March City Council Meeting
- e. Minutes of the 1 April 2020 City Council Meeting
- f. Minutes of the 1 April 2020 City Council Closed Meeting

Note: Copies of items 2a, 2b, 2d, and 2e are contained in the supplemental file.

Motion: Council Member Orme moved to approve the consent calendar.

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

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.

Accessory Dwelling Units (ADUs)

Leslie Miller submitted the following statement:

“An issue at large has received inadequate consideration and will be affected by the proposed code amendment 2020-12. The public policy issue I am referring to is the topic of Accessory Dwellings in Midway (ADU).

Some of the recent mischaracterizations of ADU’s reveal a misunderstanding of the potential benefits they may present. They include, but are not limited to Midway's economic diversity, social inclusivity and affordable housing options.

There are many elements to understanding how to regulate, manage, incentivize and/or accommodate accessory dwellings in a community.

Until there can be and (should be) a comprehensive conversation with the public about ADUs, then proposed code modifications are premature. The potential related uses for accessory dwellings will be impacted by the proposed Accessory Dwelling code revisions.

I suggest that the City Council deny or continue discussion on the code changes as proposed in order to further educate council members, staff and Midway residents about the social value and economic benefits of accessory dwelling uses in Midway.”

Katie Noble submitted the following statement:

“With respect to ADU’s I support a narrow zone change allowing them in the area abutting the present duplex zones. This should be a trial zone change. ADU’s should only be allowed in this limited area if there are significant fines for violations (nightly rental, noise, trash, parking) and a tax that supports hiring an employee who can enforce. Or expand duties of an existing employee. If the initial zone is successful then I recommend expanding it outward.

ADU's are great when they work well but we need the capacity for enforcement. Additionally, Midway needs a comprehensive affordable housing plan before making any decisions on ADU's. We need to know how ADU's fit into that plan. It shouldn't be an ad hoc approach and it certainly shouldn't be a blanket zone change for the entire City until it's tested and proved successful.

Sorry, additionally the Landlord on ADU's should pay a tax that offsets any impact on schools, road maintenance, etc. by the additional residents. This ADU definition issue clearly needs more time and study.

This issue is not an emergency and could have long lasting permanent consequences. Why does it have to be decided tonight?"

No further comments were offered.

4. Department Reports

Community Center / Multi-Purpose Room Floor

Council Member Orme reported that the wood floor in the multi-purpose room in the Community Center had been refinished.

Town Hall / Main Room Floor

Council Member Orme reported that finishing the wood floor in the main room in the Town Hall would be completed that day.

Businesses / Assistance

Council Member Orme reported that ideas were being sought to assist businesses during the pandemic.

Streets / Sweeping / Hwy 113 / River Road

Council Member Simonsen reported on the sweeping of streets and road work on Highway 113 and River Road.

Trails / Report / Dutch Fields/River Road Trail

Council Member Simonsen reported on the trails and specifically the specifications and agreement for the reconstruction of the Dutch Fields/River Road trail.

Water System / Covid-19

Council Member Dougherty reported that chlorine killed any Covid-19 virus in the City's culinary

water system.

Midway Business Alliance / Meeting

Council Member Dougherty reported that an electronic meeting of the Midway Business Alliance would be held that week.

Proposed Code Text Amendments

Michael Henke gave a presentation on recent and potential amendments to the Municipal Code. Council Member Dougherty asked that ADUs be added to the list. He was reticent about amendments to address every issue and suggested a balanced approach. Council Member Drury indicated that staff limitations should not hinder essential functions such as code text amendments.

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

- 5. Ordinance 2020-11 / Food Truck Amendments** (City Planner – Approximately 20 minutes)
– Discuss and possibly adopt Ordinance 2020-11 amending Section 7.05.050 (Periodic Sale of prepared Food by Mobile Vendors) of the Midway City Municipal Code.

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

- Current code
- Proposed code
- Conditions
- Possible findings

Mr. Henke also made the following comments:

- It had been requested that food trucks be allowed on public property. The Municipal Code was not clear on this issue.
- The proposal would not allow food trucks in the street right-of-way.
- Currently food trucks were only allowed at businesses in the commercial zones.
- The Wasatch County Health Department required that a food truck be at a location where a restroom was available.
- The proposal required an entire park, or one of the buildings on the Town Square, be rented to have food trucks because they were usually associated with events. Food could be sold to anyone not just attendees at the event.
- Food trucks were allowed if they were catering a private event on private property.
- The food truck operators had to pay sales tax to the governments where they were operating at any given time.

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

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

- Food trucks could be allowed in the right-of-way on the side of a street if the serving area faced away from the road.
- UDOT did not allow food trucks on its roads such as Main Street and Center Street.
- Food trucks were parked on Heber's Main Street which was a UDOT road.
- The current code was in part a result of push back from local restaurants.
- A public hearing should be held on the issue.
- The proposal was flexible, could help someone start in the restaurant business and should not have a lot of restrictions.
- The entire code regarding food trucks should be reviewed.
- The City should reach out to local business owners regarding the proposal.

Motion: Council Member Dougherty moved to continue consideration of the proposal.

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

6. Ordinance 2020-04 / One-Family Dwellings (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2020-04 amending Title 16 of the Midway City Municipal Code regarding the definition of one-family dwellings.

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

- Overview
- Examples
- Impacts of one-family dwellings turned into duplexes
- Definition
- Option 1 – Eliminating second kitchens
- Option 2 – Definition with additional language
- Possible findings

Mr. Henke also made the following comments:

- The issue was separate from ADUs.
- One-family dwellings needed to be defined in the Municipal Code.
- Homeowners were pushing the limits on one-family dwellings.

- Option 2 was recommended by the Planning Commission. It would require an affidavit stating that the area with the second kitchen would not be rented.
- Option 1 was easier to enforce but did not offer the flexibility of Option 2.
- The proposal prohibited boarding houses.

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

Council Member Dougherty disclosed that he had a living space in the barn next to his house. He said it was approved but had never been rented.

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

- Under the proposal two kitchens would be allowed if there was a wall between them.
- Two kitchens did not necessarily cause all the negative impacts indicated.
- Duplexes were only allowed in certain zones. How could the City enforce this limitation without a definition of what was not a duplex?
- Portions of houses in Midway were being rented and not used for a grandmother, etc. This should not be allowed and was difficult to enforce.
- Would not being able to rent an area with a second kitchen solve the problem?
- Renting any part of a single-family home, even if it did not have a kitchen, was a problem.
- Owners had property rights. Potential buyers had bought in other cities because of Midway's current restrictions.
- The proposal only defined a one-family dwelling it did not address what was or was not allowed. What was allowed was a discussion for another meeting.
- The State Code did not favor the City if its municipal code language was not clear.
- The proposal clarified the Municipal Code.

Motion: Council Member Dougherty moved to define single-family dwellings as a dwelling that could not be occupied for compensation.

Discussion: Mayor Johnson stated that the motion was a different definition from what was being proposed. She recommended denying the proposal before considering the motion.

Council Member Simonsen asked if the motion would be easy to administer? Mr. Henke responded that it would be difficult to administer because the City would not know of any money transactions. Council Member Simonsen asked if the City could demand proof of such a transaction. Council Member Dougherty responded that each homeowner would have to sign an affidavit.

Second: The motion died for lack of a second.

Motion: Council Member Dougherty moved to define a single-family dwelling as one in which, if there were two kitchens, there was also an affidavit stating that no space would be rented.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Simonsen questions if the motion was much different from the proposed ordinance.

Council Member Payne asked if a fourplex could be built in a single-family zone if the owner state it would not be rented. Council Member Dougherty responded that situation would not happen because it was not practical.

Council Member Dougherty indicated that his house would be considered a duplex under the proposed definition. He added that he was trying to meet a need in the City.

Mr. Henke indicated that the Municipal Code did not currently require an affidavit for a second kitchen.

Council Member Orme said that a second kitchen should not be the driver for a definition.

Mr. Henke again indicated that it would be difficult to enforce a prohibition against renting because the City would not know about the exchange of money.

Council Member Payne worried that a lot of things would be missed with last minute alternative language. He said that the language in the proposed ordinance was well thought out.

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

Council Member Dougherty	Aye
Council Member Drury	Nay
Council Member Orme	Aye
Council Member Payne	Nay
Council Member Simonsen	Nay

Motion: Council Member Payne moved to adopt Ordinance 2020-04 regarding one-family dwellings with Option 2 as proposed by staff and with the following conditions and findings:

- Direct access between two kitchens would not be impeded by a door or wall.
- 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.

Second: Council Member Simonsen seconded the motion.

Discussion: Council Member Drury said that the item should be continued.

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

Council Member Dougherty	Nay
Council Member Drury	Nay
Council Member Orme	Nay

Council Member Payne Aye
Council Member Simonsen Aye

Motion: Council Member Orme moved to table the item so that it could be discussed further.

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

Note: Corbin Gordon began participating at 8:14 p.m.

7. Ordinance 2020-12 / Living Quarters and Accessory Structures (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2020-12 amending Title 16 of the Midway City Municipal Code regarding the definitions of living quarters and accessory structures.

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

- Current code language
- Breezeways
- Proposed code
- Possible findings

Mr. Henke also made the following comments:

- The proposal was necessary to determine what was allowed in accessory structures.
- It would not allow living space in such structures.
- It prohibited such structures without a main building except barns.
- Breezeways did not have walls.
- Neighbors would complain if a garage was allowed without a main building.
- It allowed for bunk type buildings that did not have a kitchen, bathroom, etc.
- Had to rely on the label on the plans to determine if a room was an office or a bedroom.
- Bathrooms and kitchens were the most significant issues.
- Two buildings were considered one structure if they were connected by a breezeway.
- Living quarters was defined in Sections 16.13.6(F) and 16.13.6(E).

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

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

- Someone could list a room as an office but then rent it out as a bedroom.
- Sections 16.13.6(A) and 16.13.6(B) were redundant.

Motion: Council Member Dougherty moved to continue consideration of the item for a short period of time so that he could work with the City Planner to refine it.

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

- 8. Ordinance 2020-07 / Amend Planning Commission Bylaws** (City Attorney – Approximately 10 minutes) – Discuss and possibly revise the adoption of Ordinance 2020-07 amending the by-laws for the Midway City Planning Commission.

The revision was not provided to the Council.

Motion: Council Member Payne moved to continue the item.

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

- 9. Ordinance 2020-10 / Terms of Office** (City Attorney – Approximately 10 minutes) – Discuss and possibly adopt Ordinance 2020-10 amending Title 2 of the Midway City Municipal Code regarding the terms of office for appointed officials.

Corbin Gordon explained that the ordinance had been updated and the issues raised by the Council had been resolved.

Council Member Payne noted that the Municipal Building Authority (MBA) had been incorrectly included. Council Member Dougherty asked if the whole section on the MBA needed to be struck. Council Member Payne responded that only the sentence limiting members to two terms needed to be struck.

Motion: Council Member Dougherty moved to adopt Ordinance 2020-10, regarding the terms of office for appointed officials, as proposed except for striking the proposed additional sentence to the section regarding the MBA.

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

10. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation

Motion: Council Member Dougherty moved to go into a closed meeting to discuss pending or reasonably imminent litigation.

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

Note: Closed meeting minutes are sealed and strictly confidential. Access to such minutes must be obtained through a court of law.

Motion: Council Member Drury moved to go out of the closed meeting.

Second: Council Member Dougherty seconded the motion.

Discussion: None

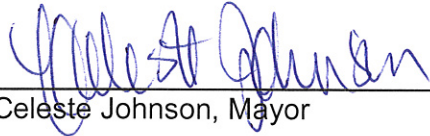
Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

11. Adjournment

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

The meeting was adjourned at 9:17 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder