

Midway City Planning Commission Regular Meeting Minutes January 11, 2022

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 6:00 p.m., January 11, 2022, at the Midway City Community Center 160 West Main Street, Midway, Utah

Attendance

Jeff Nicholas- Chairman
Rich Cliften (zoom)
Rob Bouwhuis- Vice Chair
Craig Simons
Andy Garland
Laura Wardle
Bill Ream

Staff

Michael Henke – City Planner
Melannie Egan – Admin. Assistant
Wes Johnson – City Engineer
Luke Robinson - Planner

Excused

Jon McKeon

6:00 P.M. Regular Meeting

Call to Order

- Welcome and Introductions; Opening Remarks or Invocation; Pledge of Allegiance
 - Invocation was given by Craig Simons
 - Chairman Nicholas led the Pledge of Allegiance

Item 1:

Review and possibly approve the Planning Commission Meeting Minutes of December 14, 2021.

Motion: Commissioner Garland: I make a motion that we recommend approval of the minutes for October 12, 2021, with the changes that were given to Melannie Egan.

Seconded: Commissioner Ream

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

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

Nays: None

Motion: Passed

Item 2:

Midway City is proposing an amendment to Section 16.13: Supplementary Requirements in Zones of the Midway City Municipal Code. The proposed amendment would regulate internal accessory dwelling units.

Planner Henke gave a presentation

Proposal Background

In the 2021 Utah Legislative Session, the legislator adopted H.B. 82 which modifies state code and requires counties and municipal governments to allow Internal Accessory Dwelling Units (IADU) in their communities. It appears that their intent in creating the new requirement was to address the statewide housing shortage.

The state code prescribes the minimum and maximum requirements that can be imposed by a local government on an IADU, but it also provides some optional requirements that a local government can adopt including minimum lot size of 6,000 sf., additional parking, requiring a permit/license, etc.

Highlights of the Bill

- Modifies and defines terms applicable to municipal and county land use development and management;
- Allows a municipality or county to punish an individual who lists or offers a certain licensed or permitted accessory dwelling unit as a short-term rental;
- Allows municipalities and counties to require specified physical changes to certain accessory dwelling units;
- In any single-family residential land use zone:
 - requires municipalities and counties to classify certain accessory dwelling units as a permitted land use; and
 - prohibits municipalities and counties from establishing restrictions or requirements for certain accessory dwelling units with limited exceptions;
- Allows a municipality or county to hold a lien against real property containing certain accessory dwelling units in certain circumstances;
- Provides for statewide amendments to the International Residential Code related to accessory dwelling units;
- Requires the executive director of the Olene Walker Housing Loan Fund to establish a two-year pilot program to provide loan guarantees for certain loans related to accessory dwelling units;

Optional Items that Local Governments can Regulate (Items in yellow are not reflected in the proposed code)

A municipality may:

Prohibit the installation of a separate utility meter for an internal accessory dwelling unit;

- **Require that an internal accessory dwelling unit be designed in a manner that does not**

change the appearance of the primary dwelling as a single-family dwelling;

- Require a primary dwelling:
 - to include one additional on-site parking space for an internal accessory dwelling unit, regardless of whether the primary dwelling is existing or new construction; and
 - to replace any parking spaces contained within a garage or carport if an internal accessory dwelling unit is created within the garage or carport;
- Prohibit the creation of an internal accessory dwelling unit within a mobile home as defined in Section 57-16-3;
- Require the owner of a primary dwelling to obtain a permit or license for renting an internal accessory dwelling unit;
- Prohibit the creation of an internal accessory dwelling unit within a zoning district covering an area that is equivalent to:
 - 25% or less of the total area in the municipality that is zoned primarily for residential use; or
 - 67% or less of the total area in the municipality that is zoned primarily for residential use, if the main campus of a state or private university with a student population of 10,000 or more is located within the municipality;

Prohibit the installation of a separate utility meter for an internal accessory dwelling unit;

- Require that an internal accessory dwelling unit be designed in a manner that does not change the appearance of the primary dwelling as a single-family dwelling;
- Require a primary dwelling:
 - to include one additional on-site parking space for an internal accessory dwelling unit, regardless of whether the primary dwelling is existing or new construction; and
 - to replace any parking spaces contained within a garage or carport if an internal accessory dwelling unit is created within the garage or carport;
- Prohibit the creation of an internal accessory dwelling unit within a mobile home as defined in Section 57-16-3;
- Require the owner of a primary dwelling to obtain a permit or license for renting an internal accessory dwelling unit;
- Prohibit the creation of an internal accessory dwelling unit within a zoning district covering an area that is equivalent to:
 - 25% or less of the total area in the municipality that is zoned primarily for residential use; or
 - 67% or less of the total area in the municipality that is zoned primarily for residential use, if the main campus of a state or private university with a student population of 10,000 or more is located within the municipality;
- Prohibit the creation of an internal accessory dwelling unit if the primary dwelling is served by a failing septic tank;
- Prohibit the creation of an internal accessory dwelling unit if the lot containing the primary dwelling is 6,000 square feet or less in size;
- Prohibit the rental or offering the rental of an internal accessory dwelling unit for a period of less than 30 consecutive days;
- Prohibit the rental of an internal accessory dwelling unit if the internal accessory dwelling unit is located in a dwelling that is not occupied as the owner's primary residence;

- Hold a lien against a property that contains an internal accessory dwelling unit in accordance with Subsection (5); and
- Record a notice for an internal accessory dwelling unit in accordance with Subsection (6).

Proposed Code Language

Section 16.13.38 Internal Accessory Dwelling Units.

1. As used in this section:
 - a. "Internal Accessory Dwelling Unit" means an accessory dwelling unit created:
 - i. Within a primary dwelling;
 - ii. Within the existing footprint of the primary dwelling at the time the internal accessory dwelling unit is created; and
 - iii. For the purpose of offering a long-term rental of 30 consecutive days or longer.
 - b. "Primary dwelling" means a single-family dwelling that:
 - i. Is detached; and
 - ii. Is occupied as the primary residence of the owner of record.
2. Permitted Use.
 - a. The use of one internal accessory dwelling unit within a primary dwelling is a permitted use in any area zoned primarily for residential use.
 - b. An internal accessory dwelling unit shall comply with all applicable building, health, and fire codes, except that:
 - i. A structure whose egress window in an existing bedroom complied with the construction code in effect at the time that the bedroom was finished is not required to undergo a physical change to conform to the current construction code if the change would compromise the structural integrity of the structure;
 - ii. The discharge of return air from an accessory dwelling unit into another dwelling unit, or into an accessory dwelling unit from another dwelling unit, is not prohibited; and
 - iii. An occupant of an accessory dwelling unit is not required to have access to the disconnect serving the dwelling unit in which they reside.
 - a. Except as provided in Subsection 3, the City may not establish any restrictions or requirements for the construction or use of one internal accessory dwelling unit within a primary dwelling, including a restriction or requirement governing:
 - i. The size of the internal accessory dwelling unit in relation to the primary dwelling;
 - ii. Total lot size; or
 - iii. Street frontage.
3. Restrictions and Requirements:
 - a. The following are prohibited in all internal accessory dwelling units located in the city:
 - i. Installing a separate utility meter;
 - ii. Creating an internal accessory dwelling unit within a mobile home;

- iii. Creating an internal accessory dwelling unit within a primary dwelling served by a failing septic tank;
 - iv. Renting an internal accessory dwelling unit located within a dwelling that is not the owner's primary residence;
 - v. Renting or offering to rent an internal accessory dwelling unit for a period of less than 30 consecutive days;
- b. The following are required of all internal accessory dwelling units located in the city:
- i. One additional on-site parking space, regardless of whether the primary dwelling is existing or new construction;
 - ii. Any parking spaces contained within a garage or carport removed for the creation of an internal accessory dwelling unit must be replaced;
 - iii. The owner of a primary dwelling desiring to rent out an internal accessory dwelling unit must obtain a city license and any applicable permits to do so;
 - iv. Lot containing the primary dwelling must be a minimum of 6,000 square feet in size.
- c. The City has discretion to pursue the following concerning internal accessory dwelling units:
- i. The City may hold a lien against a property containing an internal accessory dwelling unit in accordance with Subsection 4; and
 - ii. The City may record a notice for an internal accessory dwelling unit in accordance with Subsection 5.

4. Liens.

- a. *In addition to any other legal or equitable remedies available to the City, the City may hold a lien against a property containing an internal accessory dwelling unit if:*
- i. *The owner of the property violates any of the provisions of Subsections 3 or 4;*
 - ii. *The City provides a written notice of violation in accordance with Subsection (4)(b);*
 - iii. *The City holds a hearing and determines that the violation has occurred in accordance with Subsection (4)(d), if the owner files a written objection in accordance with Subsection (4)(b)(iv);*
 - iv. *The owner fails to cure the violation within the time period prescribed in the written notice of violation under Subsection (4)(b);*
 - v. *The City provides a written notice of lien in accordance with Subsection (4)(c); and*
 - vi. *The City records a copy of the written notice of lien described in Subsection (4)(a)(iv) with the Wasatch County recorder.*
- b. *The written notice of violation shall:*
- i. *Describe the specific violation;*
 - ii. *Provide the owner of the internal accessory dwelling unit a reasonable opportunity to cure the violation that is:*
 - 1. *No less than 14 days after the day on which the City sends the written notice of violation, if the violation results from the owner renting or offering to rent the internal accessory dwelling unit for a*

- period of less than 30 consecutive days; or
2. No less than 30 days after the day on which the City sends the written notice of violation, for any other violation;
- iii. State that if the owner of the property fails to cure the violation within the time period described in Subsection (4)(b)(ii), the City may hold a lien against the property in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires;
 - iv. Notify the owner of the property:
 1. That the owner may file a written objection to the violation within 14 days after the day on which the written notice of violation is post-marked or posted on the property; and
 2. Of the name and address of the City office where the owner may file the written objection;
 - v. Be mailed to:
 1. The property's owner of record; and
 2. Any other individual designated to receive notice in the owner's license or permit records; and
 - vi. Be posted on the property.
- c. The written notice of lien shall:
- i. State that the property is subject to a lien;
 - ii. Specify the lien amount, in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires;
 - iii. Be mailed to:
 1. The property's owner of record; and
 2. Any other individual designated to receive notice in the owner's license or permit records; and
 - iv. Be posted on the property.
- d. If an owner of property files a written objection in accordance with Subsection (4)(b)(iv), the City shall:
- i. Hold a public hearing to conduct a review and determine whether the specific violation described in the written notice of violation under Subsection (4)(b) has occurred; and
 - ii. Notify the owner in writing of the date, time, and location of the hearing described in Subsection (4)(d)(i) no less than 14 days before the day on which the hearing is held.
 - iii. If an owner of property files a written objection under Subsection (4)(b)(iv), the City may not record a lien under this Subsection 4 until the City holds a hearing and determines that the specific violation has occurred.
 - iv. If the City determines at the hearing that the specific violation has occurred, the City may impose a lien in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires, regardless of whether the hearing is held after the day on which the opportunity to cure the violation has expired.
- a. If an owner cures a violation within the time period prescribed in the written notice of violation under Subsection (4)(b), the City may not hold a lien against the property, or impose any penalty or fee on the owner, in relation to the specific

violation described in the written notice of violation under Subsection (4)(b).

5. Recording Notices.

- a. *If the City issues a license and any applicable permits to an owner of a primary dwelling to rent an internal accessory dwelling unit, or a building permit to an owner of a primary dwelling to create an internal accessory dwelling unit, the City may record a notice in the office of the Wasatch County recorder.*
- b. *The notice described in Subsection (5)(a) shall include:*
 - i. *A description of the primary dwelling;*
 - ii. *A statement that the primary dwelling contains an internal accessory dwelling unit; and*
 - iii. *A statement that the internal accessory dwelling unit may only be used in accordance with the City's land use regulations.*
- c. *The City shall, upon recording the notice described in Subsection (5)(a), deliver a copy of the notice to the owner of the internal accessory dwelling unit.*

6. Home Owner Associations.

- a. *A home owner association may not restrict or prohibit the rental of an internal accessory dwelling unit constructed within a lot owner's residential lot, if the internal accessory dwelling unit complies with all applicable:*
 - i. *Land use ordinances;*
 - ii. *Building codes;*
 - iii. *Health codes; and*
 - iv. *Fire codes.*

Possible Findings

- *Regardless of whether the city adopts a code regarding IADUs, state code currently allows property owners to install IADUs assuming the minimum requirements outlined in state code are met*
- *The creation of IADUs could help improve the availability of housing in our community*
- *By adopting this code, Midway City will be able to actively permit and track the creation of IADUs. By tracking the permitted units, Midway will be able to enforce the removal of non-conforming units that are in violation of the proposed title*
- *The option of recording a notice against the property will ensure that there is recorded documentation for future property owners letting them know what the implications are for having an internal accessory dwelling unit (e.g. owner occupied, long-term rentals only)*

Commissioners and Staff Comment

There was a conversation regarding primary dwellings and allowing an IADU vs a secondary dwelling and not allowing. This requirement was created by state code and not by Midway City.

There was a conversation regarding HOA's in PUD's, not allowing for an IADU. Council wanted to limit that if the lot/pad is under 6000 square feet that an IADU can not be allowed. The discussion was regarding having and allowing lots/pad under 6000 square feet. Rob Rob

Bouwhuis believes that it should be allowed. Michael Henke stated that having IADU on a PUD the parking would be the biggest negative factor. It was also mentioned that most PUD lots, the driveways are limited common area and not specifically owned by the lot/pad owner.

There was a comment that allowing more options of IADU's allowed and more IADU's, would create more primary residents and possibility create a scenario that Midway could lose the resort tax that is earned from short term rental. Andy Garland stated that it would be difficult to enforce if someone used the IADU as a short term rental. There was also a discussion regarding liens and the use of them to get someone in compliance to the ordinance.

There was a discussion regarding demonstrating the ability that the parking requirements are meant. It is possibility that a resident with a 3-car garage would already meet those requirements and may not have to create further parking.

It was clarified that an IADU is not allowed in an accessory dwelling unit.

Rob Bouwhuis suggested to list the IADU code as a permitted use in each zone. And add that it is listed as a permitted use in the commercial zone only if the home is grandfathered in as a primary residential unit.

There was a discussion regarding benefits and cons to the city. It was discussed that the code doesn't benefit the city and to open it up to every scenario in the city, it could create burdens.

There was a discussion about not allowing entrances on the front of a home and making it look like a duplex. Perhaps allowing a separate entrance located on the side or the back of the home, not on the front. Also, any additional driveway area, must be on the same side of the original driveway for the main home. The intent would be that the homes are not created to look like a duplex. Require that an internal accessory dwelling unit be designed in a manner that does not change the appearance of the primary dwelling as a single-family dwelling.

Public Hearing Open
None
Public Hearing Closed

Motion: Commissioner Simons: I make a motion that we recommend approval of an amendment to Section 16.13: Supplementary Requirements in Zones of the Midway City Municipal Code. The proposed amendment would regulate internal accessory dwelling units. Accept staff findings and adding that we require that an internal accessory dwelling unit be designed in a manner that does not change the appearance of the primary dwelling as a single-family dwelling, by allowing a separate entrance located on the side or the back of the home, not on the front. Also, any additional driveway area, must be on the same side of the original driveway for the main home unless the home is on a corner lot. To list the IADU code as a permitted use in each zone. Add that it is listed as a permitted use in the commercial zones only if the home is grandfathered in as a primary residential unit and they may have an IADU. No common area shall be counted towards the six thousand square footage minimum in order to qualify for an IADU.

Seconded: Commissioner Garland

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

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

Nays: None

Motion: Passed

Item 3:

Midway City is proposing an amendment to Section 16.24: Enforcement and Zoning Violations of the Midway City Municipal Code. The proposed amendment would modify regulations for certificates of zoning compliance.

Proposal Background

Currently, section 16.24.7 of the land use code outlines criteria necessitating the issuance of a certificate of zoning compliance previous to changes on a property. If a property owner requests a certificate of zoning compliance, they are requesting that the zoning administrator indicate whether a lot, structure or use complied with all pertinent requirements of this Code and therefore, may be occupied or used. As a staff we are proposing that the section is amended to better reflect when a certificate of zoning compliance can be requested.

Current Code

16.27.7 Certificate of Zoning Compliance Required

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premise, or to change the occupancy of any building or premise until a Certificate of Zoning Compliance shall have been issued therefore by the Zoning Administrator, stating that the proposed use of the building or land conforms to the requirements of this Title. No nonconforming structure or use shall be changed or extended until a Certificate of Zoning Compliance shall have been issued stating specifically wherein the nonconforming use differs with the provisions of this Title . The Zoning Administrator may permit the occupancy of a building prior to the completion of all required work, provided a bond or other assurance has been posted with the City in an amount equal to the cost of completing said required work as determined by the governing body . The Zoning Administrator shall maintain a record of all Certificates of Zoning Compliance for a period of five years and a copy shall be furnished upon request to any applicant. At such time as any party shall have complied with the provisions relating to large scale developments as set forth in this Title, the City Council shall so certify and shall issue a Certificate of Compliance to the developer designating with particularity all lots or other tracts that are in compliance herewith and that are available for sale. It shall be unlawful for any developer or other person to sell or offer for sale or exchange either by deed, contract, or otherwise, any lot or tract of land within said large scale developments until such time as the developer shall have received a Certificate of Compliance with respect thereto.

Concerns with Current Code by Section

16.27.7 Certificate of Zoning Compliance Required

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premise, or to change the occupancy of any building or premise until a Certificate of Zoning Compliance shall have been issued therefore by the Zoning Administrator, stating that the proposed use of the building or land conforms to the requirements of this Title. No nonconforming structure or use shall be changed or extended until a Certificate of Zoning Compliance shall have been issued stating specifically wherein the nonconforming use differs with the provisions of this Title .

Concern: Zoning Admin. is obligated to issue a certificate when any of the listed criteria are met (new home, additions, new uses, change in uses). We feel that this would be a poor use of staff time and that we have other approval processes and codes in place to handle the situations outlined in this section.

The Zoning Administrator may permit the occupancy of a building prior to the completion of all required work, provided a bond or other assurance has been posted with the City in an amount equal to the cost of completing said required work as determined by the governing body.

Concern: Zoning Admin. does not currently sign off on certificate of occupancies. Additionally, all bond amounts would then need to be approved by the City Council.

16.27.7 Certificate of Zoning Compliance Required

The Zoning Administrator shall maintain a record of all Certificates of Zoning Compliance for a period of five years and a copy shall be furnished upon request to any applicant. At such time as any party shall have complied with the provisions relating to large scale developments as set forth in this Title,...

Concern: Planning staff anticipates maintaining digital records of certificates indefinitely and does not see a need to codify a time limit.

...the City Council shall so certify and shall issue a Certificate of Compliance to the developer designating with particularity, all lots or other tracts that are in compliance herewith and that are available for sale. It shall be unlawful for any developer or other person to sell or offer for sale or exchange either by deed, contract, or otherwise, any lot or tract of land within said large scale developments until such time as the developer shall have received a Certificate of Compliance with respect thereto.

Concern: The city council would need to certify the completion of all developments. As city staff we ensure that the plat is recorded, conditions of the development agreement are met and the required infrastructure is installed with the standard of care and to the specifications outlined in the approved construction drawings. Once a development is complete and ready for building permits to be issued, the city engineer provides written notification to the city building inspector. We as staff feel as though this is sufficient but are open to the thoughts of the PC and CC.

Proposed Code Language

16.27.7 Certificate of Zoning Compliance Required

A certificate of zoning compliance may be requested by a property owner in order to validate whether existing structures and uses on the property are in compliance with the current land use code or were legally built or commenced under a previous land use code. A complete application and payment of the fee constitute a formal request.

Possible Findings

- The proposed adjustment would eliminate unnecessary criteria requiring the issuance of a certificate of zoning compliance
- The proposed adjustment would still allow property owners to request a certificate of zoning compliance

Commissioners and Staff Comment

Public Hearing Open

None

Public Hearing Closed

Motion: Commissioner Bouwhuis: I make a motion that we recommend approving an amendment to Section 16.24: Enforcement and Zoning Violations of the Midway City Municipal Code. The proposed amendment would modify regulations for certificates of zoning compliance. Accept finding and we approve as noted.

Seconded: Commissioner Wardle

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

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

Nays: None

Motion: Passed

Item 4:

Midway City is proposing an amendment to Chapter 5.02.080: Outdoor Lighting and Glare. The proposed amendment would modify regulations for outdoor lighting.

Planner Robinson gave a presentation.

Proposal Background

The purpose of this item is to update the Outdoor Lighting and Glare ordinance in title 5 with an ordinance that is modern and addresses issues relating to lighting that the city is encountering, including increasing light pollution. Instead of re-working our existing code, we are proposing that it is replaced with new code language that staff feels will meet the needs of the city.

The Problem: Light Pollution

The International Dark-sky Association defines light pollution as “any adverse or unintended effect of the use of artificial light at night, including sky glow, glare, light trespass, light clutter, decreased visibility at night, and energy waste.”

Code Addresses the Following:

- Modernizes references to lighting requirements, including current technologies, like the use of LEDs
- Provides several visual examples to help illustrate the intent of the code
- Creates clear lighting output limits for both partially shielded and fully shielded lighting
- Prohibits unshielded lighting fixtures
- Require property owners to demonstrate compliance with lighting regulations during development and building permit processes through the submission of lighting plans
- Regulations for lighting color and commercial lighting hours
- Creates a limitation on the use of permanent outdoor holiday lighting
- Pathways for legally non-conforming properties to come into compliance with the proposed regulations

Proposed Code Language

5.02.080 Outdoor Lighting

A. Outdoor lighting – Scope and applicability.

1. All lighting should be purpose driven.
2. All outdoor lighting installed after XXXXXX X, 2022 in all zoning districts within the City shall conform to the requirements established by Sections 5.02.080.A through 5.02.080.I as well as requirements for signage found elsewhere in the Midway Municipal Code. These sections do not apply to indoor lighting.
3. All existing outdoor lighting that does not meet the requirements of this chapter and is not otherwise exempted shall be considered a nonconforming use or part of a nonconforming structure subject to an amortization schedule outlined in Section 5.02.080.I.
4. In the event of any conflict between the provisions of Sections 5.02.080.A through 5.02.080.I and any other provision of the Midway Municipal Code, these sections shall control.

B. Outdoor lighting – Definitions.

1. For the purpose of Sections 5.02.080.A through 5.02.080.I, the following definitions apply:
“Accent or architectural lighting” means lighting of building surfaces, landscape features, statues, and similar items for the purpose of decoration, ornamentation, creation of visual hierarchy, sense of liveliness, or other purpose unrelated to safety, business operation, or essential lighting function.

“Backlight” means all the light emanating behind a luminaire.

“BUG rating” means backlight, uplight, and glare rating, which exists on a scale of zero to five and describes the light output of a luminaire.

“Correlated color temperature” (CCT) is a specification of the color appearance of the light emitted by a lamp, relating its color to the color of light from a reference source when heated to a particular temperature, measured in degrees Kelvin (K). The CCT rating for a lamp is a general “warmth” or “coolness” measure of its appearance. Lamps with a CCT rating below three thousand K are usually considered “warm” sources, while those with a CCT above three thousand K are usually considered “cool” in appearance.

“Direct illumination” means illumination resulting from light emitted directly from a bulb, luminary, or reflector. This does not include light reflected from other surfaces such as the ground or building faces.

“Floodlight” means a fixture or bulb designed to “flood” an area with light. A specific form of bulb or fixture designed to direct its output in a specific direction. Such bulbs are often designated by the manufacturer and are commonly used in residential outdoor lighting.

“Fully shielded fixture” means an outdoor light fixture constructed and mounted so that the installed fixture emits no light above the horizontal plane. Where a light manufacturer provides a BUG rating, the uplight rating (U) must equal zero. Fully shielded light fixtures must be shielded in and of themselves. Surrounding structures, like canopies, are not to be considered when determining if the fixture is fully shielded. Fully shielded fixtures must be appropriately mounted so that the shielding prevents light from escaping above the horizontal plane and all light is directed downward.

“Glare” means the visual sensation caused by excessive brightness and which causes annoyance, discomfort, or a disability loss in visual performance or visibility.

“Internally illuminated, backlit,” as it relates to signs, means any sign which has a light source entirely enclosed within the sign and not directly visible to the eye.

“Light pollution” means any adverse effect of manmade light. Often used to denote “skyglow” from developed areas, but also includes glare, light trespass, visual clutter and other adverse effects of lighting.

“Light source” means the part of a lighting fixture that produces light, e.g., the bulb, lamp, or chips on board.

“Light trespass” means any light that falls beyond the legal boundaries of the property it is intended to illuminate.

“Lumen” means a unit of luminous flux equal to the light emitted by a uniform point source of one candle intensity. Lumens refers to the amount of light emitted by a bulb (more lumens equates to brighter light).

“Manufacturer’s catalog cuts” means a publication or other printed material of a bulb or lighting manufacturer offering visual and technical information about a lighting fixture or bulb.

“Outdoor light fixture” means a complete lighting unit consisting of a lamp(s) and ballast(s) (when applicable), together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. Also known as a luminaire, or simply as a fixture.

“Partially shielded light fixture” means an outdoor light fixture constructed and mounted so that the installed fixture emits most of its light above the horizontal plane. Where a light manufacturer provides a BUG rating, the uplight (U) and backlight (B) ratings are greater than

zero. Light emitted at or above the horizontal plane (sideways or upwards) shall arise solely from incidental decorative elements or strongly colored or diffusing materials such as colored glass or plastic. Fixtures using spot or flood lamps are considered partially shielded if the lamps are aimed no higher than forty-five degrees above the vertical plane beneath the fixture.

“Recreational lighting” means lighting used to illuminate sports fields, ball courts, playgrounds, or similar outdoor recreational facilities.

“Skyglow” means the brightening of the nighttime sky resulting from the scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the nighttime sky.

“Spotlight” means a fixture or bulb designed to light a small area very brightly. See definition of “Floodlight.”

“Total” means the sum of shielded, partially shielded and unshielded light.

“Total outdoor light output” means the total amount of light measured in lumens from all bulbs installed in outdoor lighting fixtures. For bulb types that vary in light output as they age (such as fluorescent and high intensity discharge (HID) bulbs), the initial lumen output as defined by the manufacturer shall be the lumen value used.

“Tower” means any monopole, antenna, or the like that exceeds eighteen feet in height.

“Unshielded fixture” means a fixture that has no shielding at all that would otherwise specifically prevent light emission above the horizontal.

“Uplight” means all the light emanating above the horizontal plane of a luminaire.

Outdoor lighting – Fully shielded fixture requirements.

1. Unless specifically exempted by this section, all outdoor lighting shall use fully shielded fixtures and shall be installed so light is directed downward with no light emitted above the horizontal plane of the fixture. Where a light manufacturer provides a BUG rating, the uplight rating (U) must equal zero.
2. In order to qualify as a “fully shielded” fixture, a light fixture must have the top and sides made of completely opaque material such that light only escapes through the bottom of the fixture. Fixtures with translucent or transparent sides, or sides with perforations or slits, do not qualify as fully shielded. Any glass or diffuser on the bottom of the fixture must be flush with the fixture (no drop lenses). Merely placing a light fixture under an eave, canopy, patio cover, or other similar cover does not qualify as fully shielded.
3. Fixtures must not be placed at a location, angle, or height that directs illumination outside the property boundaries where the light fixtures are located.
4. Notwithstanding the exemptions in subsection (5) of this section, all residential and commercial luminaires shall be fully shielded when installed within twenty-five feet of adjacent residential property lines.
5. Exemptions to fully shielded fixture requirements:

- a. All lights exempted by this section shall be included in the calculation of total light output.
- b. Fixtures having a total light output less than one thousand lumens are exempted from the fully shielded requirement provided the following criteria are met:
 1. The fixture has a top that is completely opaque such that no light is directed upwards.
 2. The fixture has sides that completely cover the light source and are made of opaque or semi-opaque material. Fixtures with opaque sides may have incidental decorative perforations that emit small amounts of light. Semi-opaque material such as dark tinted glass or translucent plastic may be used if the light source is not discernable behind the material. Completely transparent materials, such as clear or lightly tinted colored glass, are not allowed.
 3. The light source must not be visible from any point outside the property on which the fixture is located.
- c. Spotlights controlled by motion sensors having a light output less than one thousand lumens per lamp are exempted from the fully shielded requirement provided:
 1. The fixture is a spotlight or other type of directed light that shall be directed straight down;
 2. The fixture must not be placed in such a manner that results in illumination being directed outside the property boundaries where the light fixtures are located; and
 3. Lights controlled by motion sensors shall not be triggered by movement or activity located off the property on which the light is located. The fixture shall have a timer that turns the floodlight fixture off after a period of time not to exceed ten minutes.
- d. Pathway lights less than eighteen inches in height are exempted from the fully shielded fixture requirement, if the total light output from each pathway light is less than three hundred lumens.
- e. Temporary exterior lighting intended as holiday or seasonal decorations displayed between November 15th and the following January 20th. Lights that strobe (blinking more than once per second) are prohibited.
- f. Permanent exterior holiday lighting may be displayed between November 15th and the following January 20th. Lights shall not strobe (blinking more than once per second). Lighting may also be turned on for the following holiday dates (actual dates and observed dates).
 1. Washington's Birthday
 2. Memorial Day
 3. Juneteenth National Independence Day
 4. Independence Day
 5. Pioneer Day
 6. Labor Day
 7. Columbus Day
 8. Halloween Day
 10. Veterans Day
- g. Traffic control signals and traffic safety devices.
- h. Temporary emergency lighting in use by law enforcement or government agencies or at their direction.
- i. The lighting of Federal or State flags; provided, that the light is a top-down and narrow beam aimed and shielded to illuminate only the flag. Lighting of flag poles on Memorial Hill shall be exempt from this requirement and may be lit from below.
- j. Partially shielded floodlight fixtures. The fixture must not be placed in such a manner that results in illumination being directed outside the property boundaries where the light fixture is located. The fixture shall be activated only by a sensor, activated only by movement or activity

located on the property in which it is located. The fixture shall have a timer that turns the floodlight fixture off after a period of time not to exceed ten minutes. Unshielded floodlight fixtures are prohibited.

D. Outdoor lighting – Total light output.

1. Commercial and Resort Commercial. Total outdoor light output shall not exceed fifty thousand lumens per developed acre. Streetlights used for illumination of public rights-of-way are excluded from this calculation. Commercial developments shall be permitted a minimum of five thousand lumens of lighting regardless of parcel size.

a. In nonresidential zoning districts, partially shielded lighting on a property shall not exceed five thousand lumens per developed acre, and shall be included in the total outdoor light output calculation.

b. In nonresidential zoning districts, unshielded lighting is prohibited.

2. Residential and Resort Residential. Total outdoor light output shall not exceed ten thousand lumens of lighting for parcels one-half acre, or larger, in size. Parcels smaller than one-half acre shall be permitted five thousand lumens of lighting regardless of parcel size. Detached single family dwellings in planned unit, mixed-use, and resort developments shall be permitted five thousand lumens of lighting. Attached single family dwellings in planned unit, mixed-use, and resort developments with no more than two units are allowed five thousand lumens of lighting per unit. Attached single family dwellings in planned unit, mixed-use, and resort developments with three or more units are allowed three thousand lumens of lighting per unit. Total outdoor light output of any apartment development shall not exceed twenty thousand lumens of lighting per acre.

a. In residential zones, partially shielded lighting on a property shall not exceed one thousand lumens per lot, and shall be included in the total outdoor light output calculation.

b. Residential units used for short-term rentals and other approved commercial uses in a residential zone shall comply with the residential standards for total light output.

a. In residential zoning districts, unshielded lighting is prohibited.

E. Outdoor lighting – Lighting hours.

1. Commercial establishments shall turn off all outdoor lighting, except that listed below, by ten p.m.:

a. Businesses open to the public after ten p.m. may leave all outdoor lighting on until one hour after the close of business.

b. Businesses who close to the public before nine p.m., shall turn off all outdoor lighting one hour after the close of business.

a. Lighting to illuminate the entrance to the commercial establishment.

b. Parking lot and pathway lighting required for the safety of guests or customers.

2. Recreational lighting (residential and commercial) shall be turned off by ten p.m. except to conclude a specific sporting event/activity that is underway.

F. Outdoor lighting – Lighting color.

All exterior lighting shall utilize light sources with correlated color temperature not to exceed three thousand Kelvin (K).

Outdoor lighting – Specialized outdoor lighting conditions and standards.

1. Gas station canopies may be illuminated; provided, that all light fixtures are mounted on the undersurface of the canopy and all light fixtures are fully shielded. Merely placing the fixtures on the underside of the canopy does not qualify as fully shielding the light fixture.

2. Roadway and streetlights are prohibited unless recommended by the City Engineer or

required by UDOT to provide for the safety of the public. When deemed necessary, streetlights shall utilize lamp types that are fully shielded luminaires that minimize skyglow, light trespass, and other unintended impacts of artificial lighting. All streetlights shall utilize the lowest illuminance levels acceptable to the City Engineer and/or UDOT. The city maintains the ability to dim or turnoff streetlights if necessary.

3. Parking lots may not utilize spot or flood lighting whether mounted on a post or exterior building wall. The overall height of any light post or tower used to illuminate parking lots in commercial zones shall not exceed twenty-five feet. All post mounted parking lot lights shall be set back from property lines a distance equal to one and one-half times the height of the pole unless an internal or external shield prevents the fixture being visible from outside the property boundaries. The overall height of any light post used to illuminate parking lots in residential zones shall not exceed twenty-five feet. All parking lot lighting shall use fully shielded downward directed fixtures. Internal or external shields shall prevent the fixture being visible from outside the parking lots.

4. Outdoor recreation areas or athletic fields at publicly owned facilities may use illumination to light the surface of play and viewing stands and for the safety of the public. The following standards shall apply to outdoor recreation area or athletic field lighting:

a. The recreational lighting shall not exceed illuminance levels for Class IV sports lighting set by the Illuminating Engineering Society of North America.

b. The recreational lighting provides illuminance for the surface of play and viewing stands, and not for any other areas or applications.

c. Off-site impacts of the lighting will be limited to the greatest practical extent possible.

d. The lighting for areas or applications outside the surface of play and viewing stands shall conform to all provisions in this chapter.

e. The recreational or athletic facility shall extinguish lighting exempted by this chapter no later than ten p.m. or one-half hour after the end of play.

f. The recreational lighting shall have timers that automatically extinguish lighting to ensure lights are not left on when the facilities are not in use.

5. Outdoor amphitheatres and outdoor stages may use illumination to light the performance area of the amphitheater and for the safety of the public. The following standards apply to all amphitheater lighting:

a. Lighting used to illuminate the performance area must be either directed spotlighting or fully shielded lighting. If directed spotlighting, the light source must be located and designed such that it is not visible beyond the property boundaries.

b. Lighting used to illuminate the performance area may only be turned on during performances or rehearsals.

c. Lighting used to illuminate the seating areas, pathways, and other areas of the amphitheater must meet all standards of this chapter.

6. All illuminated signs shall comply with the standards of Section 16.21.

H. **Outdoor lighting – Application and review procedures.**

1. Lighting Plan. All sign permit applications, subdivision applications, site plan applications, building permit applications (residential, commercial and resort), and other development review applications within any zoning district shall include a lighting plan that shows evidence that the proposed lighting fixtures and light sources comply with this chapter. Lighting plans shall include the following:

a. Plans or drawings indicating the proposed location of lighting fixtures, height of lighting fixtures on the premises, and type of illumination devices, lamps, supports, shielding and

reflectors used and installation and electrical details.

b. Illustrations, such as contained in a manufacturer's catalog cuts, of all proposed lighting fixtures. For commercial uses, photometric diagrams of proposed lighting fixtures are also required. In the event photometric diagrams are not available, the applicant must provide sufficient information regarding the light fixture, bulb wattage, and shielding mechanisms to be able to determine compliance with the provisions of this chapter.

c. A table showing the total amount of proposed exterior lights, by fixture type, wattage, lumens, and lamp type.

2. Approval Procedure.

a. The lighting plan for all new development shall be submitted for approval concurrent with the associated application process.

b. A certificate of occupancy for commercial and resort structures shall not be issued until such time as the property is subject to a post-installation inspection by Midway City staff.

Outdoor lighting – Amortization of nonconforming outdoor lighting.

1. The City shall require the termination of use of all nonconforming outdoor lighting fixtures, structures, lamps, bulbs or other devices that emit or generate light which are not otherwise exempted by this chapter, pursuant to the amortization schedule contained in this section.

2. All outdoor lighting legally existing and installed prior to the effective date of this chapter and which is not exempted shall be considered nonconforming and shall be brought into compliance by the property owner as follows:

a. Immediate compliance is required as a condition for approval when applying for a building permit, sign permit, new (nonrenewal) business license, site plan review or similar City permit or approval if site improvements, construction, reconstruction, expansion, alteration or modification of existing sites, structures, or uses individually or cumulatively equal or exceed one thousand five hundred square feet, or fifty percent of the existing site or structure, whichever is less. Projects of less than one thousand five hundred square feet in size, or fifty percent of an existing site or structure, will not be subject to immediate compliance. However, the square footage of the improved structure or site will count towards a cumulative total of projects on the same property. When the cumulative total equals or exceeds one thousand five hundred square feet, or fifty percent of the existing site or structure, compliance shall be required for approvals as cited above.

b. All damaged or inoperative nonconforming lighting shall be replaced or repaired only with lighting equipment and fixtures compliant with this chapter.

c. All outdoor lighting not previously scheduled for amortization or otherwise exempted shall be brought into conformance with this chapter within ten years from the effective date of this chapter.

3. The City shall perform two audits of all outdoor lighting in the City. The first shall be five years and the other eight years after the effective date hereof. These audits will identify all lighting that does not conform to the standards of this chapter. The results of these audits will be made available to the public.

Possible Findings

- The proposed adjustment will help curb the ever-increasing issue of light pollution as the city continues to grow and properties are developed
- The proposed adjustment will update the outdoor lighting ordinance to reflect current technologies and practices

- The proposed adjustment will create many non-conforming properties
- The proposed adjustment will create separate output allowances for residential properties less than one-half acre and those one-half acres and larger. It will also prohibit the use of un-shielded fixtures and limit the use of partially shielded fixtures
- The proposed adjustment will create various paths for legally non-conforming properties to come into compliance

Commissioners and Staff Comment

There was a conversation regarding the light source and the full cutoff and a canopy such as on a gazebo may have a full cut off.

There was a discussion regarding floodlights and partially shielded vs fully shielded.

Rob Bouwhuis stated that landscape lighting would be virtually eliminated with this code as most landscaping lighting is for the most part mounted on the ground and directed upwards.

Soffit lights would also be virtually eliminated with this code, especially if the roof is gabled.

There was a discussion regarding using a total lumen count. Rob Bouwhuis does not agree with the measurement. He believes that using full cut off lights is better. Trespass is the biggest issue.

Regarding amortization of nonconforming outdoor lighting. Craig Simons asked the question about possibly phasing on amortization. Example, starting with perhaps commercial and resorts, before we start regulating residential? How will this be enforced?

Laura suggested having the city start a campaign to promote awareness and change for residential properties and homeowners before we mandate.

The question brought up was, is this worth it, all commissioners think that it is and is a great start.

Have an electrical engineer come and do a full photometric plan. Also, have a photometric plan submitted for a permit.

There was a conversation about light trespass and how cutoff lights help

Concern is enforcement. There are individual grants along with rural municipality grants

Possible move the compliant date up if it is found that someone is out of compliance.

Public Hearing Open

George Hansen- 360 So 250 West. Believes that we are on a good start with this ordinance, but there is still much to do. Need a way to measure the trespass and there is a way to do it. Diffused reflection is not considered. Need to figure out the amounts of lights are surrounding the house. Have an incentive program, there are grant programs available that can be tapped

into to incentivize residents to change out their bulbs and fixtures.

Public Hearing Closed

Motion: Commissioner Simons: I make a motion that we recommend continuing an amendment to Chapter 5.02.080: Outdoor Lighting and Glare. The proposed amendment would modify regulations for outdoor lighting. Get a lighting engineer and come with work done or a proposal from a lighting engineer with information that we and the public can understand.

Seconded: Commissioner Garland

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

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

Nays: None

Motion: Passed

Item 5:

Review required State and Midway noticing requirements for land use applications.

Planner Henke gave presentation.

Adjournment

Motion: Commissioner Ream

Second: Commissioner Simons

10:12 pm



Chairman – Jeff Nicholas



Admin. Assistant – Melannie Egan