

Midway City Council  
4 February 2020  
Regular Meeting

Ordinance 2020-02 /  
Festival Event Parking



## CITY COUNCIL MEETING STAFF REPORT

**DATE OF MEETING:** February 4, 2020

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Code Text Amendment of Chapter 7.08: Festival Event Parking

### **ITEM: 7**

Midway City is proposing to add a new section of code to Title 7: Business Licenses and Regulations. The proposed code would allow booths on private property on the Friday and Saturday before Labor Day if public parking is allowed on the property year-round. The parking facilities would need to comply with established standards and approved by the City.

### **BACKGROUND:**

Midway City is proposing to add a new section of code to Title 7: Business Licenses and Regulations. The proposed code would allow booths on private property on the Friday and Saturday before Labor Day if public parking were allowed on the property year-round. The parking facilities would need to comply with established standards, as described in the code, and approved by the City.

Midway City was recently approached by a resident that owns property near the Town Square that offered to create year-round public parking in exchange for the ability to have third party booths on her property on the Friday and Saturday before Labor Day (Swiss Days). The City has been continually and diligently working on ways to increase parking in the commercial zones. In the past year, the City amended the parking ordinance and

increased required parking stalls for several uses. The City has also been exploring other options to create more parking and to better guide people to existing parking. The proposal from the resident is another option for the City to consider.

Staff has created a draft code for the City Council to consider (please see attached). This proposed option would only be available areas from 100 East to 200 West, 150' north and south of the edge of UDOT's right-of-way (150' north of the north sidewalk and 150' south of the south sidewalk) and three properties fronting Main Street west of 200 West which includes two properties on the north and one on the south (please see attached map). The code establishes infrastructure requirements for the parking area and other regulations for creating year-round public parking. In return, the property owner is allowed to have third party booths during Swiss Days. There would be an aisle spacing requirement of 16' to allow for emergency access, as is required for booths on the Town Square. The code also regulates the types of products that may be sold from the booths. Items sold must be substantially related to what has been historically sold during Swiss Days. No food or drink may be sold. Also, tobacco and e-cigarettes are regulated along with any sexually oriented business items.

This proposal has the ability to create public parking in the commercial area at no cost to the City. What must be determined is if the proposal will have a negative effect on Swiss Days activities. If there is a negative effect, then it must be determined by the City, is the proposal worth creating the negative impacts. There are members of the community that feel that no booths should be located off the Town Square during Swiss Days. It has been expressed that the volunteers of Swiss Days and the funds paid by the Swiss Days Committee for services such as shuttles, portable toilets, etc. is what carries Swiss Days and all others are benefitting from their hard work and service. They feel that booths located off the Town Square detract from the community event and shouldn't be allowed. As this has been debated over the years, the City has developed a code that strikes a balance that allows businesses to also benefit during Swiss Days. This proposed code would increase the number booths on private property which may create some concern from members of our community. The public benefit is increased public parking throughout the year.

**POSSIBLE FINDINGS:**

- The proposed code may create more public parking in a section of the commercial zones around Town Square
- Creating more public parking is a goal in the General Plan and the City Council has actively been pursuing this goal
- The impacted area is limited to a specific area along Main Street
- The proposed code will, most likely, increase the number of booths on private property

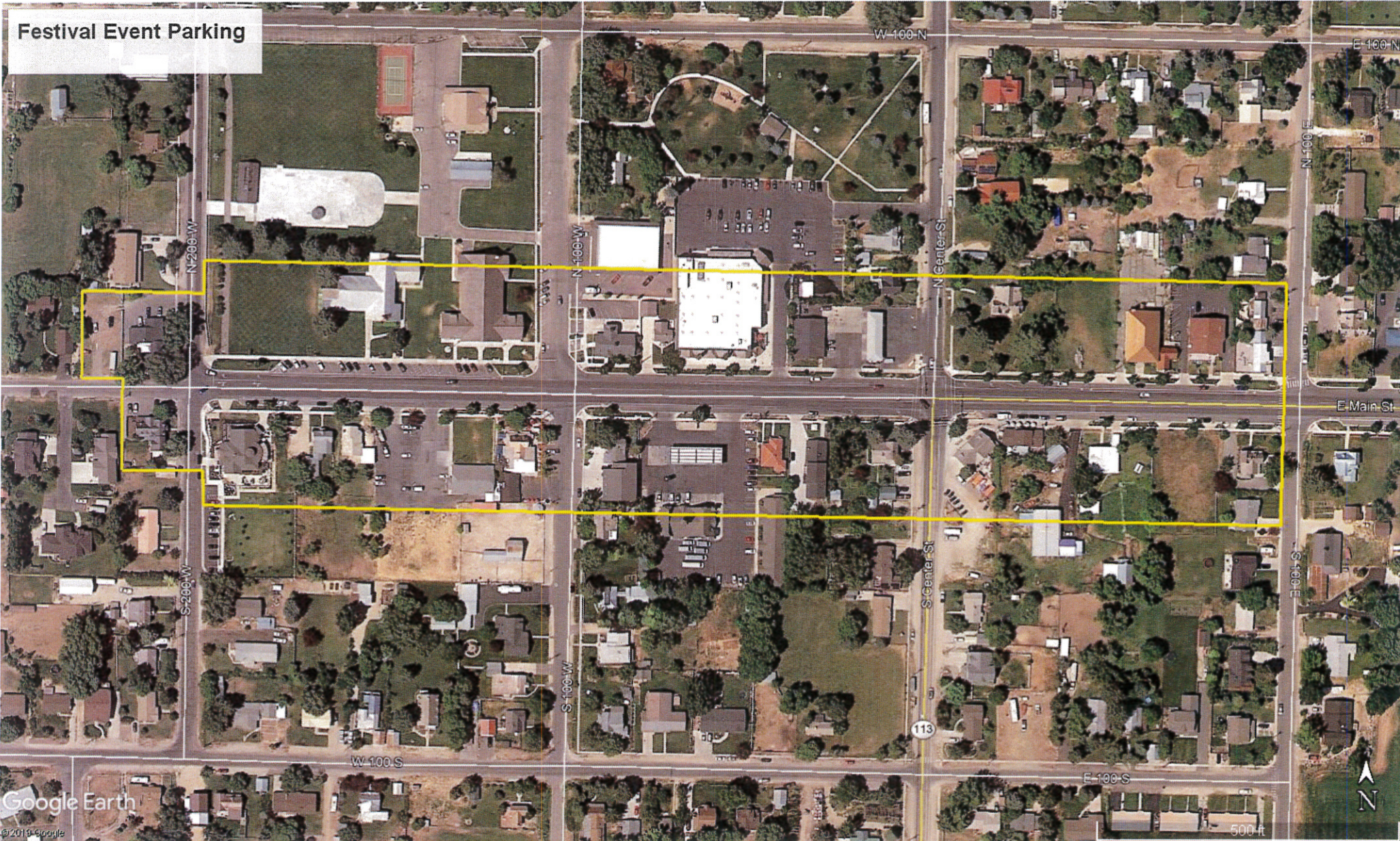
- The proposed code would require a commitment of free public parking and maintenance of the property by the owner for a full year

**ALTERNATIVE ACTIONS:**

1. Approval. This action can be taken if the City Council finds that the proposed language is an acceptable amendment to the City's Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
2. Continuance. This action can be taken if the City Council would like to continue exploring potential options for the amendment.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council finds that the proposed amendment is not an acceptable addition to the City's Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial



Festival Event Parking







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## MEMORANDUM

**TO: Midway City Council**

**FROM: Corbin Gordon**

**DATE: January 29, 2020**

***Re: Additional Public Parking Ordinance - Exaction analysis***

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## INTRODUCTION

Midway City hosts an extremely popular and well-attended festival event each Labor Day weekend known as “Swiss Days.” Many of the existing businesses in the downtown area have expressed an interest in hosting temporary booths on their property during the Swiss Days event. If required parking stalls are used for temporary booths it would cause the business to be in violation of the Midway City parking ordinance during the festival event. Midway City does not believe that it is in the best interest of the City to condone a violation of the Midway City Code regarding parking, even on a temporary basis.

Additionally, Midway has experienced an increase in the number of visitors to the downtown area of the City throughout the year. This increase in visitors has resulted in a shortage of public parking in the downtown area.

Midway desires to pass an ordinance that would address both issues by establishing a voluntary program whereby a downtown business owner may voluntarily provide additional public parking spaces above and beyond the requirements of the City Code, in exchange for the right to use those additional public parking spaces to host booths during Swiss Days.

The program would not be an exaction because it is 1) voluntary; 2) does not impose a requirement on any business owner above the existing requirements of the Code; and 3) does not violate the existing Code regarding required parking spaces.

The question addressed by this Memorandum is whether the proposed Additional Public Parking Ordinance (a draft of which is attached hereto for reference purposes) might constitute an illegal “exaction” which would be imposed on existing business owners who wish to host booths during Swiss Days.

This memorandum is not intended to be an exhaustive analysis of the law of exactions. That would take many volumes and weeks of effort. Rather, it is a brief summary of the law, and its apparent application to the proposed Ordinance. Additional research and analysis can be completed if requested by the Council.

## **ANALYSIS**

### **I. CURRENT RELEVANT CITY ORDINANCES**

A. Parking Requirements for businesses: The Midway City Code already has detailed parking requirements that are imposed on businesses. Nothing in this proposed Ordinance would change the existing parking requirements or impose any new requirement on any business that did not wish to participate voluntarily.

B. Limitation on hosting booths on existing business property: The Midway City Code already has an extensive section (§7.05) dealing with Special Business Licenses. Specifically, this section imposes limitations and restrictions on booths during Swiss Days by imposing a Festival Market Business License requirement on all booths during Swiss Days. The requirements of this Section of the Code would not be changed by the proposed Ordinance.

### **II. PROPOSED “VOLUNTARY” ADDITIONAL PARKING ORDINANCE**

A. Participation in the program provides a benefit to the business owner: The voluntary participation in the Additional Public Parking Program proposed in the Ordinance would allow existing businesses to increase the area where temporary booths could be located on their property during Swiss Days. Thus, participation would grant an additional benefit to the business owners that would theoretically offset any costs incurred as a result.

B. Participation avoids condoning violations of the existing parking requirements: Business owners are not currently allowed to place temporary booths on any portion of their required parking. By providing an option that could be exercised at the business owner’s choice, the proposed Ordinance helps avoid violations of the current City parking requirement.

### **III. “EXACTION” ANALYSIS**

The Utah Property Ombudsman defines and “Exaction” as follows:

“An **exaction** is a required contribution to a governmental entity imposed as a condition of approval for a proposed land development. Exactions generally take the form of (1) dedication

of land to the public; (2) construction of public improvements, (3) money paid in lieu of property dedication or construction, (4) connection fees, or (5) impact fees.”

A. The proposed Ordinance is not an “Exaction” because it is not a condition of approval but is purely voluntary. The Additional Public Parking program is not being imposed on anyone. Rather, it is a voluntary program that allows existing businesses to enhance their Swiss Days “presence” if they choose to do so.

B. The proposed Ordinance is not an “Exaction” because it does not impose an additional cost on the business owner without conferring a benefit to that business owner. Illegal exactions occur when the governmental entity imposes a burden on a property owner, without conferring a benefit, which is usually designed to alleviate an existing problem that was not caused by the property owner’s action. This is not the case with the proposed Ordinance. The City is offering an additional benefit to the business owner in exchange for their voluntary participation in the program.

C. The “Rough Proportionality” test does not really apply in this instance. The Ombudsman’s website describes the test that Courts use to determine if an exaction is illegal thusly:

“An exaction may be imposed on a proposed development provided that it meets “**rough proportionality**” analysis, which is:

1. An essential link exists between the exaction and a legitimate governmental interest; and
2. Each exaction is roughly proportionate, both in nature and extent, to the impact of the development.”

In the present case, the business owner itself gets to decide if there is sufficient benefit to their business to justify incurring any costs associated with installing the Additional Public Parking.

## CONCLUSION

The proposed Ordinance regarding the Additional Public Parking program is not an illegal exaction. It is voluntary and is not imposed on anyone. It is not a condition of development, and does not impose new requirements on any existing or proposed businesses. Further, the proposed Ordinance allows the business owner itself to determine 1) whether to participate; and 2) the financial pros and cons of so doing.



**DRAFT**



## ORDINANCE 2020-\_\_\_\_

**AN ORDINANCE AMENDING PORTIONS OF SECTION 7 OF THE MIDWAY CITY CODE REGARDING THE VOLUNTARY CREATION OF PUBLIC PARKING IN THE DOWNTOWN AREA OF MIDWAY, IN EXCHANGE FOR THE RIGHT TO TEMPORARILY LEASE A PORTION OF THE PUBLIC PARKING FOR TEMPORARY BOOTHS DURING FESTIVAL EVENTS, AND RELATED MATTERS.**

**WHEREAS**, Midway City has the need for additional parking in the downtown area of the City (as described herein); and

**WHEREAS**, Midway City is aware that many of the business owners in the downtown area have expressed a desire to use some of their required parking area for temporary booths during certain festival periods; and

**WHEREAS**, Midway City also is aware that adding temporary booths during the festival period in the required parking area would result in a temporary violation of the Midway City Code, because during the time that the temporary booths were in place, the business would not have the required parking; and

**WHEREAS**, in an effort to meet the request of certain business owners for temporary booths during festival events, and to help alleviate the parking shortage in the downtown area on a year-round basis, Midway City desires to create a process whereby business owners who are willing to voluntarily provide additional public parking year round, would be granted the right to lease a portion of the additional public parking for temporary booths during certain festival events; and

**WHEREAS**, the City of Midway desires to provide this incentive in a manner that is not an illegal exaction, but is a voluntary program for those business owners who wish to participate; and

**WHEREAS**, the adoption of this ordinance will be in the best interests of the citizens of Midway City;

**NOW THEREFORE**, for the reasons stated above, the City Council of the City of Midway, Wasatch County, Utah, hereby adopts, passes and publishes the following:

**BE IT ORDAINED**, by the City Council of Midway City, Wasatch County, State of Utah:

Section 7 of the Midway City Code is hereby amended by adding a new section 7.08, as follows:

CHAPTER 7.08 ADDITIONAL PUBLIC PARKING

- A. As the downtown area of Midway develops into a more commercial district, the City needs to address the issue of additional public parking. To encourage the provision of additional parking within the Festival Market Overlay Zone, the City is willing to allow existing business owners the opportunity to install additional, year-round public parking in exchange for the right to host booths on a portion of their property during Swiss Days.
- B. Any existing business owner within the downtown area (as defined below) and shown on the accompanying map willing to make “Additional Public Parking” (as this term is defined below) available year-round from the date of approval, will be allowed to host booths on a portion of their property during Labor Day Weekend (Swiss Days) subject to the following:
1. The business owner must make application to the City for approval of “Additional Public Parking”.
  2. “Additional Public Parking” shall be defined as parking stalls that exceed the amount required under Midway City Code for the type of business already located on the property. For example, if an existing business requires five stalls to conduct business, “Additional Public Parking” would only count the number of stalls above five as meeting the definition.
  3. The “Additional Public Parking” must be located entirely in the areas from 100 East to 200 West, 150’ north and south of the edge of UDOT’s right-of-way (150’ north of the north sidewalk and 150’ south of the south sidewalk) and three properties fronting Main Street west of 200 West which includes two properties on the north and one on the south.
  4. The “Additional Public Parking” must be free for public use during the entire year from the date of approval except for the Thursday, Friday, Saturday, and Sunday before Labor Day.
  5. To receive approval for “Additional Public Parking” the following standards must be met:
    - i. The parking must be installed as a hard surface (paved or concrete).
    - ii. If the existing parking lot is not a hard surface, or if it is a hard surface but is not in compliance with current City standards, the landowner shall submit engineered plans to install the parking lot in a hard surface (paved or concrete), including a drainage plan (collectively a “Parking Plan”).
    - iii. The Parking Plan must be reviewed and approved by the City Planner and City Engineer.

- iv. All public parking must meet all design standards, drainage standards and stall dimension standards as described in the City Code and Midway City construction standards.
  - v. Landowners shall be responsible for maintaining the parking lot in good working condition, removing snow from the same, and overseeing that the parking lot is safe for public use at all times
  - vi. Depending on the location of the Additional Public Parking, it shall be under the discretion of the City Council to require the landowner to install lighting for the Additional Public Parking. For example, if the Additional Public Parking is located along Main Street where lights are already installed, there may be no need for additional parking. However, if the Additional Public Parking is located where little or no City lighting exists, the City Council may require the installation of lighting sufficient to address safety concerns.
  - vii. Landowner shall be required to carry a general liability policy in an amount of no less than \$1,000,000.00 per occurrence, with Midway City named as an additional named insured. Proof of insurance shall be provided annually with the administrative request to renew, as well as within 30 days of receiving written request from Midway City.
6. Once the Parking Plan is approved and the parking lot is installed in accordance with the approval, the Applicant must agree to allow public parking on the property for one full year from the date the Additional Public Parking is made available.
- C. In exchange for making “Additional Public Parking” available within the Festival Market Overlay Zone, the landowner will be allowed to locate booths on a portion of their property during Labor Day weekend (Friday and Saturday before Labor Day) subject to the following:
1. The business owner shall be required to obtain a Festival Market Business License as set forth in Midway City Code §7.05 and include in the application a site plan that illustrates the location of the booths on the Property. Only businesses that meet the requirements for a Festival Market Business License may apply for approval for Additional Public Parking.
  2. Booths may only be located within the stalls that are deemed “Additional Public Parking”. No booths shall be allowed in parking stalls required to operate the existing business.
  3. Additional Public Parking may be located on the parcel where the business is located or on a contiguous parcel owned by the business owner.
  4. All driveway access areas and stall approach areas must remain clear of booths.
  5. The Site Plan must meet all safety/building code requirements applicable to booths on the Main Square.
  6. No food or drink may be sold from the booths.



- 7. Products sold must be substantially related to what has been historically sold on the Town Square during Swiss Days. Consideration must be given for products that are appropriate for families and children.
- 8. Tobacco and e-cigarette sales must comply with Section 16.5.2 of City Code
- 9. Sexually oriented businesses are restricted as per Section 7.04 of the municipal code and will be required to comply therewith.

D. To continue to participate in the program, Applicant shall annually file an administrative request to renew the “Additional Public Parking” approval for a minimum of an additional year. If no changes are being proposed to the “Additional Public Parking” the City Planner shall have the power to approve the administrative request.

E. Property owners participating in the program do not have a vested interest in the approval described herein beyond one year. Property owners install “Additional Public Parking” based on the opportunity to host booths in a particular calendar year. There is no guarantee that the program will be continued from one year to the next.

This ordinance shall be effective immediately upon passage. A copy of this ordinance shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

**PASSED AND ADOPTED** by the City Council of Midway City, Wasatch County, Utah  
 this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

	AYE	NAY
Council Member Lisa Christen	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Jared Simonsen	_____	_____
Council Member Steve Dougherty	_____	_____
Council Member Kevin Payne	_____	_____

APPROVED: (SEAL)

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
 Corbin Gordon, City Attorney