

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

**Tuesday, 1 February 2022, 6:00 p.m.  
Midway Community Center, Council Chambers  
160 West Main Street, Midway, Utah**

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

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

Mayor Johnson called the meeting to order at 6:12 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

Michael Henke, Planning Director  
Wes Johnson, Engineer  
Cory Lott, Public Works Crew Chief  
Shane Owens, Public Works Assistant Crew  
Chief  
Brad Wilson, Recorder/Financial Officer

**Staff Present:**

Corbin Gordon, Attorney (Arrived at 6:37  
p.m.)

**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 1 February 2022 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 18 January 2022 City Council Work Meeting
- d. Minutes of the 18 January 2022 City Council Regular Meeting
- e. Resolution 2022-05 approving compensation for service on the HL&P Board of Directors

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

Mayor Johnson asked that 2e be removed from the consent calendar. She indicated that it would be considered again after the Council's strategic planning meeting.

**Motion:** Council Member Simonsen moved to approve the consent calendar as shown but striking Item "e".

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

**Discussion:** None

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

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

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

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

#### **4. Department Reports**

##### State Legislature / Great Salt Lake & Water Rights

Council Member Dougherty reported that the State Legislature wanted to refill the Great Salt Lake by curtailing the water rights of communities like Midway.

##### Cemetery / Policy Revisions

Council Member Orme reported that she and staff were close to finishing the revisions to the City's cemetery policies.

##### Utah Community Forest Council / Community of the Year Award

Council Member Simonsen reported that Midway received the community of the year award from Utah Community Forest Council.

##### Center Street Trail / Connect to Tate Lane

Council Member Simonsen reported that a grant was being sought to extend the trail, along south Center Street / Highway 113, to Tate Lane. Midway City was asked to contribute \$30,000 to the project.

#### Valais Park / Feedback

Council Member Simonsen reported that the Parks, Trails, and Trees Advisory Committee wanted public feedback on the Valais Park.

#### Parks Committee / Standards / Budget

Council Member Simonsen reported that the Parks, Trails, and Trees Advisory Committee was preparing standards for parks and recommendations for the next budget.

#### HVTED / Thrive Hive

Council Member Orme reported that Heber Valley Tourism and Economic Development (HVTED) started a project called Thrive Hive to incentivize high school students to work at local businesses.

**Note:** Corbin Gordon arrived at 6:37 p.m.

#### HVRR / Trail / North Pole Express / Legislative Request

Mayor Johnson reported that the trail, next to Heber Valley Railroad's tracks, was closer to being built. She indicated that the Railroad's North Pole Express was a success. She added that the Railroad had asked the State Legislature for additional funding.

#### HVSSD / Planning

Mayor Johnson reported that the Heber Valley Special Service District was doing long-term planning.

#### MSD / Operations

Mayor Johnson reported that the Midway Sanitation District was operating well.

**5. Open Space Bond Funds / Small Parcels** (Open Space Committee – Approximately 30 minutes) – Discuss and possibly approve criteria for the use of open space bond funds for small parcels.

Courtland Nelson, the chair of the Midway Open Space Advisory Committee, gave a presentation regarding using open space bond funds for small parcels. He reviewed the

following items:

- Successes and losses in preserving open space
- Albert Kohler Dairy
- Kem Gardner properties
- Mountain Spa
- Chapter ten of the General Plan
- New landowner packet
- Database of landowners
- Alternatives to bond funding

Mr. Nelson also made the following comments:

- The Open Space Committee needed direction from the Council.
- \$2 million in bond funds remained.
- Had been talking with owners of smaller parcels. It was difficult to leverage the bond funds for such parcels.
- Was this the right time to preserve small parcels? What should be the approval process?
- New partnerships would need to be created.
- How should the public and Preserve Midway be involved? Preserve Midway could be beneficial because it was a 501(c)(3).

Katie Villani, a member of the Open Space Committee, made the following comments:

- The Committee was looking for guidance regarding small parcels.
- Any procedures should allow for flexibility.

Lori Stone, Preserve Midway Board Chair, made the following comments:

- Her organization was refocusing on smaller parcels.
- There was a learning process associated with preserving these parcels.
- The location of these parcels was important.
- Summit Land Conservancy but not Utah Open Lands would consider managing smaller parcels.
- There were passionate people who would help preserve these parcels.

Cheryl Fox, Summit Land Conservancy Executive Director, made the following comments:

- Applauded the work of the Committee.
- Could help with fundraising and brokering deals.
- The Conservancy would hold small parcels when it was beneficial.
- Each parcel should be evaluated on its own merits and for timing for the landowner.

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

- Previously used bond funds had been impressively leveraged.
- In three previous surveys no one definition of open space had prevailed.
- Did the City want to preserve small parcels without leveraging the City's money?
- Parcels that had a strategic advantage and made a big difference should be preserved.
- The preserved open space should be throughout the City.

- Open space was valuable down to one acre.
- Should the City solicit landowners?
- Small parcels of open space helped maintain a rural feel but the City should not own and have to maintain them.
- There was not a deadline to use the bond funds.
- Funds unused after a period of time should pay back the bond.
- The Committee could advise the Council on preserving open space.
- The City should still consider large tracks of open space.

**6. Ordinance 2022-06 / Internal Accessory Dwelling Units** (City Planner – Approximately 60 minutes) – Discuss and possibly adopt Ordinance 2022-06 amending Title 16 (Land Use) of the Midway City Municipal Code regarding internal accessory dwelling units. Recommended by the Midway City Planning Commission. **Public Hearing**

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

- Definitions
- Proposal background
- Optional items that could be regulated
- Additional parking

Mr. Henke also made the following comments:

- Someone could skirt the law by adding an addition to their house and later convert it to an IADU.
- IADUs would not be allowed in accessory structures.
- Had not seen any lots of record less than 6,000 square feet but a size limitation could be included in the proposal.
- No one could argue that their lot included all the common area in a PUD.
- PUDs did not have additional parking for IADUs.
- The proposal included the state minimums and some discretionary prohibitions.
- A family could live in a house and an associated IADU but rent could not be charged.
- A homeowner could still do a second kitchen with an affidavit.
- The owner of record was the owner listed on the property tax roll.
- The owner had to live in the house to rent out the associated IADU. This would prevent people from buying the house and IADU simply as an investment.
- Impact fees could not be increased for an IADU.
- It was unlikely that someone could have a separate entrance for the IADU based on the proposal.
- The parking for the IADU had to be a hard surface. The proposal should include a minimum width for the parking.
- State law did not allow IADU rents to be capped.
- It did not allow HOAs to prohibit IADUs.
- The parking for the IADU could not be in front of the garage. Such parking did not violate the building or fire codes. Worried that eventually the vehicle would be parked on the street.

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

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

- The 30-day rental minimum would not be appropriate if the Transient Rental Overlay District was expanded to include all of Midway.
- A lien was not effective unless the City wanted to foreclose on the property. The City should not acquire property as a punishment.
- Something was not an IADU if rent was not charged.
- A house could be considered a primary residence even if it was occupied by a renter.
- It would be difficult to track if a house with an IADU was occupied by the owner.
- An IADU had to meet the building code with some exceptions allowed by state law.
- Allowing gravel parking would create a rural look. Concrete, asphalt, and gravel should be allowed.
- Not allowing parking in front of a garage was discriminatory and unconstitutional.
- Some driveways were long enough that a car could be parked back from the garage. This would allow access to the garage.
- The setbacks protected the neighbors.
- Parking should not block the sidewalk.
- Encouraging short-term rentals drove up the rent for long-term rentals.

**Motion:** Without objection, Mayor Johnson recessed the meeting at 8:18 p.m. She reconvened the meeting at 8:25 p.m.

- The proposal was as close to state code requirements as possible. If a certain requirement was not addressed, then state code prevailed.
- Item 2(c) should be removed.

### **Public Hearing**

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

#### **Clint Coleman**

Mr. Coleman made the following comments:

- The City should be lenient when enforcing the proposal.
- Most homeowners would not want vehicles parked in front of their house.
- Small parking spaces should be allowed.
- Fewer people would follow the law if the City was "heavy handed".
- The City should get advice from those already renting units in their homes.

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

**Motion:** Council Member Orme moved to continue the item until the next council meeting so a revised version could be looked at and accepted at that time.

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

**Discussion:** Council Member Dougherty preferred a notice of noncompliance instead of a lien. Corbin Gordon responded that the proposal should stay with what was required by the State Code.

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

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

**7. Ordinance 2022-05 / Certificates of Zoning Compliance** (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2022-05 amending Chapter 16.24 (Enforcement and Zoning) of the Midway City Municipal Code. Recommended by the Midway City Planning Commission. **Public Hearing**

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

- Proposal background
- Current code
- Proposed code language

Mr. Henke also made the following comments:

- The proposal would limit certificates of compliance to when they were requested.
- A fee for such requests was already in place.
- A certificate of occupancy would not replace a certificate of zoning compliance for lots of record and setback determinations.
- Was comfortable determining what complied with the zoning.

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

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

- Was the City protected when issuing certificates of compliance?
- The City relied on a builder’s surveyor and did not have the staff to enforce restrictions.
- Was the fee for certificates sufficient?

**Public Hearing**

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

**Motion:** Council Member Payne moved to approve Ordinance 2022-05 regarding certificates of zoning compliance with the following findings:

- The proposed adjustment eliminated unnecessary criteria requiring the issuance of a certificate of zoning compliance.
- The proposed adjustment allowed property owners to request a certificate of zoning compliance.

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

**Discussion:** None

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

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

**8. Ordinance 2022-02 / Setbacks in Residential Zones** (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2022-02 amending Chapters 16.7, 16.8, 16.9, 16.10, 16.11, and 16.12 of the Midway City Municipal Code regarding setbacks for residential zones. Recommended by the Midway City Planning Commission.

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

- Proposed setbacks matrix for residential dwellings
- Proposed setbacks matrix for accessory structures
- Proposed code and exhibits
- Possible findings

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

Council Member Payne suggested that the side setbacks be increased for the R-1-22 and R-1-43 zones. He also suggested that the maximum height for accessory structures be reduced in the R-1-22 zone.

**Motion:** Council Member Payne moved to approve Ordinance 2022-02 regarding setbacks in residential zones, amending Chapters 16.7, 16.8, 16.9, 16.10, 16.11, and 16.12 of the Midway City Municipal Code, with the following findings and changes to the draft language:



- Increasing residential setbacks would likely make many structures legally non-conforming.
- Increasing setbacks might limit the size of some dwellings on smaller lots.
- Increasing setbacks might limit the ability to construct detached accessory structures on lots in some zones.
- Some developments might be exempt from newly adopted setbacks for a period of up to 10 years based on provisions adopted in state code.
- The side yard setbacks for the R-1-22 zone would increase from 15 feet to 20 feet.
- The side yard setbacks for the R-1-43 zone would increase from 20 feet to 30 feet.
- For accessory structures the maximum height at the minimum setback would decrease from 15 feet to 10 feet for the side and rear setbacks in the R-1-22 zone

**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

**9. Ordinance 2022-03 / PUDs** (City Planner – Approximately 30 minutes) – Discuss Ordinance 2022-03 amending Chapter 16.16 (Planned Unit Developments and Subdivisions) of the Midway City Municipal Code regarding planned unit developments and large-scale subdivisions. Recommended by the Midway City Planning Commission.

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

- Should it be discussed in a work meeting?
- Should the PUD code be cleaned up and significant changes made later?
- Should the PUD code be repealed?
- The incentives for PUDs should be eliminated.
- The City benefited from the private roads in PUDs.
- The costs and profit for developers should not be a consideration.
- Having an HOA and amenities prevented affordability in PUDs.
- Not allowing sensitive lands to count as open space had a significant impact on PUDs and probably no more would be built in Midway.
- The minimum acreage requirements could be changed to a minimum unit requirement.
- Developers built to the market and not to land use codes.
- There was a need for second and primary homes where the landscaping was done by the HOA.
- PUDs should be in the center and not the outskirts of Midway. This would require the number and size of units to be reduced.
- If the density of PUDs was the same as subdivisions, then their location was not important.

- RV parks would help the City retain the resort tax.
- The City's roads budget would increase by \$90,000 to \$100,000 a year if the private roads in PUDs were public.
- PUDs should be excluded from the R-1-22 and R-1-43 zones.
- PUDs should be allowed but without incentives.
- Another type of development was needed in the City.
- The proposal was not ready to be approved that night.
- Time was needed to consider the changes.
- The requirement to go to the Water Advisory Board had been removed because it was covered in another part of the Municipal Code.
- The requirement for a public participation meeting had been removed because it was now only required for phased developments. This meeting was beneficial because it started a conversation with the neighbors and residents.
- The height requirement was removed because it was covered in another part of the Code.
- The requirement to screen parking was eliminated because it was unrealistic. Neighbors had requested screening with berms. This was important if parking faced existing residences. Parking and screening might have to be considered on a project-by-project basis as part of a conditional use permit. Some berms were too big and unwanted.
- A section of the proposal had been removed because it allowed the City to create code while it was considering a development.
- Uniform setbacks needed to be insured around a development.
- Everything possible under the law should be done to ensure that warranty bonds addressed appropriate development issues.
- The proposal should not create opportunities for developers to trade for less open space outside of a project.

**Motion:** Council Member Drury moved to continue the item to the next available meeting, before the end of the development moratorium, with the following conditions:

- Directed staff to make changes based on the discussion.
- The minimum size should be based on the number of units applicable to the zone and not the minimum acreage.

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

**Discussion:** None

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

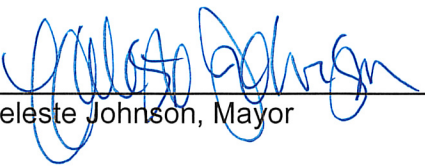
Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

## 10. Adjournment

**Motion:** Council Member Payne moved to adjourn the meeting. Council Member Drury

seconded the motion. The motion passed unanimously.

The meeting was adjourned at 9:52 p.m.

  
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Celeste Johnson, Mayor

  
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Brad Wilson, Recorder