



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: December 14, 2021
NAME OF APPLICANT: Midway City
AGENDA ITEM: Code Text Amendment of Title 16.13:
Supplementary Requirements in Zones

ITEM: 5

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.

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 IADU units are intended to be full living units located within a property owners primary dwelling. 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. Part of the bill, which included modifications to some building code requirements, went into effect on May 5th, 2021. The balance of the bill went into effect October 1st, 2021. If local governments do not adopt the mandatory and optional requirements, then the minimum provisions adopted in state code would prevail.

Below is a list of highlights from 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;

The IADU legislation was recently discussed with the City Council who provided some direction to the city attorney so that he could draft the proposed code. The proposed code would be incorporated into title 16, our municipal land use code.

Below in *red* is the proposed code language which would be adopted as section 16.13.38.

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.*
- c. *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.*
- e. *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 a recorded record 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)

ALTERNATIVE ACTIONS:

1. Recommendation of Approval. This action can be taken if the Planning Commission 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 Planning Commission 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. Recommendation of Denial. This action can be taken if the Planning Commission finds that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial