

Midway City Council  
13 June 2018  
Regular Meeting

Resolution 2018-23 /  
Resort Zone



## **CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** June 13, 2018

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Pending Ordinance Amendment for Recreational Resort Zone (RZ)

### **ITEM: 12**

**Resolution 2018-23 / Recreational Resort Zone** – Discuss and possibly approve Resolution 2018-23 noticing a pending ordinance regarding Chapter 16.15: Recreational Resort Zone.

### **BACKGROUND:**

Staff is proposing a notice of pending ordinance change for the Recreational Resort Zone. There are several reasons for the proposed notice that are based on two main issues. The first is the code assumes that a resort will be constructed but per the code no commercial space is required. One of the purposes of the resort zone is to create an economic and tax base that will benefit all the residents of Midway, but the current code does not require any commercial to be part of the plan. The most current plans for development in the RZ have focused on residential development similar to developments such as Valais instead of a resort plan. The second main issue is much of the current code language is vague and ambiguous and State Code now requires that language is clear and precise. Staff would like to edit the code from this type language that will likely create problems for any future RZ applications.

The following is list of other items that will be addressed with this amendment:

- Adjusting the water requirements so water rights are required at the Master Plan stage of the approval process similar to the adjustment made recently for PUDs and large-scale subdivision that are multi-phased.
- Require commercial development with each master plan development in the RZ.
- Define permitted and conditional uses in the RZ.
- The current code is designed for large-scale resort developments but there are smaller parcels in the zone that cannot comply with current requirements such as setbacks. Staff would propose a large parcel resort zone code and a small parcel resort zone code to alleviate this issue.
- Currently there is not a density limitation in the RZ. Density limitations are based on open space, parking requirements, setbacks, and possibly height. The City should review this item and consider the implications.
- The RZ allows buildings over 35' in height and there is no maximum height listed. The City should also review this item and consider the implications.
- Eliminate the vague and ambiguous language throughout the code that is problematic for the City and for developers.
- This list is not intended to be a comprehensive list of every potential issue in Chapter 16.15. Staff is sure to find other items that are problematic that will be found during the revision process and is therefore asking that the entire chapter be part of the pending ordinance notice and therefore any section may be amended through this process.

State Code requires clear and plain language. State Code Section 10-9a-306 (Land Use Authority Requirements – Nature of Land Use Decision) states the following:

(1) A land use authority shall apply the plain language of land use regulations.

(2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

(3) A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.

Staff is concerned that if an application is received in the RZ, because of the subjective nature of the code, the Land Use Authority will lose the ability to regulate items such as use and height because of the recent State land use laws that have been approved. Any decision made by the Land Use Authority must be based on the clear language of the

code. Any decision based on ambiguous language, that becomes a legal argument, would find the City at a disadvantage and legally the decision would be required to favor the land use application. Staff would like to avoid this scenario and remove and edit the problematic sections of code before an application is received.

**ALTERNATIVE ACTIONS:**

1. Approval. This action can be taken if the City Council feels that the proposed pending ordinance notice is in the community's best interest and if there is sufficient justification for enacting the resolution.
  - a. Accept staff report
  - b. List accepted findings
  
2. Continuance. This action can be taken if the City Council feels that there are unresolved issues.
  - 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 feels that the proposed pending ordinance notice is not in the community's best interest and there is not sufficient justification for enacting the resolution.
  - a. Accept staff report
  - b. List accepted findings



## RESOLUTION 2018-23

### **A RESOLUTION ADOPTING A NOTICE OF PENDING ORDINANCE REGARDING CHANGES TO THE RESORT ZONE WITHIN THE CORPORATE LIMITS OF THE CITY OF MIDWAY, WASATCH COUNTY, UTAH.**

**WHEREAS**, the City Council finds that many of the City's ordinances, policies and procedures, which include, but are not necessarily limited to, the City's General Plan, zoning ordinance, subdivision ordinance, construction standards, street and traffic plan, water ordinances and policies, trails plan, storm water plan, and other similar documents and policies, are in the process of revision and need to be completed in order to fully implement the adopted General Plan; and

**WHEREAS**, the City Council finds that, unless the Pending Ordinance Doctrine is invoked, and a notice of pending ordinance is published, accepting development applications for subdivisions, planned unit developments, and other large-scale residential developments in certain locations within the City while the City is completing the revision and adoption of ordinances, policies and procedures will frustrate the comprehensive, long-range planning objectives that should characterize this process, and also may result in unfairly benefiting certain landowners while burdening others; and

**WHEREAS**, the City Council finds that publishing a notice of pending ordinance, and requiring all new applications for development and/or annexation to be bound by the terms and conditions of the new ordinances, will prevent landowners or developers from being unfairly impacted by the new ordinances; and

**WHEREAS**, the City Council finds that the Midway City Staff and the Mayor and Council have been and continue to work diligently on an ordinance amending the Recreational Resort Zone of the Midway City Code to more fully effectuate the terms, conditions and intent of the General Plan. The Notice of Pending Ordinances hereby adopted relates to the following pending ordinances:

1. Midway City is proposing a Code Text Amendment of Midway City's Land Use Code that would amend the requirements of the Recreational Resort Zone as currently set forth in Section 16.15 of the Midway City Code. The proposed Amendment will include, among other items, amendments to the density limits within the zone, amendments to the maximum height of buildings within the zone, landscaping restrictions and amendments, and other changes to the Recreational Resort Zone.

**WHEREAS**, it is in the best interests of the City to complete the ordinance listed above, and to apply the terms and conditions of that ordinance to any new development, amendment to development, or annexation that may occur within the City; and

**WHEREAS**, the City Council has determined that it would be in the best interests of the health, safety and general welfare of the citizens of Midway City to invoke the pending ordinance doctrine to require that all future applications for development and/or annexation in the City of Midway be subject to the terms of the pending ordinance described herein.

**NOW THEREFORE**, the City Council has determined that there is an important, compelling and countervailing public interest in completing the new ordinance before allowing significant new development to occur. Therefore, pursuant to Section 10-9a-504, *et seq.* of the Utah Code Annotated 1953, as amended, and 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 RESOLVED**, by the City Council of Midway City, Wasatch County, State of Utah:

- 1. The Midway City Notice of Pending Ordinances, which is attached hereto and incorporated herein by this reference, is hereby approved and adopted by the City Council.*
- 2. No application for development approval or annexation shall receive final approval prior to the adoption and effective date of the above listed proposed Ordinances to the Midway City Code.*
- 3. In order to protect public health, safety and welfare of the citizens of Midway, the City Council has determined that this Resolution shall take effect immediately upon publication as required by law and shall continue until the above listed ordinances are completed, adopted and become effective, or until the City Council votes negatively on those pending ordinances.*
- 4. This resolution does not affect any development or application or annexation petition currently filed or pending with the City on or before the date of this resolution. Further, this resolution does not affect applications for building permits within developments approved by the City prior to the date of this resolution or within developments covered by applications described in the previous sentence.*

This resolution shall be effective immediately upon passage. A copy of this resolution 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 Midway City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

MIDWAY CITY

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Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

**MIDWAY CITY**  
**NOTICE OF PENDING ORDINANCES**

*Notice is hereby given by Midway City, Utah, that proposed ordinances are currently pending and under consideration by the Midway City Council and/or the Midway City*

*Planning Commission for the following:*

1. AMENDMENTS TO THE RESORT ZONE WITHIN THE BOUNDARIES OF MIDWAY CITY, UTAH

Copies of the proposed Ordinances are available in the Midway City Offices during normal business hours. ALL FUTURE APPLICATIONS FOR DEVELOPMENT APPROVAL WILL BE SUBJECT TO THE TERMS OF ANY AMENDMENTS TO THE CURRENT PROVISIONS OF THE MIDWAY CITY CODE. All applicants are hereby notified that the acceptance for filing and processing of any applications for development approval by Midway City will not create any vested rights, equitable issues or legal claims against Midway City. The applicant further acknowledges receipt and review of a copy of this Notice of Pending Ordinance and further understands and agrees that the acceptance for filing and processing of any application for development approval will be subject to any amendments to the Midway City Code currently pending and under consideration by the Midway City Council and/or the Midway City Planning Commission.

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Brad Wilson, Midway City Recorder

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DATE