

Midway City Council
11 April 2018
Work Meeting

Ordinance 2018-13 /
Permitted and Conditional Uses



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: April 11, 2018
NAME OF APPLICANT: Midway City
AGENDA ITEM: Code Text Amendment of Title 16

ITEM: 8

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16 regarding permitted and conditional uses in the City. The City would like to specify that if a use is not specifically stated as a permitted or a conditional use then it is not allowed.

BACKGROUND:

Staff is proposing an amendment to the Land Use Code that would clarify allowed uses in Midway. Currently the code has language found in Section 16.13.32 that states the following regarding permitted and conditional uses:

A similar use is a use ruled by the City Council, after a recommendation has been given by the Planning Commission, to be in harmony with and not be in conflict with the objectives and characteristics of the particular zoning district in which it is being proposed. The use must be similar to the uses expressly permitted or conditionally permitted in the zone in which it is proposed with respect to traffic requirements, appearance, and emissions of noise and odor. Upon the determination of the City Council that a use is similar to those listed as permitted or conditional uses, that use shall be considered as a permitted or conditional use in the zone in which the determination was made.

Staff has determined that this section of code should be removed for the following reasons:

1. The language is vague, subjective and ambiguous. Staff feels the language should either be eliminated and replaced with language that is clear and concise. It is better to remove or replace the provision now before an application is received and there is a debate before the City Council over a very subjective section of the code.
2. 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 for a proposal that is similar to other uses and meets the criteria stated in the code but is not a use desired by the City then the Land Use Authority will lose the ability to regulate the use and the decision will be required to favor the land use application. Staff would like to avoid this scenario and remove the section of code before an application is received.

Staff is proposing the following language is added to the code:

It is the express intent of the City Council that all uses not expressly listed as a permitted or conditional use in a particular zone are prohibited in that zone of the city.

This item has been noticed in the local newspaper for two weeks, posted in three locations in town, on the City's website, and on the State's website for the Planning Commission meeting.

POSSIBLE FINDINGS:

- State code requires plain language, or the land use decision shall be in favor of the land use application
- The current language, most likely, limits the City's ability to regulate height for commercial PUDs

ALTERNATIVE ACTIONS:

1. Approval. This action can be taken if the City Council feels 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 feels 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



ORDINANCE 2018-13

AN ORDINANCE AMENDING A PORTION OF TITLE 16 OF THE MIDWAY CITY CODE REGARDING PERMITTED AND CONDITIONAL USES IN MIDWAY CITY, AND RELATED MATTERS.

WHEREAS, Midway City desires to amend the Midway City Code regarding permitted and conditional uses in Midway City; and

WHEREAS, the proposed amendment would remove potential ambiguity from the existing Code and will clarify the intent of the City with respect to permitted and conditional uses; and

WHEREAS, the City Council has determined that the amendment to the City Code as contained herein will be in the best interests of the City and its citizens.

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 16.13.32 of the Midway City Code is hereby deleted in its entirety. Section 16.13.32 shall hereafter read as follows:

Section 16.13.32 Uses not expressly listed as permitted or conditional are prohibited.

It is the express intent of the City Council that all uses not expressly listed as a permitted or conditional use in a particular zone are prohibited in that zone of the City.

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 , 20 .

	AYE	NAY
Council Member Lisa Christen	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Bob Probst	_____	_____
Council Member JC Simonsen	_____	_____
Council Member Ken Van Wagoner	_____	_____

APPROVED:

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM:

Corbin Gordon, City Attorney

(SEAL)

Permitted and Conditional Uses
Planning Commission Motion

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16 regarding permitted and conditional uses in the City. The City would like to specify that if a use is not specifically stated as a permitted or a conditional use then it is not allowed.

Motion: Commissioner Nicholas: I move that we recommend approval of the Code Text Amendment of Midway City's Land Use Code of Title 16 regarding permitted and conditional uses in the City. The change would be to specify that if the use is not specifically stated as a permitted or conditional use then it is not allowed. We accept the staff findings and the staff report. We accept staff findings as presented on the screen not in the packet.

Seconded: Commissioner Streeter

Chairman Kohler: Any discussion on the motion?

There was none

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne, Ream and Bouwhuis

Nays: None

Motion: Passed