PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: March 21, 2018

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Amendment of Title 16

ITEM: 4

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16 regarding Residential Treatment Facilities, Residential Facilities for Elderly Persons, Rest Homes, Nursing, and Convalescent Facilities. The City would like to review the current code and potentially amend the regulations for these facilities.

BACKGROUND:

Staff is proposing an amendment to the Land Use Code regarding Residential Treatment Facilities, Residential Facilities for Elderly Persons, Rest Homes, Nursing, and Convalescent Facilities. The reason for the amendment is not to limit the use in any of the zones where they are permitted but to limit the number of residents based on if the zoning is commercial or residential. Currently there is no limit to the number of residents for any of the facilities listed above. Without a limit in the code, it is possible someone could propose, for example, a 200-resident facility in a single-family dwelling residential zone. A facility that would house that many residents would be much larger than any of the dwelling structures in the zone. Staff is recommending that a limit of residents per facility is adopted to avoid a future conflict where a facility is proposed in a residential zone that the community feels is too large for the surrounding area. A large facility would have the feel of a commercial use in a residential zone.

Staff is proposing that the limit of residents for Residential Facilities for Elderly Persons, Rest Homes, Nursing, and Convalescent Facilities is eight in all residential zones (R-1-7, R-1-9, R-1-11, R-1-15, R-1-22, RA-1-43, C-2, and C-3).

There are two sections of code that are proposed for adoption to the City's land use ordinance. The first is a definition of Single Housekeeping Unit that would be added to Chapter 16.2: Definitions. And the second is the code text for Residential Facilities for Elderly Persons or for Persons with a Disability that would be added to Section 16.18.

Singe Housekeeping Unit would be defined as the following:

71. Single Housekeeping Unit. A Single Housekeeping Unit shall mean one person or two or more individuals who:
a. are living together sharing household responsibilities and activities which may include sharing expenses, chores, eating evening meals together and participating in recreational activities and having close social economic and psychological commitments to each other;
b. are not legally dependent on others not living with them;
c. legally share in the ownership or possession of the premises. E.g., tenants in common or joint tenants on a deed or cosigners of a single lease.

A Single Housekeeping Unit does not include a common living arrangement whose basis is temporary or financial in nature, except that:
a. A Single Housekeeping Unit may include not more than three persons, where such persons, for compensation, are provided room or meals for more than 30 days at a time as distinguished from a motel or boarding house; or
b. In the case of a Residential Facility for Elderly Persons or Persons with a Disability operated pursuant to Section 16.18, as distinguished from a motel, or boarding house, a Single Housekeeping Unit may include not more than eight persons, together with a maximum of two additional qualified persons acting as resident staff, houseparents, or guardians.

Section 16.18 Residential Facilities for Elderly Persons or for Persons with a Disability

Section 16.18.010 Purpose
Section 16.18.020 Definitions
Section 16.18.030 Permitted Uses
Section 16.18.040 Review Process
Section 16.18.050 Development Standards
Section 16.18.060 License and Certification
Section 16.18.070 Accommodation Request

Section 16.18.080 Review and Hearing Process
Section 16.18.090 Exemptions

Section 16.18.010 Purpose
The purpose of this section is to:
A. Comply with Utah Code Annotated.

B. Avoid discrimination in housing against persons with disabilities pursuant to the Utah Fair Housing Act and the Federal Fair Housing Act, as interpreted by courts whose decisions are binding in Utah. This section is not a separate zone for such facilities, but applies to all residential zones within Midway City. If any facility, residence, congregate living, or other housing arrangement meets the definition of a residential facility for elderly persons or a residential facility for persons with a disability as set forth below, the requirements of this Chapter shall govern the same, notwithstanding any conflicting provision of this Title or the Midway City Municipal Code. Except as provided herein, the requirements of this Chapter shall not be construed to prohibit or limit other applicable provisions of this Title, the Midway City Municipal Code, or other local, County, State or Federal laws.

Section 16.18.020 Definitions

A. Residential Treatment. An operation licensed by the State of Utah as "Residential Treatment" as a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment, individuals are assisted in acquiring the social and behavior skills necessary for living independently in the community

B. Residential Facility for Elderly Persons. A dwelling unit owned by a resident thereof or an immediate family member of a resident, or for which the title has been placed in a trust for a resident; and is voluntarily occupied on a twenty-four (24) hour per day basis by not more than eight (8) elderly persons in a family-type arrangement. A "residential facility for elderly persons" does not include any facility:

1. *Operated as a business; provided that such facility shall not be considered to be operated as a business solely because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility;*
2. *Where persons are placed:*
   a. *For alcoholism or drug abuse treatment; or*
   b. *As part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;*
   c. *Which is a health care facility as defined by the Utah Code, as amended; or*
   d. *Which is a residential facility for persons with a disability.*

C. Residential Facility for Persons with a Disability. A dwelling unit or other place in

which not more than eight (8) persons with a disability reside together with up to two additional qualified persons acting as resident staff, houseparents or guardians, and if required by State law, is licensed or certified by:

1. *the Utah Department of Human Services under the Utah Code, Licensure of Programs and Facilities; or*
2. *the Department of Health under the Utah Code, Health Care Facility Licensing and Inspection Act.*

Section 16.18.030 Permitted Uses

A. ***Permitted Uses**. Notwithstanding any contrary provision of this Title, a Residential Facility for elderly persons and a Residential Facility for persons with a disability shall be permitted uses in any zone where a dwelling is allowed as a permitted or conditional use subject to the development standards of Section 16.18.050.*

B. ***Termination**. A use permitted by this Section is nontransferable and shall terminate if:*

1. *The facility is devoted to a use other than a residential facility for elderly persons or a residential facility for persons with a disability.*

2. *Any license or certification issued by the Utah Department of Health or the Department of Human Services for such facility terminates or is revoked.*

3. *The facility fails to comply with requirements set forth in this Chapter.*

Section 16.18.040 Review Process

In addition to other information required by the Midway City Municipal Code, the following information must be submitted with the business license application for a residential facility. Additional information may be requested to aid in that review.

A. *A statement of the specific type of facility (as defined by State regulations) the applicant seeks to operate and by which State agency it is regulated.*

B. *The minimum and maximum number of residents who will live at the residential facility, and the minimum and maximum number of both resident and non-resident staff.*

C. *The complete name of the business, the type of business entity and whether the business is a for-profit or non-profit organization.*

D. *The typical or average length of stay of the residents.*

Section 16.18.050 Development Standards

The development standards set forth in this Section shall apply to any residential facility for elderly persons or residential facility for persons with a disability.

A. ***Building, Safety and Health Regulations**. The facility shall comply with building, safety, and health regulations applicable to similar residential structures within the residential zone in which the facility is located.*

1. *Each facility shall be subject to the same development standards applicable to similar residential structures located in the same zoning district in which the facility is located.*

2. *The minimum number of parking spaces required for a facility shall be the same as for similar structures located in the same zone in which the facility is located.*

B. ***No Dangerous Persons Permitted**. No facility shall be made available to an individual whose tenancy would:*

1. *Constitute a direct threat to the health or safety of other individuals.*

2. *Result in substantial physical damage to the property of others.*

C. ***Prohibited.** A Residential Facility for persons with a disability or a Residential Facility for elderly person that would likely create a fundamental change in the character of a residential neighborhood is not allowed.*

Section 16.18.060 License and Certification

Prior to occupancy of any facility, the person or entity operating the facility shall:

A. ***State License.** Provide to the City a copy of any license or certification required by the Utah State Department of Health or the Utah State Department of Human Services, including any policies or procedures that are required under state law.*

B. ***Certification Requirements.** Certify in a sworn statement that no person will reside or remain in the facility whose tenancy would:*

1. *Constitute a direct threat to the health or safety of other individuals.*

2. *Result in substantial physical damage to the property of others.*

C. ***City License.** Obtain a Midway City Business License if any sort of license or certification is required by the Utah State Department of Health or the Utah State Department of Human Services.*

D. ***Compliance/Renewal.** Any such facility must comply with all Federal, State,*

County and City regulations. At the time of renewal, the applicant must provide copies of all necessary certifications/recertifications or licenses as required by State regulations.

16.18.070 Accommodation Request

A. ***Reasonable Accommodation Required**. In accordance with the Americans with Disabilities Act, the Fair Housing Act, Fair Housing Amendments Act and applicable law, none of the requirements of this Chapter shall be interpreted to limit any accommodation which is reasonable and necessary to allow the establishment or occupancy of a residential facility for persons with a disability.*

B. ***Request for Accommodation**. Any person or entity may request an accommodation after being informed that an existing or proposed: (i) residential facility for persons with a disability; or (ii) business license application or building permit application for a residential facility for persons with a disability, does not comply with the requirements of the Midway City Municipal Code (collectively a "Denial"). The application shall be submitted to the City Planner, shall articulate in writing the nature of the requested accommodation and the basis for the request, and shall include all other information relevant to the request. The requested accommodation must relate to the use of the property so that it may be enjoyed as other similar situated properties in the same zone. Once a request for accommodation is received by the City Planner, it shall be submitted to the Review and Hearing Process set forth in 16.18.080 below within seven business days of receipt. In the event that the City Planner receives no request for accommodation within the thirty (30) day period after a Denial, the City Planner shall submit the information received in the initial application to the Review and Hearing Process set forth in 16.18.080 below, unless the applicant specifically waives their right to the process in writing.*

16.18.080 Review and Hearing Process

A hearing officer with demonstrated experience as a hearing officer and knowledge of the Americans with Disabilities Act or Fair Housing Act, shall be appointed by the Mayor with the advice and consent of the City Council, to review the request for accommodation. Additional information may be requested by the hearing officer to aid in that review.

A. ***Hearing Officer Scheduling of Hearing.** The hearing officer shall review the request for accommodation within ten business (10) days after receipt of the written request by the City Planner. The hearing officer shall determine whether additional information is needed from the City Planner, the person or entity making the request, or both.*

1. *If additional information is needed, the hearing officer shall notify the City Planner and the person or entity making the request within seven (7) days after*

receipt of the written request by the City Planner. The City Planner and requesting person or entity shall have seven (7) days to submit the requested information, or such reasonable additional time as approved by the hearing officer. The hearing officer shall determine within three (3) days after receipt of additional information whether the submission is responsive to the hearing officer's request.

2. *If no additional information is needed or if the hearing officer receives the requested additional information, the hearing officer shall schedule a hearing. The hearing officer shall provide written notice of the hearing date and time to the person or entity requesting the accommodation and the City Planner. Unless otherwise agreed to by the person or entity requesting the accommodation and the City Planner, the hearing officer shall hold the hearing within fourteen (14) days after the hearing officer determines that all requested information has been received and no additional information is needed. Unless agreed upon by the person or entity requesting the accommodation and the City Planner, the hearing shall be held no more than forty-five (45) days after receipt of the request by the City Planner. If the hearing officer has not received all requested information at that time, the hearing officer may continue the hearing or deny the request based on insufficient information.*

B. ***Findings.*** *The hearing officer shall make a determination and prepare written findings within seven days after the hearing.*

1. *At a minimum, the written findings shall address the following issues: (i) whether the requested accommodation(s) is reasonable; (ii) whether the requested accommodation is necessary for financial and therapeutic viability; (iii) whether the facility with the requested accommodation(s) is or is not likely to create a fundamental change in the character of the residential neighborhood; and (iv) other findings in support of the hearing officer's determination.*

2. *The hearing officer shall mail a copy of the written determination and findings to the City Planner and the person or entity requesting the accommodation along with a letter notifying the City Planner and the person or entity requesting the accommodation that the decision is final and may be appealed to a court of competent jurisdiction.*

3. *The hearing officer shall forward a copy of the decision to the Mayor, the City Recorder and the City Council.*

C. ***Appeal.*** *The determination of the hearing officer shall be final and may be appealed to a court of competent jurisdiction.*

16.18.090 Exemptions

A Residential Facility for Persons with a Disability shall not include facilities which house persons who are violent, who are not voluntarily residing therein, or who are residing

therein as a part of or in lieu of confinement, rehabilitation, or treatment in a correctional facility.

POSSIBLE FINDINGS:

- Residential Treatment Facilities and Residential Facilities for Elderly Persons will still be allowed uses in all residential zones

- The proposal will assure that the number of residents in these facilities will be in scale with other residential uses in the zones in which they are located

ALTERNATIVE ACTIONS:

1. Recommendation for approval. This action can be taken if the Planning Commission 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 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 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