## PLANNING COMMISSION MEETING STAFF REPORT

**DATE OF MEETING:** December 20, 2017

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Code Text Amendment

**ZONING DESIGNATION:** C-2 & C-3

**ITEM: 9**

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Section 16.13.36 (D) that would amend Commercial PUDs and Condominium Projects.

**BACKGROUND:**

This item is a request for a Code Text Amendment that would eliminate a section of code regarding the height of commercial Planned Unit Developments (PUD) and Condominium Projects in the C-2 and C-3 zones. The language is found in Section 16.13.36 (D) (Commercial PUDs and Condominium Projects) which states the following:

> *D. The maximum height of all buildings shall be determined as part of the development review process for commercial PUD's or condominium projects. For heights greater than 35 feet, the applicant shall submit to the City Council, after receiving a recommendation from the Planning Commission, sufficient documentation indicating that heights above 35 feet are justified and not detrimental to the surrounding property owners. It is suggested that a scale model of the site be submitted to clearly illustrate the potential impacts of increased height on adjacent landowners.*

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 (to remove the possibility of a structure being taller than 35') or define the acceptable height that the City is willing to approve for this use and state it directly in the code. Staff feels that any proposal of building height over 35' will receive resistance from the public it will most likely not be in the best interest of the community. It is better to remove the provision now before an application is received and there is a public hearing debate in both the Planning Commission and 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 with a building over 35' in height, because of the subjective nature of the code, the Land Use Authority will lose the ability to regulate the height 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.

3. The City code has a provision that regulates height already. Section 16.13.10 (Maximum Height Provisions for all Buildings) states the following:

   *The height of any building shall not exceed 35 feet. The total height shall be measured as the vertical distance from the natural grade, as defined in this Title, to the highest point of a roof. To allow for unusual conditions or appurtenances the following exceptions apply:*

   *A. Antennas, chimneys, flues, vents, or similar structures may extend up to 5 feet above the specified maximum height limit.*

   *B. Water towers and mechanical equipment may extend up to 5 feet above the specified maximum height limit.*

   *C. Church spires, bell towers, finials, and like architectural features as well as flag poles, may extend above the specified maximum height limit*

*by up to 50 percent of the height limit (52 feet 6 inches for a 35-foot building), but shall not contain any habitable spaces above the maximum height.*

*D. The height of buildings in Resort Zones may exceed 35 feet if all the requirements of the Recreational Resort Chapter of this Title are satisfied.*

*E. Public buildings and churches may be erected to any height provided the building is set back from required building setback lines a distance of a least 1 foot for each additional foot of building height above the maximum height permitted.*

*F. Special height requirements for some buildings on benches and slopes greater than 10 percent are imposed by the Sensitive Lands Chapter of this Title. These restrictions on building height shall be applied where applicable.*

Because of the aforementioned reasons, staff feels that removal of this section is justified. If the City would like to retain the language or modify the language in some form, it should be relocated to Section 16.13.10 where the height restriction provisions are located and not leave this section dealing with height where it is not easily found.

This item has been noticed in the local newspaper for two weeks and in the State's website for the Planning Commission meeting.

**POSSIBLE FINDINGS:**

- The proposal would remove subjective language from the code
- A 35' height limit is the standard height limit in Midway
- 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. Recommendation of Approval. This action can be taken if the Planning Commission feels that the proposed change is an acceptable amendment to the Municipal Code.

    a. Accept staff report
    b. List accepted findings
    c. Place condition(s)

2. Continuance. This action can be taken if the Planning Commission 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. Recommendation of Denial. This action can be taken if the Planning Commission feels that the request is not an acceptable amendment to the Municipal Code.

    a. Accept staff report
    b. List accepted findings
    c. Reasons for denial