



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: 5

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. 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