

**MIDWAY CITY  
Municipal Code**

**TITLE 16    LAND USE**

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**CHAPTER 16.1    INTENT AND PURPOSE**

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**Section 16.1.1    Intent and Purpose**

It is the intent and purpose of the City Council of Midway City, Utah, to promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future

inhabitants of the City by guiding development within the City in accordance with a comprehensive plan prepared and adopted by the City to accomplish the following:

- A. Encourage and facilitate orderly growth and development in the City.
- B. Facilitate adequate provision for transportation, trails, water, sewage, schools, parks, and other public services.
- C. Promote sanitation and health of the inhabitants.
- D. Promote safety from fires, floods, traffic hazards, and other dangers.
- E. Discourage the overcrowding of land and undue concentration of population.
- F. Discourage undue scattering of population and unnecessary expenditure of monies for excessive streets, water and sewer lines, and other public services.
- G. Stabilize and improve property values.
- H. Protect the residents from objectionable noise, odor, dust, fumes, and other deleterious substances or conditions.
- I. Promote a more attractive and wholesome environment.
- J. Promote the inclusion of a variety of household types, age groups, and income levels.
- K. Promote the historic downtown area with shops and workplace in close proximity to each other, the scale of which accommodates pedestrian travel for trips within the community.
- L. Promote the retention of Midway City's rural atmosphere and preserve a variety of types of open spaces, scenic vistas, agricultural lands, and natural areas.

**Section 16.1.2            Application**

The regulations and restrictions as set forth in this Title shall be so interpreted and applied as to further the purposes of this Title.

**Section 16.1.3            Declaration**

In establishing the zones, the boundaries thereof, and regulations and restrictions applying within each of the zones, due and careful considerations was given, among other things, to the suitability of the land for particular uses, and to the character of the zone, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

#### **Section 16.1.4            Interpretation**

In interpreting and applying this Title, the provisions thereof shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. In the case that this Title imposes a greater restriction than is imposed or required by other existing provisions of law or ordinance, then in such case the provisions of this Title shall control.

## CHAPTER 16.2      DEFINITIONS

For the purpose of this Title, the following words and phrases shall, unless defined differently in a particular section, have the meanings respectively ascribed to them:

1. Agriculture. The growing of soil crops in the customary manner in the open. It shall not include livestock-raising activities nor shall it include retailing of products on the premises.
2. Agricultural Product. Any product which is derived from agriculture.
3. Aquaculture. The controlled cultivation of aquatic animals.
4. Aquaponics. The symbiotic cultivation of plants and aquatic animals in a recirculating environment.
5. Aquaculture Facility. Any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture.
6. Boarding House. A building containing not more than one kitchen, where for compensation, meals are provided pursuant to previous arrangements on a daily, weekly, or monthly basis as distinguished from a motel, café, or rooming house.
7. Building. Any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.
  - a. Building, accessory. A subordinate building, the use of which is incidental to that of the main building.
  - b. Main building. One or more of the principal buildings upon a lot.
  - c. Building line. A line designating the minimum distance which buildings must be set back from a street or lot line.
8. Compost. Organic matter that has been decomposed and recycled as a fertilizer and soil amendment.
9. Carport. A structure with one or two or no walls for the shelter of automobiles.
10. Clinic. A building used for the diagnosis and treatment of ill, infirm, or injured persons, but which building does not provide board, room, or regular hospital care and services.
11. Club. A building used, occupied, and operated by an organized association of persons for social, fraternal, religious, or patriotic purpose, whose activities are confined to the members and their guests, but shall not include any organization, group or association, the principal activity of which is to render a service usually and ordinarily carried on as a business.
12. Common Area. Property that a community association, as defined in Utah Code, owns, maintains repairs or administers.
13. Conditional Use. A use which requires a recommendation from the Planning Commission and an approval from the City Council prior to the Zoning Administrator issuing a permit for construction or prior to the use commencing. Also, a use which requires individual consideration of surrounding conditions and circumstances prior to approval. Approval by the Planning Commission or City Council may be given with conditions.
14. Convenience Store/Shop. Establishments which are designed and intended to serve the daily or frequent trade or service needs of surrounding population. Such establishments typically include grocery stores, variety stores, drug stores, coin operated laundry, dry cleaning, beauty shops, barber shops, or a combination thereof. Convenience stores do not include repair garages, automobile sales or service, or clothing stores.
15. Convalescent Home/Rest Home. A building for the care and keeping of elderly or infirm people afflicted with infirmities or chronic illness.

16. Cottage Industry. A business in a residential area conducted primarily by the residents of the property where customers or clients come to the home and/or where items are manufactured within an attached or detached garage or other outbuilding. Neither manufacturing nor storage of items related to the business are allowed outside of a building(s), which building(s) is/are approved by the City Council as a part of the conditional use approval.
17. Curb Cut. A cut in the curb line for the passage of vehicles.
18. Density
  - a. Gross Density. The number of dwelling units per gross acre of land in a project.
  - b. Net Density. The number of dwelling units per acre within a specified area in a project.
19. Drive-in (Retail). Any form of merchandising, serving, or dispersing of goods in which the customer is serviced while in his/her automobile.
20. Dwelling Unit. Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
21. Environmental Assessment Review Statement. A statement prepared by an engineer in conjunction with a geologist, or other person qualified by training or experience, as determined by the Planning Commission, which indicates or describes the impact that the development will likely have on the natural features of the immediate area, and which describes the measures that will be taken to lessen the occurrence of adverse conditions. The impact statement shall describe the impact the development will likely have on the natural features of the immediate area. The statement shall also indicate the measures that will be taken to mitigate any negative conditions that will occur as a result of the project with respect to:
  - a. Control of erosion within the project area.
  - b. Re-seeding of cuts and fills.
  - c. Provisions for potable water, including ability of existing or proposed infrastructure to deliver culinary water, provide fire flow, water storage capacity, and any other concerns of the City Engineer.
  - d. Disposition of geologic hazards which will be hazardous to safety or any aspect of the development. Special attention shall be given to the discussion concerning soil conditions. A soils engineer shall be consulted in the preparation of the impact statement. The statement shall include preliminary information concerning the existing water table, bed rock conditions, road design criteria, and approximate cost estimates for utility installation.
  - e. Provisions for proper disposal of sanitary sewer wastes, including ability of existing or proposed infrastructure to take sewer water, provide for treatment and storage capacity for treated effluent in the existing facility, and any other concerns of the Midway Sanitation District and Heber Valley Special Service District engineers.
  - f. Prevention of the accumulation of weeds and debris both during construction of the infrastructure and throughout the build out of the entire project, including if a project is to be phased into more than one plat.
  - g. Disposition of existing vegetation and the establishment of new vegetation.
  - h. Disposal of surface water run-off and conditions relating to flood hazards for a 25-year, 24-hour storm disposal of storm water run-off in relation to off-site requirements. Study shall also show the affects of a 100-year storm on the development and affected surrounding areas as directed by the City Engineer.

- i. Costs of services or facilities (both off-site and on-site), which may devolve upon the public as a result of the construction of the project, as planned.
  - j. Study declaring existence of and showing protection for wetlands, wildlife habitat (including migration patterns) ridgelines/hillsides, stream corridors, subsurface or surface geothermal features and mounds (whether active or not), and other natural features as required in the Sensitive Lands Overlay Zone Chapter of this Title.
  - k. Provisions for disposal of solid wastes.
22. Exaction. A requirement imposed as a condition of land use that is subject to the following standard. The City may impose an exaction or exactions on proposed land use development if:
- a. An essential nexus exists between a legitimate governmental interest and each exaction; and
  - b. Each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.
23. Family. One or more persons living together as a single housekeeping unit in a dwelling unit.
24. Fence, Decorative. A fence up to six (6) feet in height of which no more than the lower five (5) feet is sight obscuring. The top foot or more of the fence must be non-sight obscuring which permits vision through more than fifty percent of each square foot. A chain link or barbed wire fence is not considered decorative.
25. Fence, Sight-Obscuring. A fence having a height of at least six feet above the general surrounding grade of the area which permits vision through not more than ten percent of each square foot. General grade shall be determined by the Zoning Administrator or referred to the Planning Commission for their determination.
26. Final Completion. All items required in "Substantially Complete" plus all street lights, street signs, and roadway striping. The entire development or phase of the development shall be complete and functioning as shown on the construction plans and as determined by the City Engineer.
27. Floor Area, Gross. The total of all square footage within a given structure measured from outside faces of each wall.
28. Fractional Numbers and Measurements. In meeting the requirements of this Title, all fractions of numbers above one-half shall be construed to mean the next highest whole number. All fractions one-half or less shall be construed to mean the next lowest whole number.
29. Frontage. The distance between the two (2) side lot lines of a parcel, measured along the street (or, on a corner lot, streets) which the parcel is allowed to access. Corner lots shall have the required minimum lot frontage on both streets. For purposes of this title, temporary turnarounds, dead ends of roadways, or emergency accesses shall not be used as frontage.
30. Garage, Private. A building or part thereof designed for the parking or temporary storage of automobiles of the occupants of the premises.
31. General Plan. A coordinated plan which has been prepared and adopted by the Planning Commission and City Council for the purpose of guiding development. The plan may include, but is not limited to, a plan of land use, circulation, housing, public facilities and identified City goals and objects.
32. Grade, Natural. Elevation of the existing surface of the land prior to commencement of construction of any improvements proposed or any previous site disturbance. Natural grade, when not readily established due to prior modifications in terrain, shall be fixed by reference elevations and slopes at points where the prior disturbance appears to meet the undisturbed portions of the subject property or the undisturbed grade of adjacent properties. The estimated

natural grade shall tie into the elevation and slopes of adjoining properties without creating a need for new retaining walls, or abrupt differences in the visual slope and elevation of the land, and not change the direction or flow of run-off water.

33. Greenhouse, Agricultural. A structure or portion of a structure usually made of glass or other translucent material, for which the primary purpose is the cultivation or the production of wholesale: nursery stock, annual or perennial flowers, fruits, vegetables or landscaping plants. This could include hydroponics or plants grown in soil. Aquaculture and aquaponics may be allowed on a case-by-case basis upon consideration of all relevant factors, including but not necessarily limited to past experience.

34. Greenhouse, Personal. An accessory building on residential property in which plants are grown for personal use by the owner and/or residents of the property. No commercial uses or sales are permitted. Personal greenhouses are subject to all of the standards and restrictions for accessory structures in the specific underlying zoning district section of the municipal code and are limited to a maximum area of one thousand (1,000) square feet and a recommended greenhouse height of twenty-five (25) feet. The maximum height shall not exceed thirty-five (35) feet. Requests exceeding one-thousand (1,000) square feet require a conditional use permit.

35. Grow Light or Plant Light. An artificial light source, generally an electric light, designed to stimulate plant growth by emitting an electromagnetic spectrum appropriate for photosynthesis. Grow lights are used in applications where there is either no naturally occurring light, or where supplemental light is required.

36. Guest. A person staying or receiving services at a hotel, motel, boarding house, rooming house, house, rest home, or similar use.

37. Height of Building. The vertical distance from natural grade to top of the highest portion of the roof at any point directly above.

38. Home Occupation. Any occupation conducted within a dwelling which is clearly secondary in importance to the home as a dwelling or place to live and carried on only by persons residing in the dwelling and where customers do not come to the home to conduct business. In other words, the business is conducted over the telephone or Internet and any products are shipped to the customer. The business owner does paperwork within the home and any meetings with or services to clients are rendered away from the home (such as an accountant, decorator or consultant).

39. Hydroponics. The cultivation of plants in a nutrient-rich solution rather than in soil under controlled conditions of lights, temperature, and humidity.

40. Junk Yard. A place where scrap, waste, discarded, or salvaged materials are bought, sold, exchanged, disassembled, or handled or stored, including auto wrecking yards, house wrecking yards, used lumber yards, and places or yards for storage of salvaged house wrecking and structural steel materials and equipment, but not including such places where uses are conducted entirely within a completely enclosed building or where salvaged materials are kept incidental to manufacturing operations conducted on the premises.

41. Kennel. Land or buildings used in the keeping of four or more dogs over four months old.

42. Landscaping. Some combination of planted trees, shrubs, vines, ground cover, flowers, or lawns. In addition, the combination of design may include rocks and such structural features as fountains, pools, art works, screens, walls, fences, walks, or benches, but such objects alone shall not meet the requirements of this Title. The selected combination of objects for landscaping purposes shall be arranged in a harmonious manner as determined by the Planning Commission.

43. Land Use Plan. A plan recommended by the Planning Commission and adopted and maintained by the City Council, which shows how land should be used. It is also an element of the General Plan.
44. Large Scale Development. A development that contains two or more main buildings on a zoning lot and which development is planned and developed as a single entity.
45. Livestock. Cattle, sheep, goats, horses, mules, poultry, or any other domestic animal or domestic furbearer.
46. Livestock Corral. A place or pen where livestock are kept on a seasonal basis as part of an agricultural operation as distinguished from a livestock feed yard.
47. Living Open Space. That portion of the yard on a zoning lot which is not used by automotive vehicles, but reserved for outdoor living space, recreational space and landscaping.
48. Lodging/Rooming House. A building, where for compensation, rooming and sleeping accommodations are provided for four or more persons pursuant to previous arrangements on a daily, weekly, or monthly basis. Not a motel or hotel.
49. Lot. A single parcel or tract of land.
  - a. Lot, corner. A lot situated at a junction of two public streets or situated on a curved street where the radius of the curve is 35 feet or less and where the angle formed by the intersection of the tangent is 105 degrees or less.
  - b. Lot, interior. A lot other than a corner lot.
  - c. Lot of record. A lot designated in an approved subdivision or a lot legally created, said lot or subdivision being created prior to the current zoning designation. This lot would be recorded pursuant to statute in the County Recorder's office. A lot of record may or may not coincide with zoning requirements.
50. Manufactured Home. See State of Utah law and definitions.
51. Manufactured Home Park. An area or tract of land used to accommodate manufactured homes.
52. Mixed Use. A development in the commercial zone that blends a combination of residential and commercial uses where structural functions are physically and functionally integrated and provide a stronger neighborhood character and more compact development.
53. Modular Home. See State of Utah law and definitions.
54. Mobile Home. See State of Utah law and definitions.
55. Motel. One or more buildings containing individual sleeping rooms or living units designed for use by automobile tourists or transients with parking spaces conveniently located by each unit.
56. Non-Complying Structure. A structure that: (a) legally existed before its current land use designation; and (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations which govern the use of land.
57. Non-Conforming Building. A building, structure, or portion thereof, which does not conform to the regulations of the Title applicable to the zone or district in which such building is situated but which was in existence on the effective date of this Title.
58. Non-Conforming Use. A use of land that:
  - a. Legally existed before its current land use designation;
  - b. Has been maintained continuously since the time the land use ordinance governing the land changed; and

c. Because of one or more subsequent land use ordinance changes does not conform to the regulations that now govern the use of the land.

59. Nursery/Day Care. A home or building in which children are tended or kept for compensation. Does not include overnight accommodations for such children.

60. Parking Space. Space within a building or parking area, exclusive of driveways, ramps, columns, office and working area, for the parking of a motor vehicle, not less than 20 feet in length and not less than nine feet in width.

61. Pasturing of Animals. Keeping of farm animals in an enclosure, in which no feed is provided except that which the animals obtain by grazing except during the months of October through May, when supplemental feeding will be tolerated. The function of this provision is to reduce the impact of animals on the land to preserve non-weed species of plants as ground cover in all areas where animals are enclosed, except for corals and pens on farms which are permitted in their zones or are valid non-conforming uses. Farm animals may only be kept in numbers allowed under the point system in this Title. The intent of this section is to allow animals to graze off grass and weeds from pastures where animals are not allowed as a permitted use.

62. Planned Unit Development (PUD). A tract of land which is planned and developed as a single entity, wherein the requirements applying to all buildings and improvements are modified to conform to the approved plan. For the purposes of this Title, condominium projects shall be processed under the PUD requirements when meeting the PUD standards and requirements and the condominium requirements of the laws of the State of Utah.

63. Planting/Landscape Plan. A plan showing the location, type, and size of plants. It shall indicate irrigation equipment, curbs, berms and other protective features around the edge of the planting beds.

64. Public Parks and Playgrounds. A tract of land which is owned by the public and which has been partially or totally developed or designated for recreational purposes.

65. Rest/Nursing/Convalescent Home. A building for the care and keeping of elderly or infirm people afflicted with infirmities or chronic illnesses.

66. Recreational Vehicle Camper/Travel Trailer/Motor Home. A vehicle unit, other than a mobile or manufactured home, primarily designed as a temporary dwelling for travel, recreational and vacation use, which is either self-propelled or is mounted on or pulled by another vehicle, including but not limited to: a travel trailer having a width of eight feet or less and a length of 32 feet or less, a camping trailer having width of eight feet or less and a length of 32 feet or less, a truck camper, and motor home comprised of a self-propelled vehicle primarily designed as a temporary dwelling for travel, recreational use, and vacation use.

67. Recreational Vehicle Court. An area or tract of land used to accommodate two or more recreational vehicles.

68. Salvage Yard. See "junk yard."

69. Setback. The shortest distance between the property line and the foundation, wall, or a framing member of the building supporting a floor or roof (a deck shall not be considered a floor; however, a support for a roof over a deck shall be the point for measuring setbacks).

70. Sign. Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including a flag pole.

a. Sign, Accessory. A sign which directs attention to a business or profession, conducted on the premises.

b. Sign, Area of. The area of a sign shall be considered to include all lettering, wording, and accompanying designs or symbols together with any background material, whether painted or

applied. Where a sign consists of individual letters attached to or painted on a building or wall or window the area of the sign shall be considered to be that of the smallest rectangle which encompasses all the letters or symbols.

c. Sign, Non-accessory Billboard. A sign which directs attention to a business, commodity service, or entertainment, which is conducted, sold, or offered elsewhere than on the premises.

71. Single Housekeeping Unit. One person or two or more individuals 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.

72. Street, Private. A street located on private property, for which the City has no responsibility.

73. Street, Arterial or Collector. A principal thoroughfare, as shown or designated in the Comprehensive Street Plan.

74. Street, Local. Any dedicated street serving as the principal means of access to property, which street is not shown on the Comprehensive Street Plan, as a principal thoroughfare.

75. Subdivision. The division of a tract, lot, or parcel of land into two or more lots, plots, sites, or other division of land for the purpose, whether immediate or future, of sale or for building development.

76. Substantially Complete. The culinary water, secondary water, sewer, and storm water, must be installed and tested as a complete system. All road base, asphalt roads, curb, gutter, sidewalks and/or trails, must be installed. All electrical and natural gas utilities installed and all utility conduits have been installed as a complete and functioning system.

77. Swiss/Alpine Architecture. Compliance with Swiss Architecture as stated in this Title shall be determined by the City Council following a recommendation by the Vision Architectural Committee.

78. Variance. A waiver of a specific regulation of this Title granted by the Board of Adjustment in accordance with the provisions set forth in this Title for the purpose of assuring that no property, because of special circumstances applicable to it, shall be deprived of privileges commonly enjoyed by other properties in the same zone.

79. Yard. An open space on the same lot with a building unoccupied or unobstructed from the ground upward, except as otherwise provided in this Title.

a. Yard, front. The minimum horizontal distance between the street line and the front line of the building or any support posts for projections thereof, excluding non-enclosed steps. On a corner lot, the front yard may be applied to either street.

b. Yard, Rear. An open area or unoccupied space on the same lot as a building, measured from the rear line of the building (exclusive of steps) to the rear line of the lot, and extending for the entire width of the lot. On a corner lot, the rear yard may be applied to either of the interior lot lines, but does not enter the front or side yard, which faces the street.

c. Yard, Side. The open space between the building and the sideline of the lot and extending from the front yard to the rear lot line. On a corner lot, one of the side yards must face upon the remaining street after the front yard street frontage has been designated.

80. Zoning Lot. A tract of land designated for purposes of this Title as the development site. A zoning lot may or may not coincide with a lot of record.

81. Frontage. The distance between the two (2) side lot lines of a parcel, measured along the street (or, on a corner lot, streets) which the parcel is allowed to access. Corner lots shall have the required minimum lot frontage on both streets. For purposes of this title, temporary turnarounds, dead ends of roadways, or emergency accesses shall not be used as frontage.

82. Width. The distance between the two (2) side lot lines of a parcel measured at the required minimum building setback. Corner lots shall have the required minimum lot width at the required setback on both streets.

(2010-12, Chapter Amended, eff. 6/2/2010; 2010-16, Chapter Amended, eff. 6/16/2010; 2011-12, Section Amended, 12/25/2011; 2012-13, Section Amended Addition of Definitions, eff. 5/9/12; 2013-02, Sections Added & All Renumbered, Eff. 5/8/13; 2013-15, Section Amended, eff. 3/18/15; 2014-07, Section Amended, eff. 06/10/15)

**CHAPTER 16.3      ZONES ESTABLISHED**

- Section 16.3.1      Zones Established**
- Section 16.3.2      Official Zone Map**
- Section 16.3.3      Boundaries of Zones**

**Section 16.3.1      Zones Established**

In order to carry out the purposes of this Title, Midway City, Utah is hereby divided into zones as follows:

- B&MP Business and Manufacturing Park Zone
- C-2 Commercial Zone
- C-3 Commercial Zone
- R-1-7 Residential Zone
- R-1-9 Residential Zone
- R-1-11 Residential Zone
- R-1-15 Residential Zone
- R-1-22 Residential Zone
- RA-1-43 Residential-Agricultural Zone
- RZ Resort Zone
- SL-OV Sensitive Lands Overlay Zone
- TROD Transient Rental Overlay District

**Section 16.3.2      Official Zone Map**

The location and boundary of each of the zones are shown on the Official Zone Map of Midway City, Utah, and said map is hereby declared to be an official record and a part of this Title. Whenever amendments or changes are made in zone boundaries, such amendments or changes shall be made on the Official Zone Map.

**Section 16.3.3      Boundaries of Zones**

Where uncertainty exists with respect to the boundaries of various zones, the following rules shall apply:

- A. Where the intended boundaries on the zone map are approximately street or alley lines, said street or alleys shall be construed to be the zone boundaries.
- B. Where the indicated boundaries are approximately lot lines, said lot lines shall be construed to be the zone boundaries, unless otherwise indicated.

C. Where land has not been subdivided into lots, the zone boundary shall be determined by the use of the scale of measurement shown on the map.

D. Where other uncertainty exists, the Zoning Administrator shall interpret the map.

## **CHAPTER 16.4 BUSINESS AND MANUFACTURING PARK ZONE**

<b>Section 16.4.1</b>	<b>Purpose and Objective</b>
<b>Section 16.4.2</b>	<b>Allowed Uses within the B&amp;MP Zone</b>
<b>Section 16.4.3</b>	<b>Tract and Lot Area, Yard, Coverage, and Height Requirements</b>
<b>Section 16.4.4</b>	<b>Performance Standards</b>
<b>Section 16.4.5</b>	<b>Parking, Loading, and Access Requirements</b>
<b>Section 16.4.6</b>	<b>Landscaping</b>
<b>Section 16.4.7</b>	<b>Planning Commission Approval</b>
<b>Section 16.4.8</b>	<b>City Council Approval</b>
<b>Section 16.4.9</b>	<b>Guarantees and Covenants</b>

### **Section 16.4.1 Purpose and Objective**

A. The purpose of the Business and Manufacturing Park (B&MP) Zone is to provide for development of offices, research and development institutions, and light manufacturing establishments. The general categories of uses allowed within this zone are more limited than other commercial or manufacturing zones. These restrictions are based on operating characteristics and land use impacts rather than type of service or product. The essential purpose of this district is to achieve development in a setting that is an economic asset to the community. The zone may be located adjacent to quality residential development and must be beautified to create the highest degree of compatibility. The zone should always be located adjacent to collector or arterial streets. It is not the intent of this Chapter that a B&MP zone should become a catalyst for strip commercial development around its perimeter. Unless the General Plan calls for a commercial center near the park's boundary, commercial development shall not be allowed, particularly where the park is surrounded by residential development.

B. The objective of this Chapter is to establish rules, regulations, standards, and procedures for approval of all Business and Manufacturing parks in order to:

1. Strengthen and sustain the economic potential of the City and to create jobs.
2. Advance and promote business development.
3. Implement the adopted policies of the Midway City General Plan.

### **Section 16.4.2 Allowed Uses within the B&MP Zone**

A. Permitted Principal Uses.

The following principal uses are permitted in the B&MP zone:

1. Research Services - (including laboratories, scientific, medical, chemical, applied physics, mechanical, electronic, biological, genetic or other similar experimental research, product development or testing facilities).
2. Manufacturing, processing, and fabricating establishments, except those in which explosives or other highly dangerous materials are used or fabricated.

3. Communications - including radio and television broadcasting (studios only), telephone company offices, recording and sound studios, and motion picture studios.
4. Data Processing Services.
5. Other uses similar to the foregoing uses which are ruled by the Planning Commission to be in harmony with the intent of this zone.

B. Permitted Secondary Uses. The following secondary activities which support or are accessory to the primary activities are permitted subject to the development and performance standards and conditions set forth herein. When located in the same building with another main use, secondary uses shall not occupy more than 30 percent of the total floor space.

1. Support and maintenance shops for the above uses.
2. Concessions and services which are provided for the convenience of the occupants of the buildings, provided they are located within a main building and there is no exterior evidence of such accessory uses such as signs or display windows.
3. Printing, publishing and allied industries.
4. Storage activities and warehouse facilities are permitted only as part of a primary activity.
5. Day care center in support of primary activity.
6. Off-street parking and parking structure incident to the above building uses.
7. Administrative offices for the permitted uses. These offices must be either in the same building or in a separate building on the same parcel as the permitted use.

C. Conditional Uses. The following uses and structures are permitted in the B&MP zone only after a Conditional Use Permit has been issued, and subject to the terms and conditions thereof:

1. Marketing, telemarketing, and advertising services.
2. Auto, electronic and other repair establishments.
3. Agricultural Greenhouses
4. Other similar and compatible uses. Other similar uses not specifically listed above may be approved by the City Council, with the issuance of a conditional use permit, upon findings that the proposed use most closely fits within one of the listed categories, and that any expected impacts will be no greater than that of other uses listed.

(2013-02, Sub-section #3 Added, Eff. 5/8/13; 2014-07, Section Amended, eff. 06/10/15)

D. Prohibited Uses. The permitted uses enumerated above shall not be construed to include, either as a main or accessory use, any of the following uses. This list of prohibited uses is not exhaustive, but is intended to be illustrative of the type of uses which are not allowed:

1. Terminals, including truck or bus terminals, and other distribution facilities.
2. Sand, gravel and other extraction mining.
3. Junk or salvage yards.
4. Liquor Stores.
5. Explosive, flammable or highly combustible material, storage, sales, processing or production.
6. Asphalt and concrete mixing and similar operations.
7. Retail sales except as otherwise specified.

### **Section 16.4.3 Tract and Lot Area, Yard, Coverage, and Height Requirements**

- A. Tract Area. The minimum size of any tract zoned and developed for a Manufacturing and Business Park shall be twenty acres.
- B. Lot Area. There shall be no requirements for individual buildings or lots within the zone, except that the area shall be sufficient to provide for setbacks, landscaping, and off-street parking.
- C. Perimeter Buffer. The boundary between any B&MP zone and a residential zone shall consist of a City standard street and right-of-way.
- D. Building Setbacks. Buildings on all lots shall be set back a minimum of 30 feet from any dedicated street and ten feet from any other property line (except 25 feet when abutting a residential zone boundary). All setbacks shall be landscaped as set forth in this Chapter, except for permitted driveways.
- E. Height. No building shall be constructed to a height exceeding two stories with the highest part of the building being 35 feet, unless as per the zoning Chapter of this Title.
- F. Lot Width. Minimum lot width shall be 100 feet.
- G. Minimum Lot Frontage. Each lot or parcel of land in the B&MP zone shall abut a public or private street for a minimum distance of 100 feet.
- H. Minimum Perimeter Street Frontage. The B&MP tract shall have a minimum of 100 feet frontage on a public arterial street. Planning Commission and City Council shall be required for all buildings and other improvements on any lot within a Business and Manufacturing Park.
- I. Site Plan Approval. Before any building permit shall be issued for any building or other improvement, site plan approval shall be obtained by the applicant from the Planning Commission and City Council for each lot.
- J. Buildings per Lot. More than one main building may be placed on a lot; however, amended site plan approval shall be required for buildings that are in addition to those on the original site plan approval.
- K. Building Separation. A separation of at least 20 feet shall be maintained between buildings.
- L. No building shall be larger than 20,000 square feet in gross floor area.

### **Section 16.4.4 Performance Standards**

- A. In the B&MP zone, no primary or secondary use shall be so conducted as to cause the discharge of any harmful waste materials into or upon the ground, into or within any sanitary or storm sewer system, into or within any water system or water, or into the atmosphere, and no use

or activity shall be conducted or permitted which is dangerous or offensive to persons or property by reason of the creation of a fire, explosion, or other physical hazard, or by reason of air pollution, odor, smoke, noise, dust vibration, radiation, or fumes. In addition, no use shall be permitted or conducted where the same creates a public or private nuisance.

B. Without limiting the generality of the preceding paragraph, the following specific standards shall apply in the B&MP zone:

1. Incineration. There shall be no incineration on any site of any waste material.
2. Vibration. There shall be no activity on any site which causes ground vibration which is perceptible, without instruments, at the boundary line of the lot.
3. Air Pollution. There shall be no emission on any site of air pollutants in excess of levels permitted by the Utah Bureau of Air Quality. Water vapor is not considered a pollutant. The normal venting of a building shall not be prohibited.
4. Wastes. The quality and nature of industrial wastes shall not overburden the public sewage disposal facilities or cause odor and unsanitary effect beyond the property line, nor shall such wastes be discharged into the ground or any surface or subsurface waterways. Disposal of all wastes shall comply with all applicable local, state, and federal regulations. Sewage shall also comply with all local, state and federal regulations.
5. Storm Water. Storm water management shall be incorporated into the development plans so that the rate of storm water runoff from the sites will not be increased as a result of the proposed development. The facilities shall be designed to control the storm water runoff from at least a 25-year, 24-hour return frequency storm as certified by a professional engineer.

#### **Section 16.4.5            Parking, Loading, and Access Requirements**

A. One parking space for every two occupants of a building as calculated in Title 12, Building and Construction.

B. Parking Layout and Construction Standards. All parking spaces, parking areas and driveways must be constructed in accordance with standards established in this Title. All parking areas shall be hard surfaced.

C. Parking Setbacks. No parking will be allowed in the required setback areas. Parking areas shall be at the side or rear of the building.

D. Parking Structures. Any parking structures above the finished ground elevation shall have the same setback requirements as outlined for buildings, and shall be architecturally integrated through use of the same or similar materials, colors, rhythm, landscaping, etc.

E. Parking Structure Height. Freestanding parking structures shall comply with the same height requirements for main buildings.

F. Emergency Access. Suitable access for emergency equipment shall be provided to all buildings and areas as per fire code requirements.

#### **Section 16.4.6            Landscaping**

All land not covered by off-street parking or buildings shall be planted into lawn, trees or shrubs, and otherwise landscaped and maintained with lawns, trees and shrubs, except for permitted driveways and sidewalks. Landscaping and site drainage plans shall be approved as a part of conditional use and site plan approval.

#### **Section 16.4.7            Planning Commission Approval**

The Planning Commission shall recommend approval or denial of the application and preliminary development plan to the City Council. The recommendation of the Planning Commission may contain conditions, limitations, or amendments to the preliminary development plan to ensure that the Business and Manufacturing Park is integrated into its surroundings and serves the public interest to the greatest extent possible. The Commission shall be guided in its decision by the policies of the General Plan and the standards and conditions of this Title. The Planning Commission shall also review and approve any request for a conditional use permit as provided in this Title.

#### **Section 16.4.8            City Council Approval**

The City Council, after holding a public hearing, may approve or disapprove a petition for a Business and Manufacturing Park within the B&MP Zone, or if they choose, they may send it back to the Planning Commission for further study. The Council shall be guided in its decision by the policies of the General Plan and the standards and conditions of this Title. In the case of conditional use approval requests, City Council decisions shall be guided by Conditional Use and Special Exception Approvals and Regulations in this Title

#### **Section 16.4.9            Guarantees and Covenants**

A. As a part of the submission packet, a Declaration of Covenants, Conditions and Restrictions for said development shall be submitted to and be approved by the Midway City Planning Commission and City Council and shall be recorded with the Wasatch County Recorder's Office with the Final Plat.

B. Assurances and standards shall be included within the Declaration of Covenants, Conditions, and Restrictions recorded in conjunction with any B&MP development.

C. The Declaration shall contain provisions requiring owners of individual parcels of land or condominium units within the B&MP development to install landscaping to a standard at least equivalent to that established within the typical landscaping plan approved as an element of the preliminary project plan. Landscaping must be installed before a certificate of occupancy is issued.

- D. The Declaration may provide for the creation and perpetual provision of an architectural committee, the number of members and composition of which shall be clearly stipulated. The Declaration shall also establish design guidelines governing the appearance of the site buildings, signs, lighting, landscaping, street furniture, fencing, and mechanical equipment.
- E. The Declaration shall stipulate the method and procedure by which the Declaration may be amended.
- F. The Declaration shall specify the maximum percentage of lot area which will be set forth in the approved preliminary project plan.
- G. The Declaration shall specify the maximum building height approved by the Planning Commission.
- H. The Declaration shall contain a traffic and parking management plan aimed at encouraging car pooling among the park's employees.
- I. The Declaration may also contain use restrictions which are more restrictive than the City's Zoning provisions, but in no case shall they be more permissive.
- J. The Declaration shall set up the provisions for maintenance of all common areas and private streets and utilities.
- K. The Declaration shall state the following: Midway City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal within the common areas if the Association fails adequately to perform such. In the event Midway City exercises this right, the City shall be entitled to recover any associated costs and attorney fees from the Association. This section shall not be amended or deleted without the approval of Midway City.

**CHAPTER 16.5 COMMERCIAL C-2 AND C-3 ZONES**

- Section 16.5.1 Objectives and Characteristics**
- Section 16.5.2 Permitted and Conditional Uses**
- Section 16.5.3 Site Development Standards**

**Section 16.5.1 Objectives and Characteristics**

These zones have been established as districts in which the primary use of the land is for planned and integrated commercial and service uses. It is intended that these zones shall be characterized by a harmonious grouping of a variety of stores, shops, office buildings, or other permitted uses in an organized development. These zones have also been established to create new development which is characterized by well landscaped frontages, safe access and egress, proper parking design, coordinated site planning, and buildings which follow the objectives of the City Master Plan and resort architectural requirements. Emphasis in the approval of plans in the C-2 zone shall be to protect the appearance of the entrances to the City. Development in the C-3 zone is intended to create a shopping and financial center for the City and surrounding territory. Another objective of the commercial zones is to mitigate potential negative impacts upon residential zones caused by commercial activity. The City commercial zones are surrounded by residential areas on all sides and buffering restrictions are necessary.

**Section 16.5.2 Permitted and Conditional Uses**

A. The peculiar character and nature of conditional uses (those designated by "C") require special consideration. Therefore, the Planning Commission review of these conditional uses shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development in accordance with existing and future needs. The City Council shall deny or approve these conditional uses based upon the character of the zone, the surrounding land use, traffic, utilities and other public requirements.

B. In the following list of possible uses in the C-2 and C-3 zones, those designated "P" will be a permitted use. Uses designated as "C" will only be allowed when approved as a conditional use by the City Council. Uses designated as "N" will not be allowed in the zone.

<b>USES</b>	<b>C-2</b>	<b>C-3</b>
Retail, grocery, and service stores (up to 25,000 sq. ft.) Tobacco sales and e-cigarettes (no more than 5% of total retail)	P	P
Professional offices and clinics	P	P
Auto detailing, gas stations and car washes	C	N
Alcohol dispensing establishments ( <u>with local consent</u> )	C	C

Rest Homes/Nursing/Convalescent Facilities/Assisted Living	P	P
Day Care	P	P
Recreational activity businesses, photo, art, and craft galleries, retail show rooms	P	P
Engraving, publishing, and printing	P	P
Mortuaries and wedding chapels	P	P
New and used vehicle sales <u>and rentals</u>	C	N
Hospitals	P	P
Short-term lodging facilities	P	P
Cafes and restaurants	P	P
Public and quasi-public buildings (police/fire stations)	P	P
Barber, beauty shops, massage therapy and day spas	P	P
Vehicle parking ( <u>not associated with another use</u> )	C	C
Repair shops (other than auto) (no outside storage)	P	P
Veterinarian and pet grooming services (no outside kennels or keeping of animals)	P	P
Mixed Use (See Section 16.5.2(I))	C	C
Commercial PUDs and commercial condominium projects	C	C
Private academies/studios (education, art, dance, sports, etc.)	P	P
Carpentry and woodworking shops (no outside storage)	C	C
Electrician shops (no outside storage)	P	P
Plumbing shops (no outside storage)	P	P

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2-11, Section Added, eff. 04/11/2012; 2013-15, Section Amended, eff.03/18/15; 2015-04, Section Amended eff. 7/8/15; 2016-13, Section Amended eff. 7/13/16; 2016-15, Section Amended eff. 11/2/16)

## Section 16.5.3 Site Development Standards

### Site Development Standards

A. Minimum lot area: none

B. Minimum building setback from property line for all commercial structures:

1. Front. 10' minimum and 30' maximum from the property line; however, an accessory or secondary building may be allowed by the City Council to be set back further provided all provision of this Title are met.
2. Side. None
3. Rear. None
4. Fuel pumps. 20 feet from any street
5. Setback from residential zones: 15 feet
6. Commercial structure setback from existing residential uses: 8 feet
7. Residential structure setback *as part of a mixed-use development* (single-family and apartments): 10 feet
8. Mixed-Use Structures. The commercial area of the structure must comply with the commercial structure setback requirements. The residential area of the structure located behind the commercial must comply with the residential structure setback requirements. Residential areas located above commercial may use the commercial structure setback requirements.
9. The City Council, upon an applicant's request, may approve a setback different than listed in this section based on specific circumstances of the site and building orientation or specific use of a proposal.

C. Building Heights

1. Minimum: 8 feet (see Section 16.13.110)
2. Maximum: 35 feet (see Section 16.13.100)

D. All building sizes and setbacks are also subject to the requirements of the building code adopted by the City Council. Building heights shall be subject to this Title.

E. All parking shall be located at the side or rear of the main building on each commercial zoning lot. The City Council, upon an applicant's request, may approve a parking plan different than listed in this section based on specific circumstances of the site and building orientation or specific use of a proposal.

F. Each new construction commercial building must have a door facing Main Street if the lot fronts Main Street.

G. Notwithstanding any other provision contained herein, structures and setbacks must comply with Section 16.13.15: Clear View Triangle of Intersecting Streets.

H. A landscaping plan is required for all permitted and conditional uses in the commercial zones. The plan will be reviewed by the Visual and Architectural Committee during the approval process and must meet the requirements found in Section 16.13.22.

## I. Mixed-Use Standards.

### 1. Lots less than one acre:

- a. Frontage: 70 feet
- b. One single-family dwelling (above, behind or detached)
- c. A minimum of 20 percent of the gross square feet of all structures on the lot must be deed-restricted as commercial.

### 2. Lots greater than one acre:

- a. Frontage: 200 feet
- b. Up to 20 residential units per acre
- c. A minimum of 20 percent of the gross square feet of all structures on the lot must be deed-restricted as commercial.

(2010-32, Section Amended, eff. 12/08/2010; 2015-04, Section Replaced eff. 7/8/15; 2016-15, Section Amended eff. 11/2/16)

**CHAPTER 16.6 REPEALED**

(2010-32, Chapter (Central Business District Overlay Zone) Repealed, eff. 12/08/2010)

## **CHAPTER 16.7      R-1-7 RESIDENTIAL ZONE**

<b>Section 16.7.1</b>	<b>Objectives and Characteristics</b>
<b>Section 16.7.2</b>	<b>Permitted Uses</b>
<b>Section 16.7.3</b>	<b>Conditional Uses</b>
<b>Section 16.7.4</b>	<b>Area Requirements</b>
<b>Section 16.7.5</b>	<b>Width Requirements</b>
<b>Section 16.7.6</b>	<b>Location Requirements</b>
<b>Section 16.7.7</b>	<b>Supplementary Requirements</b>

### **Section 16.7.1              Objectives and Characteristics**

The objective in establishing the R-1-7 Residential Zone is to provide appropriate locations within the City for development with a higher amount of residential density. In general, this zone is located in the central part of the City, adjacent to commercial areas where the impact of vehicular travel and parking is consonant with adjacent use of land, and where multiple dwellings can best be supplied with necessary public facilities. This zone is characterized by more compact development and somewhat higher volumes of traffic than is characteristic of the R-1-11 and R-1-9 Zones. Representative of the uses within the R-1-7 Zone are one and two-family dwellings and related community facilities. However, commercial uses are prohibited in this zone. In order to accomplish the objectives and purposes of this Title, and to promote the characteristics of this Zone the following regulations shall apply in the R-1-7 Zone:

### **Section 16.7.2              Permitted Uses**

The following uses shall be permitted in the R-1-7 Residential Zone:

A. One-family dwellings and related accessory buildings and uses. Accessory uses and buildings include garages, personal greenhouses less than one thousand (1,000) square feet and carports.

(2013-03, Sub-section Replaced, eff. 5/8/13)

B. Customary household pets, including but not limited to cats, dogs and canaries. This does not including the breeding of dogs and cats or other pets for sale or other use. Notwithstanding the foregoing, no more than three cats or three dogs are permitted at one time at any single family residence.

C. Temporary buildings and yards for the storage of materials and equipment incidental to the construction of dwellings and other permitted uses provided that a permit for such temporary buildings shall not be effective for more than one year.

D. Attached two-family dwellings. Attached two-family dwellings must meet the following:  
1. Have a separate kitchen and bathroom facilities for each dwelling unit.

2. Have adequate off-street parking for each dwelling unit.
3. Have separate utilities to each dwelling unit.
4. Each dwelling unit is built to residential building codes.
5. No temporary structures are allowed as a dwelling unit.
6. Both dwelling units are under one ownership.
7. Each dwelling unit will have its own address.
8. Each dwelling unit will meet emergency and fire code access standards.
9. A hard surface driveway (concrete, asphalt, or brick) must be installed for both dwellings before the Certificate of Occupancy is approved.

(2010-12, Sub-section Replaced, eff. 6/2/2010)

E. Detached two-family dwellings. Detached two-family dwellings must meet the following:

1. Have a separate kitchen and bathroom facilities for each dwelling unit.
2. Have adequate off-street parking for each dwelling unit.
3. Have separate utilities to each dwelling unit.
4. Each dwelling unit is built to residential building codes.
5. No temporary structures are allowed as a dwelling unit.
6. Both dwelling units are under one ownership.
7. Each dwelling unit will have its own address.
8. Each dwelling unit will meet emergency and fire code access standards.
9. A hard surface driveway (concrete, asphalt, or brick) must be installed for both dwellings before the Certificate of Occupancy is approved.
10. One of the two units must be occupied by the owner or a person related to the owner by blood, marriage or adoption.
11. The living area square footage of one of the dwellings cannot be more than 70% of the living area square footage of the second dwelling.
12. Detached garages may contain a dwelling unit above or below the garage if the dwelling unit meets requirements 1-11 of this section.

(2010-12, Sub-section Added, eff. 6/2/2010)

F. Home Occupations

(2010-21, Sub-section Added, eff. 7/28/2010)

G. Residential Facilities for Elderly Persons

(2012-11, Section Added, eff. 4/11/2012)

### **Section 16.7.3            Conditional Uses**

A. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.

(2011-01, Sub-section Amended, eff. 2/16/2011)

B. Planned Unit Developments.

C. Cottage Industries.

(2010-21, Sub-section Amended, eff. 7/28/2010)

D. Child day care centers and foster family care homes.

E. Rest Homes/Nursing/Convalescent Facilities

(2012-11, Section Added, eff. 4/11/2012)

F. Greenhouse, Personal: greater than one thousand (1,000) square feet

(2013-02, Section Added, eff. 5/8/2013)

#### **Section 16.7.4 Area Requirements**

A. A minimum lot or parcel size of 7,000 square feet shall be provided for one-family dwellings.

B. A minimum lot or parcel size of 10,000 square feet shall be provided for attached two-family dwellings such as a duplex or twin home.

C. A minimum lot or parcel size of 22,000 square feet shall be provided for detached two-family dwellings.

(2010-12, Section Replaced, eff. 6/2/2010)

#### **Section 16.7.5 Width and Frontage Requirements**

The minimum width and frontage of any building site in the R-1-7 zone shall be 70 feet. A minimum width and frontage of 100 feet shall be required for attached two-family dwellings. A minimum width and frontage of 110 feet shall be required for all detached two-family dwellings.

(2010-12, Section Replaced, eff. 6/2/2010, 2012-13 Section Replaced, eff. 5/9/12)

#### **Section 16.7.6 Location Requirements**

A. Front Setback. All buildings and structures shall be set back at least 30 feet from the front lot line or projected street right-of-way.

B. Side Setback. All dwellings shall be set back from the side property lines a distance of at least ten 10 feet. The minimum side setback for accessory buildings shall be the same as for main

buildings, except that a three foot side setback shall be required for accessory buildings which are located more than 100 feet from the front lot line and at least twelve feet to the rear of any dwelling. On corner lots, the side setback from any street shall not be less than 30 feet for both main and accessory buildings.

C. Rear Setback. For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet. Accessory buildings on interior lots shall be set back not less than 10 feet from the rear property line, except that a 2 foot rear setback shall be permitted for accessory buildings meeting fire resistive requirements of the building code. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet, except that for dwellings having an attached garage or carport, the setback shall not be less than 20 feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than 3 feet.

D. Size of Dwelling. The ground floor area of all dwellings shall be not less than 900 square feet except as may be approved in a large scale development.

#### **Section 16.7.7            Supplementary Requirements**

See Chapter 16.13, Supplementary Requirements in Zones.

## **CHAPTER 16.8      R-1-9 RESIDENTIAL ZONE**

<b>Section 16.8.1</b>	<b>Objectives and Characteristics</b>
<b>Section 16.8.2</b>	<b>Permitted Uses</b>
<b>Section 16.8.3</b>	<b>Conditional Uses</b>
<b>Section 16.8.4</b>	<b>Area Requirements</b>
<b>Section 16.8.5</b>	<b>Width Requirements</b>
<b>Section 16.8.6</b>	<b>Location Requirements</b>
<b>Section 16.8.7</b>	<b>Size of Dwelling</b>
<b>Section 16.8.8</b>	<b>Supplementary Requirements</b>

### **Section 16.8.1              Objectives and Characteristics**

The objective in establishing the R-1-9 Residential Zone is to provide a residential environment within the City which is characterized by smaller lots and somewhat denser residential environment than is characteristic of the R-1-11 Zone. Nevertheless, this zone is characterized by spacious yards and other residential amenities adequate to maintain desirable residential conditions. The principal uses permitted in this zone shall be one and two family dwellings and certain other public facilities needed to promote and maintain stable residential neighborhoods.

### **Section 16.8.2              Permitted Uses**

A. One-family dwellings and related accessory buildings and uses. Accessory uses and buildings include garages, personal greenhouses less than one thousand (1,000) square feet and carports.

(2013-02, Sub-section Amended, eff. 5/8/13)

B. Customary household pets, including but not limited to cats, dogs and canaries. This does not including the breeding of dogs and cats or other pets for sale or other use. Notwithstanding the foregoing, no more than three cats or three dogs are permitted at one time at any single family residence.

C. Temporary buildings and yards for the storage of materials and equipment incidental to the construction of dwellings and other permitted uses provided that a permit for such temporary buildings shall not be effective for more than one year.

D. Attached two-family dwellings. Attached two-family dwellings must meet the following:

1. Have a separate kitchen and bathroom facilities for each dwelling unit.
2. Have adequate off-street parking for each dwelling unit.
3. Have separate utilities to each dwelling unit.
4. Each dwelling unit is built to residential building codes.
5. No temporary structures are allowed as a dwelling unit.
6. Both dwelling units are under one ownership.

7. Each dwelling unit will have its own address.
8. Each dwelling unit will meet emergency and fire code access standards.
9. A hard surface driveway (concrete, asphalt, or brick) must be installed for both dwellings before the Certificate of Occupancy is approved.

(2010-12, Sub-section Replaced, eff. 6/2/2010)

E. Detached two-family dwellings. Detached two-family dwellings must meet the following:

1. Have a separate kitchen and bathroom facilities for each dwelling unit.
2. Have adequate off-street parking for each dwelling unit.
3. Have separate utilities to each dwelling unit.
4. Each dwelling unit is built to residential building codes.
5. No temporary structures are allowed as a dwelling unit.
6. Both dwelling units are under one ownership.
7. Each dwelling unit will have its own address.
8. Each dwelling unit will meet emergency and fire code access standards.
9. A hard surface driveway (concrete, asphalt, or brick) must be installed for both dwellings before the Certificate of Occupancy is approved.
10. One of the two units must be occupied by the owner or a person related to the owner by blood, marriage or adoption.
11. The living area square footage of one of the dwellings cannot be more than 70% of the living area square footage of the second dwelling.
12. Detached garages may contain a dwelling unit above or below the garage if the dwelling unit meets requirements 1-11 of this section.

(2010-12, Sub-section Added, eff. 6/2/2010)

F. Home Occupations

(2010-21, Sub-section Added, eff. 7/28/2010)

G. Residential Facilities for Elderly Persons

(2012-11, Section Added, eff. 4/11/2012)

### **Section 16.8.3            Conditional Uses**

A. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.

(2011-01, Sub-section Amended, eff. 2/16/2011)

B. Planned Unit Developments.

C. Cottage Industries.

(2010-21, Sub-section Amended, eff. 7/28/2010)

D. Child day care centers and foster family care homes.

E. Manufactured Home Parks.

F. Rest Homes/Nursing/Convalescent Facilities

(2012-11, Sub-section Added, eff. 4/11/2012)

G. Greenhouse, Personal: greater than one thousand (1,000) square feet

(2013-02, Sub-section Added, eff. 5/8/2013)

#### **Section 16.8.4 Area Requirements**

A. A minimum lot or parcel size of 9,000 square feet shall be provided for one-family dwellings.

B. A minimum lot or parcel size of 12,000 square feet shall be provided for attached two-family dwelling such as a duplex or twin home, child day care centers and foster family care homes.

C. A minimum lot or parcel size of 33,000 square feet shall be provided for detached two-family dwellings.

(2010-12, Section Replaced, eff. 6/2/2010)

#### **Section 16.8.5 Width and Frontage Requirements**

The minimum width and frontage of any building site in the R-1-9 zone shall be 90 feet. A minimum width and frontage of 100 feet shall be required for attached two-family dwellings. A minimum width and frontage of 110 feet shall be required for all detached two-family dwellings.

(2010-12, Section Replaced, eff. 6/2/2010; 2012-13, Section Replaced, eff. 5/9/12; Error Corrected, 7/13/15)

#### **Section 16.8.6 Location Requirements**

A. Front Setback. All buildings and structures shall be set back at least 30 feet from the front lot line or projected street right-of-way.

B. Side Setbacks. All dwellings shall be set back from the side property lines a distance of at least ten feet. The minimum side setback for accessory buildings shall be the same as for main buildings, except that a 3 foot side setback shall be required for accessory buildings which are located more than 100 feet from the front lot line and at least 12 feet to the rear of any dwelling. On corner lots, the side setback from any street shall not be less than 30 feet for both main and accessory buildings.

C. Rear Setback. For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet. Accessory buildings on interior lots shall be set back not less than 10 feet from the rear property line, except that a 2 foot rear setback shall be permitted for accessory buildings meeting fire resistive requirements of the building code. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet, except that for dwellings having an attached garage or carport, the setback shall not be less than 20 feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than 3 feet.

**Section 16.8.7            Size of Dwelling**

The ground floor area of all dwellings shall be not less than 900 square feet except as may be approved in a large scale development.

**Section 16.8.8            Supplementary Requirements**

See Chapter 16.13, Supplementary Requirements in Zones.

## **CHAPTER 16.9      R-1-11 RESIDENTIAL ZONE**

<b>Section 16.9.1</b>	<b>Objectives and Characteristics</b>
<b>Section 16.9.2</b>	<b>Permitted Uses</b>
<b>Section 16.9.3</b>	<b>Conditional Uses</b>
<b>Section 16.9.4</b>	<b>Area Requirements</b>
<b>Section 16.9.5</b>	<b>Width Requirements</b>
<b>Section 16.9.6</b>	<b>Location Requirements</b>
<b>Section 16.9.7</b>	<b>Size of Dwelling</b>
<b>Section 16.9.8</b>	<b>Supplementary Requirements</b>

### **Section 16.9.1              Objectives and Characteristics**

The objective in establishing the R-1-11 Residential Zone is to encourage the creation and maintenance of residential areas within the City which are characterized by medium-size lots on which single-family dwellings are situated, surrounded by well kept lawns, trees and other plantings. A minimum of vehicular and pedestrian traffic and quiet residential conditions favorable to family living are also characteristic of this zone. In order to accomplish the objectives and purposes of this Chapter and to promote the characteristics of this zone, the following regulations shall apply in the R-1-11 Residential Zone.

### **Section 16.9.2              Permitted Uses**

A. One-family dwellings and related accessory buildings and uses. Accessory uses and buildings include garages, personal greenhouses less than one thousand (1,000) square feet and carports.

(2013-02, Sub-section Amended , eff. 5/8/2013)

B. Customary household pets, including but not limited to cats, dogs and canaries. This does not include the breeding of dogs and cats or other pets for sale or other use. Notwithstanding the foregoing, no more than three cats or three dogs are permitted at one time at any single family residence.

C. Temporary buildings and yards for the storage of materials and equipment incidental to the construction of dwellings and other permitted uses, provided that a permit for such temporary buildings shall not be effective for more than one year.

D. Home Occupations.

(2010-21, Sub-section Added, eff. 7/28/2010)

### **Section 16.9.3            Conditional Uses**

A. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.

(2011-01, Sub-section Amended, eff. 2/16/2011)

B. Planned Unit Developments.

C. Cottage Industries.

(2010-21, Sub-section Amended, eff. 7/28/2010)

D. Manufactured Home Parks.

E. Residential Facilities for Elderly Persons

(2012-11, Sub-section Added, eff. 4/11/2012)

F. Rest Homes/Nursing/Convalescent Facilities

(2012-11, Sub-section Added, eff. 4/11/2012)

G. Greenhouse, Personal: greater than one thousand (1,000) square feet

(2013-02, Sub-section Added, eff. 5/8/2013)

### **Section 16.9.4            Area Requirements**

An area of not less than 11,000 square feet shall be provided and maintained for each one-family dwelling and uses accessory thereto.

### **Section 16.9.5            Width and Frontage Requirements**

The minimum width and frontage of any building site for a dwelling shall be 100 linear feet.

(2012-13, Section Amended, eff. 5/9/12)

### **Section 16.9.6            Location Requirements**

A. Front Setback. All buildings and structures shall be set back at least 30 feet from the front lot line or projected street right-of-way.

B. Side Setbacks. All dwellings shall be set back from the side property line a distance of at least 10 feet, and the total distance of the 2 side setbacks shall be at least 24 feet. The minimum side setback for accessory buildings shall be the same as for main buildings, except that a 3 foot side setback shall be required for accessory buildings which are located more than 100 feet from the front lot line and at least 12 feet to the rear of any dwelling. On corner lots, the side setback from any street shall not be less than 30 feet for both main and accessory buildings.

C. Rear Setback. For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet. Accessory buildings on interior lots shall be set back not less than 10 feet from the rear property line, except that a 2 foot rear setback shall be permitted for accessory buildings meeting fire resistive requirements of the building code. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet, except that for dwellings having an attached garage or carport, the setback shall not be less than 20 feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than 3 feet.

#### **Section 16.9.7            Size of Dwelling**

The ground floor area of all dwellings shall be not less than 1,000 feet except as may be approved in a large scale development.

#### **Section 16.9.8            Supplementary Requirements**

See Chapter 16.13 Supplementary Requirements in Zones.

## **CHAPTER 16.10 R-1-15 RESIDENTIAL ZONE**

<b>Section 16.10.1</b>	<b>Objectives and Characteristics</b>
<b>Section 16.10.2</b>	<b>Permitted Uses</b>
<b>Section 16.10.3</b>	<b>Conditional Uses</b>
<b>Section 16.10.4</b>	<b>Area Requirements</b>
<b>Section 16.10.5</b>	<b>Width Requirements</b>
<b>Section 16.10.6</b>	<b>Location Requirements</b>
<b>Section 16.10.7</b>	<b>Size of Dwelling</b>
<b>Section 16.10.8</b>	<b>Supplementary Requirements</b>

### **Section 16.10.1 Objectives and Characteristics**

The objective in establishing the R-1-15 Residential Zone is to encourage the creation and maintenance of residential areas within the City which are characterized by medium size lots on which single-family dwellings are situated, surrounded by well kept lawns, trees and other plantings. A minimum of vehicular and pedestrian traffic and quiet residential conditions favorable to family living are also characteristic of this zone. In order to accomplish the objectives and purposes of this Chapter and to promote the characteristics of this zone, the following regulations shall apply in the R-1-15 Residential Zone.

### **Section 16.10.2 Permitted Uses**

A. One-family dwellings and related accessory buildings and uses. Accessory uses and buildings include garages, personal greenhouses less than one thousand (1,000) square feet and carports.

(2013-02, Sub-section Amended, eff. 5/8/2013)

B. Customary household pets, including but not limited to cats, dogs and canaries. This does not include the breeding of dogs and cats or other pets for sale or other use. Notwithstanding the foregoing, no more than three cats or three dogs are permitted at one time at any single family residence.

C. Temporary buildings and yards for the storage of materials and equipment incidental to the construction of dwellings and other permitted uses, provided that a permit for such temporary buildings shall not be effective for more than one year.

D. Home Occupations.

(2010-21, Sub-section Added, eff. 7/28/2010)

### **Section 16.10.3            Conditional Uses**

A. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.

(2011-01, Sub-section Amended, eff. 2/16/2011)

B. Planned Unit Developments.

C. Cottage Industries.

(2010-21, Sub-section Amended, eff. 7/28/2010)

D. Residential Facilities for Elderly Persons

(2012-11, Section Added, eff. 4/11/2012)

E. Rest Homes/Nursing/Convalescent Facilities

(2012-11, Section Added, eff. 4/11/2012)

F. Greenhouse, Personal: greater than one thousand (1,000) square feet

(2013-02, Section Added, eff. 5/8/2013)

### **Section 16.10.4            Area Requirements**

An area of not less than 15,000 square feet shall be provided and maintained for each one-family dwelling and uses accessory thereto.

### **Section 16.10.5            Width and Frontage Requirements**

The minimum width and frontage of any building site for a dwelling shall be 100 linear feet.

(2012-13, Section Amended, eff. 5/9/12)

### **Section 16.10.6            Location Requirements**

A. Front Setback. All buildings and structures shall be set back at least 30 feet from the front lot line or projected street right-of-way.

B. Side Setbacks. All dwellings shall be set back from the side property line a distance of at least 10 feet, and the total distance of the 2 side setbacks shall be at least 24 feet. The minimum side setback for accessory buildings shall be the same as for main buildings, except that a 3 foot side setback shall be required for accessory buildings which are located more than 100 feet from

the front lot line and at least 12 feet to the rear of any dwelling. On corner lots, the side setback from any street shall not be less than 30 feet for both main and accessory buildings.

C. Rear Setback. For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet. Accessory buildings on interior lots shall be set back not less than 10 feet from the rear property line, except that a 2 foot rear setback shall be permitted for accessory buildings meeting fire resistive requirements of the building code. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet, except that for dwellings having an attached garage or carport, the setback shall not be less than 20 feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than 3 feet.

#### **Section 16.10.7            Size of Dwelling**

The ground floor area of all dwellings shall be not less than 1,200 square feet except as may be approved in a large scale development.

#### **Section 16.10.8            Supplementary Requirements**

See Chapter 16.13, Supplementary Requirements in Zones.

## **CHAPTER 16.11 R-1-22 RESIDENTIAL ZONE**

<b>Section 16.11.1</b>	<b>Objective and Characteristics</b>
<b>Section 16.11.2</b>	<b>Permitted Uses</b>
<b>Section 16.11.3</b>	<b>Conditional Uses</b>
<b>Section 16.11.4</b>	<b>Area Requirements</b>
<b>Section 16.11.5</b>	<b>Width Requirements</b>
<b>Section 16.11.6</b>	<b>Location Requirements</b>
<b>Section 16.11.7</b>	<b>Size of Dwellings</b>
<b>Section 16.11.8</b>	<b>Supplementary Requirements</b>

### **Section 16.11.1 Objective and Characteristics**

The objective in establishing the R-1-22 Residential Zone is to encourage the creation and maintenance of residential areas within the City which are characterized by medium to large size lots on which single-family dwellings are situated, surrounded by well kept lawns, trees and other plantings. A minimum of vehicular and pedestrian traffic and quiet residential conditions favorable to family living are also characteristic of this zone. In order to accomplish the objectives and purposes of this Chapter and to promote the characteristics of this zone, the following regulations shall apply in the R-1-22 Residential Zone.

### **Section 16.11.2 Permitted Uses**

A. One-family dwellings and related accessory buildings and uses. Accessory uses and buildings include garages, personal greenhouses less than one thousand (1,000) square feet and carports.

(2013-02, Sub-section Amended, eff. 5/8/2013)

B. Customary household pets, including but not limited to cats, dogs and canaries. This does not including the breeding of dogs and cats or other pets for sale or other use. Notwithstanding the foregoing, no more than three cats or three dogs are permitted at one time at any single family residence.

C. Temporary buildings and yards for the storage of materials and equipment incidental to the construction of dwellings and other permitted uses, provided that a permit for such temporary buildings shall not be effective for more than one year.

D. Home Occupations.

(2010-21, Sub-section Added, eff. 7/28/2010)

### **Section 16.11.3            Conditional Uses**

A. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.

(2011-01, Sub-section Amended, eff. 2/16/2011)

B. Planned Unit Developments.

C. Cottage Industries.

(2010-21, Sub-section Amended, eff. 7/28/2010)

D. Residential Facilities for Elderly Persons

(2012-11, Sub-section Added, eff. 4/11/2012)

E. Rest Homes/Nursing/Convalescent Facilities

(2012-11, Sub-section Added, eff. 4/11/2012)

F. Greenhouse, Personal: greater than one thousand (1,000) square feet

(2013-02, Sub-section Added, eff. 5/8/2013)

### **Section 16.11.4            Area Requirements**

The minimum area for lots for one-family dwellings shall be one-half acre (21,780 square feet), except for dwellings which are located within an approved large-scale development.

### **Section 16.11.5            Width and Frontage Requirements**

The minimum width and frontage for a lot for a one-family dwelling shall be 115 feet.

(2012-13, Section Amended, eff. 5/9/12)

### **Section 16.11.6            Location Requirements**

A. Front Setback. All buildings and structures shall be set back at least 30 feet from the front lot line or projected street right-of-way.

B. Side Setbacks. All dwellings shall be set back from the side property line a distance of at least 12 feet, and the total distance of the 2 side setbacks shall be at least 28 feet. The minimum side setback for accessory buildings shall be the same as for main buildings, except that a 3 foot side setback shall be required for accessory buildings which are located more than 100 feet from

the front lot line and at least 12 feet to the rear of any dwelling. On corner lots, the side setback from any street shall not be less than 30 feet for both main and accessory buildings.

C. Rear Setback. For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet. Accessory buildings on interior lots shall be set back not less than 10 feet from the rear property line, except that a 2 foot rear setback shall be permitted for accessory buildings meeting fire resistive requirements of the building code. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet, except that for dwellings having an attached garage or carport, the setback shall not be less than 20 feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than 3 feet.

#### **Section 16.11.7            Size of Dwellings**

The ground floor area of all dwellings shall be not less than 1,400 square feet except as may be approved in a large scale development.

#### **Section 16.11.8            Supplementary Requirements**

See Chapter 16.13 Supplementary Requirements in Zones.

## **CHAPTER 16.12 RA-1-43 RESIDENTIAL-AGRICULTURAL ZONE**

<b>Section 16.12.1</b>	<b>Objectives and Characteristics</b>
<b>Section 16.12.2</b>	<b>Permitted Uses</b>
<b>Section 16.12.3</b>	<b>Conditional Uses</b>
<b>Section 16.12.4</b>	<b>Area Requirements</b>
<b>Section 16.12.5</b>	<b>Width Requirements</b>
<b>Section 16.12.6</b>	<b>Location Requirements</b>
<b>Section 16.12.7</b>	<b>Size of Dwellings</b>
<b>Section 16.12.8</b>	<b>Supplementary Requirements</b>

### **Section 16.12.1 Objectives and Characteristics**

The RA-1-43 Zone has been established for the primary purpose of providing low-density areas in the City where livestock can be maintained. This zone is currently characterized by large lots or tracts of land with occasional dwelling units, barns, corrals, and agricultural service buildings in connection with farming operations. In order to accomplish the objectives and purposes of this Chapter and to stabilize and protect the essential characteristics of this zone, the following regulations shall apply in the RA-1-43 Zone.

### **Section 16.12.2 Permitted Uses**

A. Agriculture.

B. One-family dwellings and related accessory buildings and uses. Accessory uses and buildings include garages, personal greenhouses less than one thousand (1,000) square feet and carports.

(2013-02, Sub-section Replaced, eff. 5/8/13)

C. Customary household pets, including but not limited to cats, dogs, and canaries. This does not include the breeding of dogs and cats or other pets for sale or other use. Notwithstanding the foregoing no more than three cats or three dogs are permitted at one time at any single family residence, unless a Conditional Use Permit shall have first been obtained in conformance with the applicable animal control standards under this Code. A conditional use which allows more than three cats or dogs shall not be approved on any lot that is less than one acre in size.

D. The keeping of animals and fowl in numbers according to the following point system:

1. Animals may total 50 points per ½ acre.
2. Animals shall be worth the following points each:
  - a. Chickens, pigeons, pheasants, and other similar birds; 2 points.
  - b. Geese, ducks, peafowl, turkey and other similar birds; 10 points.
  - c. Sheep, llamas, calves, foals, and other similar sized animals; 25 points.
  - d. Horses, cattle, and other similar sized animals; 40 points.

- e. For the purpose of this point system, an animal and one offspring shall be considered to be one animal until six months after the birth of the offspring.
- 3. The keeping of swine in any numbers shall not be allowed. Permission may be granted by the Zoning Administrator to raise swine for FFA, 4-H, and similar projects. Permission must be granted annually. The number of animals requested and location of pens shall be made known to the Zoning Administrator in order to determine approval.
- 4. The above requirements do not apply to commercial farming and dairy operations in existence at the time of the adoption of this Title.

E. Farm machinery and farm products maintenance and storage sheds.

F. Barns, corrals, pens, coops, and feed storage buildings for the keeping of animals and fowl and the storage of farm products, provided uses for the care and keeping of livestock and fowl are located at least 100 feet distance from any existing dwelling on a neighboring lot or parcel or 50 feet from side and rear property lines, whichever is greater, and 100 feet from the front property lines; also, small animal hospitals without outside runs.

G. Churches, not to include temporary revival tents or buildings.

H. Home Occupations.

(2010-21, Sub-section Added, eff. 7/28/2010)

### **Section 16.12.3            Conditional Uses**

A. Public buildings, primary and secondary schools, and churches.

(2011-01, Sub-section Amended, eff. 2/16/2011)

B. Hobby breeders:

- 1. When located on a lot of at least 1.5 acres.
- 2. Has been inspected by the City and the Animal Control Officer and found to be in compliance with other applicable City ordinances.

C. Kennels or Catteries:

- 1. When located on a lot or property that is greater than 1.5 acres.
- 2. Has been inspected by the City and the Animal Control Officer and found to be in compliance with other applicable City ordinances.

D. Day-care nurseries.

E. Rest homes.

F. Public utility facilities and buildings.

G. Golf courses and golf clubhouses (private and public).

H. Cemeteries.

I. Plant nurseries.

J. Planned unit developments.

K. Cottage Industries.

(2010-21, Sub-section Amended, eff. 7/28/2010; 2011-01, Section Amended, eff. 2/16/2011)

L. Residential Facilities for Elderly Persons

(2012-11, Sub-section Added, eff. 4/11/2012)

M. Rest Homes/Nursing/Convalescent Facilities

(2012-11, Sub-section Added, eff. 4/11/2012)

N. Commercial Greenhouses

(2013-02, Sub-section Added, Eff. 5/8/13)

#### **Section 16.12.4 Area Requirements**

The minimum area for lots for one-family dwellings shall be one acre except for dwellings which are located within an approved large-scale development

#### **Section 16.12.5 Width and Frontage Requirements**

The minimum width and frontage for a lot for a one-family dwelling shall be 150 feet except within an approved large scale development.

(2012-13, Section Amended, eff. 5/9/12)

#### **Section 16.12.6 Location Requirements**

A. Front Setback. All buildings and structures shall be set back at least 30 feet from the front lot line or projected street right-of-way.

B. Side Setbacks. All dwellings shall be set back from the side property line a distance of at least 14 feet, and the total distance of the 2 side setbacks shall be at least 30 feet. The minimum side setback for accessory buildings shall be the same as for main buildings, except that a 3 foot side setback shall be required for accessory buildings which are located more than 100 feet from

the front lot line and at least 12 feet to the rear of any dwelling. On corner lots, the side setback from any street shall not be less than 30 feet for both main and accessory buildings.

C. Rear Setback. For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet. Accessory buildings on interior lots shall be set back not less than 10 feet from the rear property line, except that a 2 foot rear setback shall be permitted for accessory buildings meeting fire resistive requirements of the building code. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least 30 feet, except that for dwellings having an attached garage or carport, the setback shall not be less than 20 feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than 3 feet.

#### **Section 16.12.7            Size of Dwellings**

The ground floor area of all dwellings shall be not less than 1,400 square feet except as may be approved in a large scale development.

#### **Section 16.12.8            Supplementary Requirements**

See Chapter 16.13 Supplementary Requirements in Zones.

## **CHAPTER 16.13      SUPPLEMENTARY REQUIREMENTS IN ZONES**

<b>Section 16.13.1</b>	<b>Yard Space for One Building Only</b>
<b>Section 16.13.2</b>	<b>Every Dwelling to be on a Zoning Lot</b>
<b>Section 16.13.3</b>	<b>Sale or Lease or Required Space Prohibited</b>
<b>Section 16.13.4</b>	<b>Yards to be Unobstructed – Exceptions</b>
<b>Section 16.13.5</b>	<b>Area of Accessory Buildings</b>
<b>Section 16.13.6</b>	<b>Accessory Buildings Prohibited as Living Quarters</b>
<b>Section 16.13.7</b>	<b>Kitchen Units in Motels and Hotels</b>
<b>Section 16.13.8</b>	<b>Storage of Commercial Vehicles in Residential Zones Prohibited</b>
<b>Section 16.13.9</b>	<b>Storage of Junk and Debris in Residential Zones Prohibited</b>
<b>Section 16.13.10</b>	<b>Maximum Height Provisions for all Buildings</b>
<b>Section 16.13.11</b>	<b>Minimum Height Required for Buildings</b>
<b>Section 16.13.12</b>	<b>Minimum Width Required for Buildings Containing Dwelling Units</b>
<b>Section 16.13.13</b>	<b>Location of Barns</b>
<b>Section 16.13.14</b>	<b>Drainage</b>
<b>Section 16.13.15</b>	<b>Clear View of Intersecting Streets</b>
<b>Section 16.13.16</b>	<b>Effect of Street Plan</b>
<b>Section 16.13.17</b>	<b>Exception to Front and Side Setback Requirements</b>
<b>Section 16.13.18</b>	<b>Concessions in Public Parks and Playgrounds</b>
<b>Section 16.13.19</b>	<b>Sewage Disposal</b>
<b>Section 16.13.20</b>	<b>Location of Gasoline Pumps</b>
<b>Section 16.13.21</b>	<b>Motor Vehicle Access</b>
<b>Section 16.13.22</b>	<b>Landscaping Plan</b>
<b>Section 16.13.23</b>	<b>Maintenance of Undeveloped Areas – Large Scale Developments</b>
<b>Section 16.13.24</b>	<b>Trails</b>
<b>Section 16.13.25</b>	<b>Pollution Prevention</b>
<b>Section 16.13.26</b>	<b>Recreational Vehicles, Manufactured Homes, and Mobile Homes</b>
<b>Section 16.13.27</b>	<b>Home Occupations</b>
<b>Section 16.13.28</b>	<b>Cottage Industries</b>
<b>Section 16.13.29</b>	<b>Frontage on a Public Street</b>
<b>Section 16.13.30</b>	<b>Transitional Use</b>
<b>Section 16.13.31</b>	<b>Moving of Homes</b>
<b>Section 16.13.32</b>	<b>Similar Uses</b>
<b>Section 16.13.33</b>	<b>Fences, Walls, and Hedges</b>
<b>Section 16.13.34</b>	<b>Heliports and Private Aircraft</b>
<b>Section 16.13.35</b>	<b>Bed and Breakfast Establishments</b>
<b>Section 16.13.36</b>	<b>Commercial PUDs and Condominium Projects</b>
<b>Section 16.13.37</b>	<b>Commercial and Resort Architectural Requirements</b>
<b>Section 16.13.38</b>	<b>Repealed</b>
<b>Section 16.13.39</b>	<b>Off-Street Parking and Loading</b>
<b>Section 16.13.40</b>	<b>Requirements for Single-Family Dwelling Units</b>
<b>Section 16.13.41</b>	<b>Requirements for Solar Panels</b>
<b>Section 16.13.42</b>	<b>Plat Amendment Recording Requirements</b>
<b>Section 16.13.43</b>	<b>Plat Amendment Planning Commission Recommendation</b>
<b>Section 16.13.44</b>	<b>Cul-De-Sac Lots or Lots on Inside Curves</b>

**Section 16.13.45      Commercial Greenhouses**  
**Section 16.13.46      Warehousing and Mini Storage Units**

**Section 16.13.1      Yard Space for One Building Only**

No required yard or other open space around an existing building, or which is hereafter provided around any building, which is needed to comply with the provisions of this Code, shall be considered as providing the yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing the yard or open space on the lot whereon a building is to be erected or established.

**Section 16.13.2      Every Dwelling to be on a Zoning Lot**

All buildings which contain a dwelling unit shall be located and maintained on a zoning lot as defined in this Title. Two-family or multi-family dwelling units may be in more than one building on a lot as allowed in the R-1-7 and R-1-9 zones. This section does not apply to dwelling units in Planned Unit Developments.

(2010-12, Section Replaced, eff. 6/2/2010)

**Section 16.13.3      Sale or Lease or Required Space Prohibited**

No space needed to meet the width, yard, area, coverage, parking, or other requirement of this Title for a lot or building may be sold or leased apart from such lot or building unless other space so complying is provided.

**Section 16.13.4      Yards to be Unobstructed – Exceptions**

Every part of a required yard shall be open to the sky and unobstructed except for permitted accessory buildings and except for ordinary and customary projection of sills, cornices, and other ornamental features and unenclosed steps and un-walled stoops and porches, which may project up to three feet into a required yard.

**Section 16.13.5      Area of Accessory Buildings**

Accessory buildings in any residential zone shall not cover more than 25 percent of the rear yard.

**Section 16.13.6      Accessory Buildings Prohibited as Living Quarters**

Living and sleeping quarters in any building other than the main residential building is prohibited except as allowed for detached two family dwellings in the R-1-7 and R-1-9 zones.

(2010-12, Section Replaced, eff. 6/2/2010)

**Section 16.13.7 Kitchen Units in Motels and Hotels**

Lot area per dwelling unit shall apply to motels and hotels for those units that include kitchen facilities.

**Section 16.13.8 Storage of Commercial Vehicles in Residential Zones Prohibited**

It shall be unlawful to park a double axle truck having a rated capacity of two tons or more on any public street in any residential zone for a continuous length of time of three hours or more except in the case of current City Public Works projects. It shall also be unlawful to so park any construction equipment, such as graders, compressors, etc.

**Section 16.13.9 Storage of Junk and Debris in Residential Zones Prohibited**

No yard or other open space surrounding an existing building in any residential zone, or which is hereafter provided around any building in any residential zone, shall be used for the storage of junk, debris, or obsolete vehicles; and no land shall be used for such purposes, except as specifically permitted herein.

**Section 16.13.10 Maximum Height Provisions for all Buildings**

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 at 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.

**Section 16.13.11 Minimum Height Required for Buildings**

No dwelling shall be erected which has a ceiling height of less than 7 feet 6 inches or one story above grade, whichever is greater.

**Section 16.13.12 Minimum Width Required for Buildings Containing Dwelling Units**

No dwelling shall be erected, for which the narrowest width is less than 20 feet from outside face of opposing walls. This shall not include bay windows or offsets less than 6 feet in depth.

**Section 16.13.13 Location of Barns**

No barn, corral, or coop shall be constructed closer than 100 feet from any existing dwelling on an adjacent lot or parcel or public street, nor shall any corral, pen, or coop be constructed or maintained closer than 30 feet to any open waterway that drains into a natural stream. Surface drainage from corrals or coops shall not be permitted to drain into a waterway that drains into a natural stream.

**Section 16.13.14 Drainage**

Surface water from rooftops, lots or irrigation ditches shall not be allowed to drain onto adjacent lots or streets.

**Section 16.13.15 Clear View Triangle of Intersecting Streets**

No obstruction which will obscure the view of automobile drivers shall be placed on a corner lot within a triangular area formed by the street property lines and a line connecting them at points 45 feet from the intersection of the street lines.

**Section 16.13.16 Effect of Street Plan**

Wherever a front or side yard is required for a building which abuts on a proposed street which has not been constructed but which has been designated by the City as a future street, the depth of such front or side yard shall be measured from the planned street lines.

**Section 16.13.17      Exception to Front and Side Setback Requirements**

The setback from the street for any dwelling located between two existing dwellings in any residential zone may be the same as the average for the said two dwellings, provided the existing dwellings are on the same side of the street and are located within 150 feet of each other. However, no dwelling shall be located closer than 20 feet from the street.

**Section 16.13.18      Concessions in Public Parks and Playgrounds**

Concessions, including but not limited to amusement devices, recreational buildings, and refreshment stands, shall be permitted on a public park or playground when approved by the City Council.

**Section 16.13.19      Sewage Disposal**

Domestic liquid waste facilities in all dwellings and other buildings used for human occupancy which buildings are located on property of which the property line is within 300 feet to an available public sewer shall be connected to a public sewage system. Where domestic liquid waste facilities are located of which the property line is further away than 300 feet from any available public sewer, a public sewer shall either be extended to connect with such facilities or else the facilities must be constructed in accordance with health department standards before a building permit shall be issued for the building in which the sewage facilities are to be constructed.

(2015-09 Section Changed eff. 6/10/15)

**Section 16.13.20      Location of Gasoline Pumps**

Gasoline pumps islands shall be set back at least 20 feet from any street line or residential zone boundary line. If the pump island is set in an angle on the property, it shall be so located that automobiles stopped for service will not extend over the property line. In no case shall pumps be set closer than 10 feet from any side or rear property line. Lots from which gasoline is dispensed to customers at retail shall be not less than 75 feet by 100 feet in size. Canopies over pump islands may extend to within 5 feet of the property lines.

**Section 16.13.21      Motor Vehicle Access**

Access to all lots and parcels of land having frontage on a public street shall be controlled as follows:

- A. Access shall be by not more than two driveways from any one street, except as may be permitted by the City Council, when it can be shown that additional driveways will promote traffic safety.

B. On corner lots, no driveway shall be closer than 40 feet to the point of intersection of the front property line with the side property line which abuts upon a street.

### **Section 16.13.22 Landscaping Plan**

A plan that demonstrates how the surface of the earth as approved for a building or as part of a Final Plan will be maintained to preserve the final grade for the drainage and storm water plan, control noxious weeds, provide economy of maintenance, water use and environmental protection, as well as providing aesthetic enhancement suitable to the project. In all cases, such a plan will show the finished grade, location, type, and size of plants. It shall include irrigation equipment, water demand, paving, curbs, berms, and other protective procedures around the edge of the planting beds.

At least 70 percent of the area contained within a required front or side yard adjacent to a street shall be landscaped. The purpose of the landscaping requirement in this Title shall be to provide a plan that when implemented, will provide the means to reasonably protect buildings, utilities, surrounding properties and public facilities from damage from surface drainage, conserve irrigation water, control dust, increase efficiency of maintenance for landscaped areas, enhance the appearance of buildings, to protect and enhance the beauty of the property and City, and to stabilize property values by encouraging pleasant and attractive surroundings and thus create the necessary atmosphere for the orderly development of a pleasant community. Landscaping also contributes to the relief of heat, noise, and glare through the proper placement of plants and trees.

A. Scope of Requirement. Where landscaping is required, such landscaping shall comply with the requirements set forth in this Section for the specific use and location, and shall be specific enough so that the implementation of the plan can be valued for installation costs, monitored for compliance with the plan by the City or a third party as approved by the City and, if required by the terms of this Title, be secured for completion by a construction and a warranty bond.

B. Site Grading Plan. Provide reasonable drainage away from the buildings by establishing grade lines to positively control water in coordination with existing or approved storm water drainage plans, to minimize erosion, and to protect landscaped surfaces from damage by concentrated runoff.

C. When landscaping is required as a part of a site plan, conditional use, small or standard subdivision, PUD, resort, or other development approved under this Title, such landscape plans shall incorporate compliance with all other required conditions of the City for the project.

D. Maintenance Required. Required landscaped areas shall be maintained in a neat, clean, orderly, and healthful condition. This is meant to include proper pruning, mowing lawns, weeding, removal of litter, fertilizing, replacement of dead plants, and the regular watering of all plantings. A landscape plan shall include a description of the landscape maintenance plan and the plan by which funds sufficient to maintain the plan shall be provided. This shall be demonstrated by a drainage plan and reference to the storm drain plan, a list of planting material, including watering requirements and nutrient needs, surface material key and maintenance guidelines for the surface material, irrigation system maintenance plan and operational instructions.

E. Irrigation Plan. Where landscaping is required, such landscaping shall include an irrigation system suitable to maintain the landscape material subject to the plan.

F. Screening Requirements. Where landscape screening is required, said screening shall consist of evergreen shrubs, closely spaced and maintained at substantially the specified height of said required screening. When not otherwise specified, natural screening shall be maintained at a height of at least 6 feet.

G. Site Plan Required. Where landscaping is required in this Title, a site plan showing the proposed landscaping development, watering system and use of the property shall be submitted to the Planning Commission and City Council, except that a separate site plan showing the landscape plan shall not be required for one and two-family dwellings within subdivisions or on zoning lots of record. Otherwise, the same plan used to show parking layout or other requirements for the issuance of a building permit may be used to show landscaping, providing all required landscaping is detailed adequately on said plot plan. The City Council may disapprove such plans if it determines that they are not consistent with the requirements and purposes of this Chapter.

H. Non-Conforming Status. Any use of property, which, on the effective date of this Chapter is non-conforming only as to the regulations relating to landscaping, may be continued in the same manner as if the landscaping were conforming, unless such use constitutes a nuisance.

I. It is not required that any particular species of plants or grasses shall be provided, except that the landscape plan shall explain the choice for each plant material and demonstrate that the plant material is appropriate to the function of the landscape plan and can survive in this climate with the water rights and irrigation equipment proposed to implement the landscape plan. The landscape plan may include water wise plantings; however, any plan that does include water conserving plants or natural non-irrigated plan elements must demonstrate how noxious weed species can be controlled within the landscape plan area.

J. Construction Bond Required. When required by the provisions of this Title, all landscaping planting plans shall post a bond equal to 110 percent of the cost of construction and inspection of all elements of the landscaping planting plan as determined by the City Engineer, in writing, to assure the completion of the plan and a warranty bond for two years after construction is complete to assure the implementation of the constructed plan.

### **Section 16.13.23      Maintenance of Undeveloped Areas – Large Scale Developments**

All areas within a large scale development shall be maintained and, other than noxious weeds, kept mowed to 8 inches or less by the developer, until permanent landscaping and infrastructure are installed. Noxious weeds, as identified by the Wasatch County Weed Board, shall be controlled using Weed Board-approved treatment procedures for the selected weed species.

**Section 16.13.24 Trails**

All large scale developments shall connect any trails shown on the City Trails Master Plan for the area. A recommendation from the Midway City Trails Advisory Committee to the Planning Commission and City Council shall be required before final approval is granted.

**Section 16.13.25 Pollution Prevention**

Any use which emits or discharges gases, fumes, dust, glare, noise, or other pollutants into the atmosphere in amounts which exceed the standards as prescribed by the Utah State Air Conservation Board or the Board of Health and any use which emits or discharges liquids or solid material onto the soil or water in amounts exceeding the standards prescribed by the Utah State Water Pollution Control Board or the Board of Health, shall be prohibited. This Section shall not prohibit the use of burning for agricultural purposes.

**Section 16.13.26 Recreational Vehicles, Manufactured Homes, and Mobile Homes**

A. It shall be unlawful to place a mobile home within the corporate limits of Midway City.

B. A recreational vehicle shall not be placed on any lot or parcel of land in an area covered by the zone map and to use the same for human habitation except in compliance with one or more of the following conditions:

1. When temporarily parked on a lot and occupied by relatives or friends of the residing family, but not to exceed 14 days.
2. When temporarily located on a lot on which a building is being constructed provided the recreation vehicle is connected to approved water and sewer facilities and that a bond in the amount of \$200.00 (or an amount as set by the City Council from time to time) shall first be posted with the City Treasurer guaranteeing that human habitation of the recreational vehicle will be terminated upon completion of construction, but no later than one year from the date of permit.

C. Any two of the following shall be prima facia evidence of human habitation of a recreational vehicle:

1. Connection to an electrical power source.
2. Connection to water source.
3. Connection to a private or public sanitary sewer system.

D. Manufactured homes may be placed within the residential areas of Midway City, when they meet all zoning criteria for a residential dwelling unit, when the home is placed on a permanent foundation, and when meeting the criteria of State law.

### **Section 16.13.27 Home Occupations**

A conditional use permit for home occupations, as described below, may be approved by the Zoning Administrator when he or she finds the application to be in compliance with the following:

- A. Home occupations are permitted in the zone.
- B. The home occupation is clearly incidental to and secondary to the residential use of the dwelling unit and does not occupy more than 500 square feet or 25 percent of the total floor area of such dwelling unit, whichever is less.
- C. The home occupation is carried on entirely within the dwelling unit by one or more of the residents residing within the dwelling. For the purposes of this Section, a garage, carport, patio, breezeway or any accessory building is not considered to be part of the dwelling.
- D. It shall not be permitted to conduct any activity of the home occupation outside of the dwelling unit or store materials or products outside of the dwelling unit. There shall be no external evidence of the home occupation. Signs shall be as permitted as outlined in this Title.
- E. The home occupation shall not have customers or other persons coming to the home to conduct business. Note: Home-based businesses where customers come to the home are regulated in this Title.
- F. The home occupation shall be in compliance with Title 5 requirements of this Code.
- G. The home occupation must comply with all Midway City building and fire codes.
- H. The home occupation shall apply for, be issued, and keep current a Midway City business license after conditional use approval and before commencing operations.
- I. No known zoning violations shall be in existence on the applicant's property in order to be approved for a conditional use or for approval of subsequent business licenses thereafter. In the event that complaints concerning a home occupation are filed with the City, the Zoning Administrator shall investigate problems identified in the complaint to determine if the home occupation is being conducted in violation of this Code. If the Zoning Administrator determines the home occupation is in violation of this Code, the Administrator shall pursue the elimination of the violating activity in accordance with this Title.

### **Section 16.13.28 Cottage Industries**

A conditional use permit for Cottage Industry may be approved by the City Council after a recommendation from the Planning Commission when in compliance with the following:

- A. A cottage industry is permitted in the zone.

B. No commercial vehicles are to be used by the Cottage Industry except one delivery truck, not to exceed one ton rated capacity.

C. Signs shall be as permitted as outlined in Title 16.

D. The cottage industry shall be licensed with a business license obtained from the City.

E. The physical appearance, size and number of accessory building(s), and other activities in connection with the cottage industry, shall not be contrary to the objectives and characteristics of the zone in which the cottage industry is located.

F. Any building on the property by the cottage industry must be specifically approved by the City Council. The City Council shall determine if the number, height and floor area of any accessory building devoted to the cottage industry is in harmony with the size of the property and the density of the surrounding area. All buildings must be completed with approved roofing materials, wall coverings, lighting, doors, and so forth before a business license can be issued by the City.

G. There shall be no outside storage of materials or products in connection with the cottage industry.

H. The cottage industry shall not have more than three customer/client vehicles parked at the residence at any time, provided all vehicles can be legally parked in normal parking places on the lot of the cottage industry. In addition to the foregoing, the cottage industry must not generate more than 20 vehicle trips to the residence per day. The cottage industry shall not generate any traffic before 7 a.m. or after 8 p.m. nor shall any vehicle weighing in excess of 12,000 pounds gross weight, travel to the residence for the purpose of servicing the cottage industry.

I. The cottage industry shall be in compliance with the requirements of Title 7.

J. No known zoning violations shall be in existence on the applicant's property in order to be approved for a conditional use or for approval of subsequent business licenses thereafter.

K. If the applicant is leasing the property, written proof must be provided to the City that the applicant has the landowner's permission to operate the cottage industry business.

L. The applicant shall supply the City with a site plan showing the location and size of all buildings, either in existence or proposed, on the property and show which ones are to be used and in what manner in conjunction with the cottage industry business. Renderings of the building's elevations and a list of finish materials may be required by either the Planning Commission or City Council.

M. The cottage industry is carried on only by members of the residing family and up to two employees, if off-street parking is provided for said employees, and the standards for said employment are pre-approved by the City either with the initial conditional-use approval or by subsequent amendment.

N. After a recommendation from the Planning Commission, a public hearing, as outlined in Title 16, shall be held by the City Council in order to obtain comments from citizens and neighbors in order to provide relevant information to assist the City Council to determine if the application meets the above criteria. In the event that complaints concerning a cottage industry are filed with the City, the Zoning Administrator shall investigate problems identified in the complaint to determine if the cottage industry is being conducted in violation of this Chapter. If the Zoning Administrator determines the cottage industry is in violation of this Chapter, the Administrator shall pursue the elimination of the violating activity in accordance with this Title.

**Section 16.13.29 Frontage on a Public Street**

Except in large scale developments and on approved private streets, one side on each lot used as a dwelling site shall abut upon a street which has been designated or dedicated to the public for street purposes, and the length of such abutting side measured at the setback line shall be at least as great as the width required for dwelling sites in the zone in which such building site is located.

**Section 16.13.30 Transitional Use**

Uses which are permitted on either portion of a lot which lot is divided by a zone boundary line or which is coterminous with a zone boundary line may be permitted to extend to the entire lot, but not more than 100 feet beyond the boundary line of such zone in which such use is permitted. Before a permit for such a use may be granted, however, the City Council must find that the General Plan of zoning will be maintained and that a more harmonious mixing of uses will be achieved thereby.

**Section 16.13.31 Moving of Homes**

The legal moving of a dwelling from one location to another is defined and permitted as follows: Dwellings, which have had prior use, shall be permitted within all zones in which dwellings are permitted when approved by the City Council, subject to the following conditions:

A. An application has been filed with the City Council containing the following information:

1. Location and address of both the old and new sites.
2. Plot plan of the new site, showing adjacent lots on all sides of the property and indicating all structures and improvements on said lots.
3. Plans and specifications for the proposed improvements at the new location, including plans for landscaping treatment.
4. Certification by a licensed structural engineer that the structure is sound enough to be moved shall be provided to the Building Inspector and a site plan and other documents showing that the condition, location, and use of the building will comply with the Land Use Title and all other applicable codes and ordinances.

B. The City Council finds:

1. That the building will have no appreciable detrimental effect on the living environment and property values in the area into which the structure is to be moved.

2. That the building is in conformity with the quality of buildings existing in the area into which it is proposed to be moved.
3. That said building and the lot on which the building is to be located will conform to the requirements of the Land Use Title and other applicable sections of the Municipal Code.
4. That the location on the lot does not in any substantial way adversely affect buildings or uses on abutting properties.
5. That all landscaping, walkways and masonry work about the premises and the required dedications and improvements for streets and facilities and buildings shall be provided in conformity with the standards of the City.
6. That a bond or other assurance has been posted as a guarantee that the building and grounds will be improved as stipulated by the City Council before the building is occupied, and that the vacated site will be restored to a safe and sightly condition. The amount of the bond or other assurance shall be at least equal to the cost of employing a contractor to make the improvement to the buildings and premises as required by the City Council.

### **Section 16.13.32      Similar 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.

### **Section 16.13.33      Fences, Walls, and Hedges**

- A. Fences, walls, and hedges shall be permitted in all zones to a height of 6 feet unless prohibited by this Section.
- B. No fence, wall, or hedge shall exceed 4 feet in height within 30 feet of any existing or proposed City street right-of-way or within 55 feet of a center line of a proposed or existing City street or right-of-way, whichever is the greater distance.
- C. Notwithstanding subsection B above, for an existing dwelling that is within 30 feet of any existing or proposed City street right-of-way or within 55 feet of a center line of a proposed or existing City street or right-of-way and is legally non-conforming, a fence may align with the edge of the dwelling parallel to said street right-of way line, but not closer than 20 feet.
- D. Notwithstanding subsection B above, a fence up to 6 feet high may be constructed within 30 feet of an existing or proposed City street right-of-way or within 55 feet of a center line of a proposed or existing City street or right-of-way if the street in question is a Collector Street, Minor Collector Street, or Local Collector Street (see Transportation Capital Facilities Plan) and if the following conditions are met:

1. Said six (6) foot fence shall be located only within the "rear yard" and/or "side yard" defined in Section 16.02 (fences over four (4) feet in height are prohibited within the area defined as the "front yard");
2. Gates in fences on double frontage lots are encouraged for ease of maintenance of the planter strip and fence setback area; however, the maximum gate width shall be four (4) feet; and
3. New subdivisions which contain double or triple frontage lots must have Covenants, Conditions, and Restrictions for the subdivision approved by the City through the subdivision process and recorded with the subdivision plat, addressing standardized fence height, materials, and color for fences constructed along the subdivision's frontages of collector roads. Said subdivisions are also required to install a decorative fence, as defined in section 16.2.

E. Notwithstanding subsection B above, commercial outside retail establishments are allowed a 6 foot high decorative fence within 30 feet of an existing street right-of-way or within 55 feet of a center line of a proposed or existing City street or right-of-way if the fence complies with the following criteria:

1. The fence is non-sight obtrusive.
2. The fence is not chain link.
3. The fence is not located in the clear view of intersecting streets as explained in Section 16.13.15.
4. The Vision Architectural Committee shall first review and forward its recommendations for the proposed fence to the Planning Director.

F. Fences, walls, hedges or other obstructions shall not be located in the clear view of intersecting streets as explained in Section 16.13.15.

G. No fence, wall, hedge or other obstruction over (4) feet in height shall be constructed or placed within 30 feet of any driveway which would interfere with the visibility of pedestrians and traffic.

H. All private fences, walls, hedges or other obstructions, regardless of fence height or property zoning classification, shall be constructed upon private property and not within the street right-of-way.

(2011-04, Sub-section Amended, eff. 12/14/2011; 2011-12, Section Replaced, eff. 1/25/2012)

### **Section 16.13.34      Heliports and Private Aircraft**

Due to the close proximity of the City of Midway to the regional airport located in Heber City, the need for additional land within the City limits to be designated for heliports or the landing of other types of aircraft has been determined to not be necessary. Temporary landing of helicopters may be permitted only after request and approval by the City Council in a regularly scheduled City Council meeting. Nevertheless, the landing of emergency medical or fire fighting aircraft, regardless of its type, shall be permitted within the City limits in the event of emergency situations. It is not intended to regulate or restrict the use of non-motorized aircraft by the passage of this Section.

### **Section 16.13.35      Bed and Breakfast Establishments**

Bed and breakfast establishments shall be allowed as a conditional use in any zone, but only if at least one of the following criteria is met and such a use is not prohibited by private Covenants, Conditions, and Restrictions (CC&R's) governing the lot:

1. Located in the Transient Rental Overlay District (TROD)
2. Established in a structure that is at least 75 years old
3. Located on lot that is at least two acres in size

In addition, all bed and breakfast establishments shall be subject to the following provisions:

- A. The lot shall have at least 100 feet of frontage on a dedicated street;
- B. One off-street parking space shall be provided for each employee plus one space per sleeping room. Parking shall not be allowed in the front setback area. Parking must be paved.
- C. Breakfast shall be the only meal served. Breakfast meals shall only be served to residents, employees, and overnight lodgers.
- D. No cooking facilities shall be allowed in the sleeping rooms.
- E. Such use shall conform to all applicable health, safety and building codes.
- F. No structural alterations shall be allowed which change the residential character of the structure.
- G. Alcoholic beverages may not be served unless a license has been granted by the Utah Department of Alcoholic Beverage Control and the City Council has specifically approved the same as part of the conditional use permit.
- H. Receptions, banquets, or catering may be permitted as an additional use to an approved bed and breakfast conditional use when the applicant can show adequate facilities and parking exists on the lot or when arrangements are made with the permission of surrounding lot owners.
- I. Any commercial or retail use shall be incidental to the bed and breakfast establishment use, i.e. gift shop, and shall be limited to 5 percent of the total square footage of the main floor of the residence.
- J. All signs shall comply with the current Title 16.
- K. A Midway City business license shall be required as a condition of approval.
- L. The bed and breakfast establishment shall, at the time of approval and thereafter, be the property owner's primary residence. Conditional use approval shall cease upon sale of the property. The new owner shall apply for conditional use approval before operating the bed and breakfast establishment.

M. Supervision by an on-site manager or owner shall be required on an overnight basis when the establishment has guests.

N. Care shall be taken to insure that no exterior lighting shines directly onto adjoining property. Incident light at the property line shall not measure more than ten foot-candles.

O. A fire hydrant shall be within 250 feet from the property.

P. The Fire Marshal shall determine maximum occupancy.

Q. A site plan shall be submitted with the conditional use application.

2015-11, Section Replaced eff. 7/8/15)

### **Section 16.13.36 Commercial PUDs and Condominium Projects**

Commercial projects within the C-2 and C-3 Zones may be approved and recorded as PUDs or condominiums under the following criteria:

A. Commercial condominium projects shall be considered a conditional use and in addition to these requirements, shall be subject to the State of Utah Condominium laws and Midway City Conditional Use and Special Exception Approvals and Regulations, as outlined in this Title.

B. Standards and Requirements. Commercial PUDs and condominiums shall meet the standards and requirements of the Commercial C-2 and C-3 Zones, and supplementary requirements in Zones, all as outlined in this Title.

C. Approval Process: Any person wishing to construct a commercial PUD or condominium project shall obtain information from the City regarding the City's plan of land use, streets, public facilities and other requirements affecting the land to be developed. The developer shall then prepare plans and seek approval based on the information received.

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.

### **Section 16.13.37 Commercial and Resort Architectural Requirements**

A. All commercial buildings and structures, walkways, or lighting in the C-2, C-3, or Resort Zones of Midway City, including all new construction or substantial alteration or remodeling of existing construction shall conform in exterior design to the Swiss-European architectural theme adopted in the City's Vision Statement. This requirement does not apply to structures listed on the national or local historic register.

B. For purposes of this Section, the term “substantial alteration or remodeling” shall be defined as: any interior and/or exterior alteration or remodeling, the total cost of which (including, but not limited to electrical, mechanical, plumbing, and structural changes) for a building or structure within an 18-month period equals or exceeds 25 percent of the assessed value of that building or structure at the time the alteration or remodeling is started. When a project qualifies as a “substantial alteration or remodeling,” the entire building, including the existing structure and any new additions or remodeling, becomes subject to this section, including, but not necessarily limited to, conformance to the Swiss-European architectural theme of the City.

C. The following structures or items shall comply, to the maximum extent practical and feasible, with the Swiss-European architectural theme of the City when they are located upon or used in conjunction with any commercial building or structure in any commercial or resort zone of the City:

1. Ornamental roof-like structures such as canopies.
2. Utility boxes.
3. Meters.
4. Garbage receptacles and dumpsters.
5. Outside fuel containers and dispensers.
6. Outside vending machines.
7. Newspaper dispensers.
8. Telephone booths.
9. Fencing.

Screening plans and designs must be included in the architectural elevations presented for Vision Architectural Committee (VAC) review.

D. All mechanical equipment such as heating and air conditioning equipment, air handling ducts, and compressors shall be screened from view. False balconies, false chimneys, railings, and parapet walls may be used as screenings to enhance the Swiss-European theme. Screening plans and designs must be included in the architectural elevations presented for VAC review.

E. Rain gutters, downspouts, and/or heat tapes shall be required for all eaves to eliminate the possibility of drainage onto sidewalks.

F. All signs for commercial structures and buildings must conform to Title 16 including, but not limited to, review and recommendation by the VAC.

G. Parking plans are subject to review and recommendation by the Land Use Authority and the VAC. When Main Street parking spaces cannot provide for adequate parking, parking lots shall be located behind buildings where they are not visible to passersby, unless the VAC and/or Land Use Authority determines this is not feasible, in which case steps shall be taken through berming and landscaping, etc. to shield parking areas from view.

H. Serving windows to outdoor, privately owned staging areas shall be set back a minimum of eight feet from the sidewalk or public right-of-way.

I. Commercial buildings shall not be occupied or opened for business until the approved exterior design features of that building are finished. A temporary exemption may be recommended by the VAC and granted by the City Council for not more than six months due to weather or other circumstances beyond the control of the owner.

J. All applications for construction or improvements in the C-2, C-3, or Resort Zone, subject to the provisions of this Section, shall be submitted to the VAC for their review and recommendation.

K. The terms, conditions, and requirements of this Section shall be in addition to and not in lieu of the requirements of Midway City's building and other uniform codes adopted by the City or in any other ordinance, State statute, or regulation governing the construction, building, zoning, or other similar regulations applicable within the City.

L. The VAC, in making a recommendation for or against approval of a design in accordance with this ordinance, shall consider the following criteria. This list is intended to serve as a guide for prospective developers/owners who are either substantially altering/remodeling or building new commercial structures in the commercial and resort overlay zones of Midway City. The following design elements shall be incorporated, as applicable, in design proposals brought before the Midway Vision/Architectural Committee to implement the Swiss-European architectural theme in the city of Midway.

1. Structural features.

a. Large Structural exposed beams. Exposed beams are representative of Swiss-European design features. When used, beams should be stained or natural in color.

b. Carved exposed beams for post supports, roof overhangs, and deck supports. Carved beams are a standard feature in Swiss-European architecture design and can greatly enhance the appearance of buildings where effectively employed. Scrolled lookout beams are encouraged.

c. Knee bracing for unsupported decks. Knee bracing shall be scrolled or of an arched design. The size of the knee braces should be sufficiently proportional to the size of the deck.

d. Roof overhangs. Overhangs shall be expansive on the front and sides and usually require rafter and ridge beams. Scrolled ridge beams are encouraged and should not extend beyond the fascia. If roof rafters are exposed (open soffit), the underside of the roof covering should be crafted from one of the following materials: tongue and groove boards, exterior finish sheeting, exterior re-sawn plywood or solid wood.

e. Roof overhangs covering outside decks. Overhangs on outside decks will extend past the deck itself consistent with traditional Swiss-European architectural design. Deck overhangs usually require lookout beams. Ridge beams shall not extend beyond the fascia.

f. Flared curved rooflines at the soffit on "Riegelhaus" style buildings. Riegelhaus designs have a great deal of decorative wood on the exterior of the building and include the curved roofline near the bottom of the roof pitch.

g. Dutch gables on "Oberland" style buildings. Dutch gables are characterized by the front of the roof cut off to a slope consistent with the pitch of the roof.

h. Shingles. The following shingle types are acceptable: actual or simulated slate, wood shingles or shakes, and tile shingles.

i. Rounded arch doors and doorways. Main entrance doors of a rounded design reinforce a Swiss-European look and feel. The arched doorway or entryway should be constructed of wood, stone or stucco.

- j. Exterior walls. Exterior walls should be finished with a combination of stucco and heavy timbered wood, stucco and stone, or wood and stone. The use of stucco and heavy wood timbers are a Swiss-European architecture feature that is enhanced when corner stones are added. Riegelhaus patterns have more intricate, curved wood when used as an exterior wall finish. When adding color to stucco a color palette must be submitted for approval.
- k. Exposed corner stones. Natural stone, irregularly shaped rock and some forms of cultured stone are acceptable. Painted concrete or stucco are not considered acceptable options.
- l. Turrets, towers, finials and oriel windows. Must be of a Swiss-European design. Round, octagon and hexagon shapes are acceptable.
- 2. Finish features
  - a. Clocks and bells in towers and on buildings. They shall be of a Swiss-European design that lends itself to the theme of the community.
  - b. Scalloped fascia with exposed soffit. Scalloped, scrolled or carved fascia reinforce the desired architectural theme.
  - c. Wood shutters with cutouts or painted designs. Cutout designs are an integral part of Swiss-European architecture.
  - d. Decorative design railings. Metal railings of a Swiss- European design add to the desired theme.
  - e. Carved and cutout wood railings. There are many different patterns to choose from which will reinforce the desired look.
  - f. Window flower boxes. These add beauty and charm to a Swiss- European community when constructed and painted appropriately.
  - g. Metal outside fixtures. Light fixtures, lampposts, sign fixtures and exterior wall designs shall be of a traditional Swiss-European design.
  - h. Rain gutters and supports. Decorative rain gutters and supports will enhance the desired look and reinforce the stability of the rain gutter itself.
  - i. Flags and banners extending from buildings. Flags and banners of a Swiss-European design provide a special atmosphere to the community.
  - j. Carved names, dates and statements. These can be carved in wood or stone to depict an address, a name or a sentiment.
  - k. Painted embellishments on exteriors and/or "fresco-style" murals. Paintings are used extensively in Switzerland to enhance the beauty of a building and to accentuate its architectural features. Decorative embellishments are often added around windows, under soffits, on exterior walls and on carved moldings. Painted murals, depicting historical or fictional scenes, are often added as a final touch that can transform a building into a work of art.
  - l. Fountains and statues. These add to the old world dimension found in many Swiss villages.
  - m. Carved embellishments and layered decorative moldings. These add beauty and charm to a Swiss-European community when done with authenticity.
  - n. Roofline facades. High quality designs are often an integral part of Swiss-European architecture.

(2010-24, Sub-section Added, eff. 8/25/2010)

**Section 16.13.38      Repealed**

(2010-04, Section (Protection of Older Buildings for Historic Preservation) Repealed, eff. 7/28/2010)

### **Section 16.13.39      Off-Street Parking and Loading**

The following regulations are established to increase safety and lessen congestion in the public streets, to provide adequately for parking needs associated with the development of land and increased automobile usage, to set standards for off-street parking according to the amount of traffic generated by each use, and to reduce the on-street storage of vehicles.

A. The number of spaces required below for each land use are established as minimum requirements.

1. Residential structures shall provide two parking spaces per unit.
2. Boarding houses and bachelor dwellings shall have one parking space for each 100 feet of floor space devoted to bedrooms or one space for each two persons living on the premises, whichever is greater.
3. Hospitals shall have one visitor parking space per two patient beds, plus one parking space for each employee at work in the hospital during daylight hours.
4. Convalescent, nursing, and other such institutions shall have one visitor parking space per three patient beds, plus one parking space for each employee at work in the home during daylight hours.
5. Hotels and motels shall have one parking space per room or suite, plus one parking space for each employee at work on the premises during daylight hours.
6. Private clubs and lodge halls shall have one parking space per two persons based on the design capacity of the facility.
7. Commercial recreation uses shall have one parking space per two patrons, based on the design capacity of the facility.
8. Churches shall have one parking space per three seating spaces in the main assembly room.
9. Theaters, auditoriums, sports arenas, and spaces of assembly shall have one parking space per two people based on the design of the structure.
10. Mortuaries or funeral homes shall have 40 parking spaces or one space for each 60 square feet of floor space in all assembly rooms, whichever is greater.
11. Medical clinics shall have four parking spaces per staff doctor, plus one parking space for each non-doctor employee at work on the premises during daylight hours.
12. Restaurants, taverns and lounges shall have one parking space per 250 square feet of dining room floor space.
13. Banks, professional offices, and other business buildings not specifically mentioned elsewhere in this sub-section shall have one parking space per 250 square feet of floor area in the building devoted to public use.
14. Retail stores, personal service shops, and other business buildings shall have parking spaces at the rate of four per 1,000 square feet of retail floor area.
15. Drive-in restaurants shall have at least twelve off-street parking spaces or sufficient off-street parking spaces to accommodate all patrons or customers, whichever is greater. No patron or customer may be served in automobiles, which are parked on public streets.
16. Industrial, manufacturing, and wholesale establishments shall have one parking space per two employees based on the largest shift.
17. Living quarters above or below the main level of a business in the commercial zone shall have one parking space assigned to each dwelling unit.
18. Uses not mentioned. The required off-street parking for any use not listed above shall be determined by the Planning Commission. The Planning Commission shall make the determination based on similar uses listed above.

#### B. Location and Control of Parking Facilities.

The off street parking facilities required by this Ordinance shall be located on the same lot or parcel of land as the use they are intended to serve, unless a cross parking agreement has been entered into with a neighboring party; said agreement must be approved by City Council.

#### C. Computation of Required Parking Spaces.

For the purpose of computing off-street parking spaces (a space nine feet wide and 18 feet deep), which are required by this Ordinance, the following rules shall apply:

1. Floor area shall mean gross floor area, unless otherwise specified for a particular use.
2. In stadiums, sports arenas, churches, and other places of assembly in which benches or pews are used in place of seats, each 18 inches of length of such benches or pews shall be counted as one seat.

#### D. Combined Parking Areas.

The required off-street parking and loading facilities may be provided collectively for two or more buildings or uses, provided that the total number of parking spaces shall not be less than the sum of the requirements for each of the individual uses. Nevertheless, if the applicant can show, by using nationally recognized studies, the City Council may reduce the amount of parking.

#### E. Mixed Uses.

In the event that two or more uses occupy the same zoning lot or parcel of land, the total requirements for off street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately. Nevertheless, if the applicant can show, by using nationally recognized studies, the City Council may reduce the amount of parking.

#### F. Access to Parking Facilities.

1. Access driveways shall be a minimum of 24 feet in width and provide for ingress to and egress from all parking and loading facilities. Each parking and loading space shall be easily accessible to the intended user.
2. Forward travel in an automobile to and from parking facilities from a dedicated street or alley shall be required for all uses, except for parking, which has been provided in connection with one and two family dwellings. The parking area shall be adequate to facilitate the turning of vehicles to permit forward travel upon entering a street.
3. Access to all off-street parking facilities shall be designed in a manner that will not interfere with the movement of vehicular and pedestrian traffic.

#### G. Circulation within a Parking Area.

Circulation within a parking area shall comply with the following requirements:

1. Parking area with more than one aisle must be so arranged that a car need not enter the street to reach another aisle within the same parking area. Aisles must be at least 24 feet wide.
2. Directional signs shall be required to differentiate between entrance and exit access points to the streets.

#### H. Location of Parking Facilities.

Restricted parking and loading facilities shall be located at the side and rear of buildings. Off-street parking space which is required in connection with a use shall be construed to be part of that use and shall not be located within a zone unless expressly permitted herein.

**I. Lighting of Parking Areas.**

Any lighting used to illuminate off street parking facilities or vehicle sales areas shall be so arranged as to reflect the light away from the adjoining premises in any residential zone. Lighting shall meet the requirements of the Midway City Nuisance Ordinance.

**J. Continuing Obligation.**

The required off-street parking and loading facilities shall be a continuing obligation of the property owner so long as the use requiring vehicle parking or vehicle loading facilities continues. It shall be unlawful for an owner of any building or use to discontinue or dispense with the required vehicle parking or loading area which meets the requirements of this Ordinance.

**K. Plot Plan Approval Required.**

At the time a building permit is requested for any building or structure, or at the time the use of land is changed which requires additional off street parking spaces, a plot plan shall be submitted showing the location and layout of such required spaces along with access aisles, roadways, curbs and curb cuts. The Planning Commission shall disapprove such plans if it finds that the required spaces are not usable for standard sized automobiles or do not comply with the requirements for off-street parking as set forth in this Ordinance.

(2009-15, Section Added, eff. 12/23/2009) (2016-02, Section Amended, eff. 3/9/16)

**Section 16.13.40 Requirements for Single-Family Dwelling Units**

A. Single-family dwelling units shall be constructed on permanent foundations.

B. Each single-family dwelling unit shall be not less than twenty (20) feet in depth at the narrowest point. The depth shall be considered to be the lesser of the two (2) primary dimensions of the dwelling exclusive of attached garages, bay windows, room additions, or other similar appendages.

(2010-26, Section Added, eff. 8/25/2010) (2016-05, Section Amended, eff. 5/11/16)

**Section 16.13.41 Requirements for Solar Panels**

A. The purpose of this section is to regulate the permitting of solar panels for personal use and encourage renewable energy practices with minimal regulation while mitigating negative effects.

B. Flush mounted roof solar panels are allowed as a permitted use in any zone as long as the panels are mounted flush (or minimum parallel separation allowed for cooling) with the roof and are a maximum of 4” thick.

C. Structured roof mounted solar panels are a conditional use in any zoning district. Structured panels are defined as a panel that does not mount flush with the roof but has some type of structure to change the angle of the panel.

D. Free standing solar panel structures are a permitted use in any residential zoning district with the following regulations:

1. A maximum height of 15' from natural grade.
2. A maximum area of 300 square feet.
3. The solar panel structure shall meet all the setback requirements for an accessory structure as required in the zoning district in which it will be located.

E. Solar panels require a building permit in all cases except when all the following requirements are met:

1. The solar panels are not hooked into any local electrical provider's system.
2. The size of the panels is no more than 2' x 2'.
3. No more than 2 amps are produced.

(2010-30, Section Added, eff. 10/27/2010)

#### **Section 16.13.42 Plat Amendment Recording Requirements**

The duration of a plat amendment approval shall be for one year from the date of approval of the amendment by the City Council. Should the amended plat not be recorded by the County Recorder within the one-year period of time, the plat amendment's approval shall be voided, and approval must be re-obtained, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extends the time limit for recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that: (a) each extension will be for a one-year period only, after which time an annual review must be requested by the applicant and presented before the City Council; and/or (b) no more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Section Added, eff. 12/14/2011)

#### **Section 16.13.43 Plat Amendment Planning Commission Recommendation**

Proposed plat amendments which meet any of the following conditions shall be reviewed and will receive a recommendation from the Planning Commission before being considered by the City Council:

- A. Density is being increased.
- B. The street layout is being revised.

C. Open space configuration is being changed.

(2012-06, Section Added, eff. 3/14/2012)

#### **Section 16.13.44 Cul-De-Sac Lots or Lots on Inside Curves**

Lots that front on the bulb of a cul-de-sac or an inside curve shall have a minimum frontage of sixty feet (60') at the right of way line, and the minimum lot width required for the particular zone or development type, at the required setback line. In order to qualify for this reduced frontage requirement, at least seventy five percent (75%) of the frontage of the lot must be contained within the bulb of the cul-de-sac, or inside curve.

(2012-14, Section Added, eff. 5/9/2012)

#### **Section 16.13.45 Commercial Greenhouses**

A. Purpose and Intent of Agricultural Greenhouses. The purpose and intent of the City Council is to encourage open space, encourage less density, encourage healthy lifestyle by healthy eating, provide job opportunities and economic diversity, support and recognize agriculture as an economic industry for over 100 years in the City, encourage benefits of a local food system, including the support to small businesses and recirculation of capital within the city.

B. Requirements for Agricultural Greenhouses.

1. An agricultural greenhouse project requires a conditional use permit. The consideration of an application for a conditional use shall be governed by the following standard of Utah Code: (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. (b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.
2. All new projects must conform to Midway City Municipal Ordinances including Public Health and Safety, Water, Building and Construction, Supplementary Requirements in Zones, and Sensitive Lands. The project must also comply with applicable Department of Agriculture regulations.
3. A minimum of five (5) acres.
4. The area of the agricultural greenhouse(s) including support buildings shall not exceed more than 35 percent of the total parcel acreage. This does not include any other buildings allowed within the zoning district or any existing buildings.
5. A recommended greenhouse height of twenty-five (25) feet. The maximum height shall not exceed thirty-five (35) feet.
6. A minimum of a one hundred (100) foot setback on all sides for agricultural greenhouses and all support buildings.
7. Berming, screening and landscaping.
8. If aquaculture or aquaponics are approved by the City Council, the slaughtering, processing, or packaging of fish for commercial purposes are not allowed on-site. The fish must be transported alive to an appropriate off-site facility for these activities.

C. Project Management Plan. The applicant shall provide a proposed project management plan that addresses any probable impacts of the type described below and includes any proposed mitigation measures. The plan shall include, without limitation:

1. Site plan prepared to scale on a topographic base by a professional planning team which shows the concept of the major features of the projects, including roads in relation to existing conditions and developments within one-fourth of a mile of the outside 67 boundaries of the development. Handwritten plans will not be accepted. Twenty copies of the plan on 11" x 17" size paper shall be submitted to the Planning Department. a. Description of how the development will implement Midway City's Vision b. name of project c. Applicant entity name, primary contact name, civil engineer, etc. with respective contact addresses, phone numbers, fax numbers, and email addresses for each. d. Legal description with section tie e. Zone boundaries and designations f. North point and a scale consistent with a scale that is on a standard engineering scale ruler g. Identification, location and description of all sensitive lands and a proposal to protect such lands h. Adjacent property owners
2. Title report
3. Landscape plan
4. Drainage plan
5. Lighting plan, interior and exterior
6. Description of the type of equipment necessary or intended for use in each season and the frequency and duration of anticipated use;
7. Disclosure of any intent to spray or otherwise apply agricultural chemicals or pesticides, frequency and duration of application, and the plants, diseases, pests or other purposes they are intended for
8. Proposed sediment and erosion control plan
9. Noxious weed control plan
10. Location of office, bathroom, warehouse facilities or any other support buildings associated with the agricultural greenhouse
11. Photosimulation of the project from the surrounding area.
12. Demolition bond. The developer set aside money in a five (5) year performance bond, which is held in escrow and can be used to demolish the greenhouse(s) should they cease to function as originally approved. The amount of the bond will be determined by staff based on the size and scope of the project.

D. Potential Impacts and Mitigation. The application shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably-anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably-anticipated detrimental effects of the proposed use cannot be mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied. The City Council, in determining whether to approve or place reasonable conditions on the application, shall consider the potential impacts and mitigation as outlined in the following, but not limited to:

1. Water Quality and Soils. Impacts of irrigation run-off on adjacent properties, water bodies and environmentally critical areas, and proposed sediment and erosion control measures.
2. Traffic, Deliveries, and Parking. Impacts related to the number of staff onsite during work hours, and the number of potential visitors regularly associated with the site. Commercial deliveries and pickups will be included in the daily trip count of any required traffic study.

3. Visual Impacts and Screening. Visual impacts relating to the proposed nature, location, design, and size of proposed features, structures and activities, planting areas and any existing or proposed screening including landscaped berms as listed in the site plan.
4. Noise and Odor. Impacts related to the location of any trash, storage areas, additional accessory structures and any other noise-generating or odor-generating equipment and practices. No odors or fumes shall be allowed to escape into the open air in such amounts as to be detrimental to the health of any individuals or the public; or noticeable, discomforting or disagreeable so as to offend the sensibilities of a reasonable individual from the property line. All compost and/or organic matter storage must be contained and enclosed.
5. Use of Chemicals. Impacts related to the use of chemicals, including any fertilizer and pesticide.
6. If grow lights are used between the hours of 10pm and 6am the greenhouse will be required to shade the light from escaping to the exterior.
7. Drainage. The site shall be designed and maintained to prevent water from irrigation, fertilizer or other activities from draining onto adjacent property.
8. Compost, Refuse Storage and Disposal. Trash areas shall be provided and screened on at least three (3) sides from public view by an opaque impact-resistant fence of sufficient height to screen the dumpster(s) and shall be located at least 100' from any property line. Compost shall be located at least 100' from any property line.
9. City Council may impose conditions to mitigate any potential impacts including but not limited to the aforementioned items.

(2013-02, Section Added, eff. 5/8/2013; 2014-07, Section Replaced, eff. 06/10/15)

### **Section 16.13.46      Warehousing and Mini-Storage Units**

The following requirements apply to Warehousing and Mini-Storage Units in zones where they are allowed:

- A. All Warehousing and Mini-Storage Units shall have a setback of 150' from any public road.
- B. The colors used on Warehousing and Mini-Storage Units structures shall be neutral and will be reviewed by the VAC.
- C. All storage, including vehicles, of any items in Warehousing and Mini-Storage Units facilities shall be located under a roof.
- D. All applicants for Warehousing and Mini-Storage Units shall be required to propose and build on the site one or more additional structures not used for storage, to be located within the 150' setback area, in order to reasonably screen the Warehousing and Mini-Storage Units from view from the frontage of the property. Such structures shall be built prior to or concurrently with construction of the Warehousing and Mini-Storage Units and shall be subject to review by the VAC.
- E. A combination of a fence and appropriate landscaping shall be used on all sites of a Warehousing and Mini-Storage Unit facility to screen the structures from view and provide security for the property. The fencing and landscaping plan shall be proposed by the applicant and reviewed and approved by the City as part of the conditional use process.

(2015-04, Section Added, eff. 7/8/2015)

## **CHAPTER 16.14 SENSITIVE LANDS OVERLAY ZONE**

<b>Section 16.14.1</b>	<b>Purpose</b>
<b>Section 16.14.2</b>	<b>Definitions</b>
<b>Section 16.14.3</b>	<b>Area, Scope, and Applicability</b>
<b>Section 16.14.4</b>	<b>Sensitive Lands Identification and Review Procedure</b>
<b>Section 16.14.5</b>	<b>Reference Materials and Resources</b>
<b>Section 16.14.6</b>	<b>Hillsides, Slopes, and Natural Grade</b>
<b>Section 16.14.7</b>	<b>Ridgelines and Benches</b>
<b>Section 16.14.8</b>	<b>Streams, Waterways, and Ditches</b>
<b>Section 16.14.9</b>	<b>Wetlands and other Water Resources</b>
<b>Section 16.14.10</b>	<b>Spring and Well Protection Zones</b>
<b>Section 16.14.11</b>	<b>Trees and Vegetation</b>
<b>Section 16.14.12</b>	<b>Geological and Hydrological Features, Rocks and Soils</b>
<b>Section 16.14.13</b>	<b>Wildlife Habitat Areas</b>
<b>Section 16.14.14</b>	<b>Approval Procedures</b>
<b>Section 16.14.15</b>	<b>Appeal and Variance Procedures</b>

### **Section 16.14.1 Purpose**

A. This Sensitive Lands Overlay Zone Chapter recognizes and provides protection for the unique sensitive lands features that are of major interest to the City.

B. Thus, the purposes of this Sensitive Lands Overlay Zone Chapter shall be to provide standards and guidelines for the protection of these natural resources and features for the City and the public. These purposes include, as examples, but are not limited to:

1. Encourage development designed to reduce risks associated with natural hazards from storm water runoff and erosion by requiring drainage facilities and the minimal removal of vegetation.
2. Minimize the threat and consequential damages of fire in hillside areas by establishing fire protection measures.
3. Preserve natural features, wildlife habitat and open space.
4. Preserve public access to mountain areas and natural drainage channels.
5. Retain natural topographical features such as drainage channels, streams, ridgelines, rock outcroppings, vistas, trees and other natural plant formations.
6. Preserve and enhance visual and environmental quality by the use of natural vegetation and prohibition of excessive excavation and terracing.
7. Assure adequate transportation systems for sensitive areas to include consideration of the Midway City Transportation Master Plan. This system design will consider densities and topography with minimal cuts, fills or other visible scars.
8. Establish on-site and off-site traffic facilities that ensure ingress and egress for vehicles (including emergency vehicles) into all developed areas at any time.
9. Encourage a variety of development designs and concepts that are compatible with the natural terrain of sensitive areas and with the flexibility to enable developers to preserve open space and the natural landscape.

10. Establish land use management criteria that will encourage protection of natural features while allowing a harmonious and high quality residential environment.
11. Encourage location, design and development of building sites to provide maximum safety and human enjoyment while adapting the development to the best use of natural terrain.
12. Encourage the use of creative design teams composed of professional landscape architects, engineers and others.
13. Preserve the visual and aesthetic qualities of the foothills, including prominent ridgelines, which are vital to the attractiveness of foothill areas.
14. Identify and protect environmentally sensitive areas of the City.
15. Protect these areas from flooding, erosion, storm water damage or fire hazard.
16. Protect the public safety and public costs thereof.
17. Protect the scenic and natural character and views of these areas.
18. Retain the natural topographic features and natural grade of these areas.
19. Protect the flora and fauna and habitat of these areas.
20. Encourage public access to these areas.
21. Ensure that traffic and trail patterns are planned in accordance with these purposes.
22. Encourage land use management and architectural criteria that encourage protection and enhancement of these natural features.
23. Encourage clustering of developments, where appropriate.
24. Encourage the preservation of large and contiguous areas of open space.
25. Preserve the reasonable use of the lands to the owner or developer.

#### **Section 16.14.2            Definitions**

- A. Bench Line Overlay Zone Map. A map provided by the City showing the general areas of benches in the City. To be used in conjunction with the Bench methodology.
- B. Bench. An abrupt rise in the land of at least 20 feet in elevation across a distance of 100 feet or less (20 percent grade or more) in otherwise level or near level (5 percent grade or less) land.
- C. Certified Agency. A public agency with regulatory oversight as delegated by applicable law or regulation.
- D. Licensed Engineer. An engineer or firm licensed to practice in Utah or otherwise professionally recognized in a particular field of expertise.
- E. City Engineer. An approved engineer acting as the Engineer for Midway City.
- F. City Planning Staff. Those members of the City Staff with the professional experience and responsibility to review and enforce this Title.
- G. Clustering. A development technique that grants density and concentrates buildings in specific areas on a site to allow the land in question to be used for recreation, common open space facilities, and preservation of environmentally sensitive areas (see also Planned Unit Developments).

H. Community Viewing Stations. Those selected public vantage points within and adjacent to the municipal boundaries from which computer and field observations are used to assess the visual significance of development on prominent land forms.

I. Critical Value Wildlife Habitat. Sensitive use areas necessary to sustain the existence of one or more species of "high interest wildlife" during critical periods of their life cycles. Examples of critical value habitats are: concentration areas for big game on winter ranges, important movement corridors, breeding and rearing complexes, developed wetlands, and riparian habitats critical to high interest wildlife. High interest wildlife are all game species, any economically important species, any species of special aesthetic, scientific or educational significance which may include all protected wildlife, or habitats for threatened or endangered species.

J. Development. Disturbance of the property for a structure, road, utility service, retaining wall, or any other improvement that is used to support human habitation or structures of any use.

K. Drainage Corridor. An above-ground water, gully or impression in the landscape that carries storm water runoff or spring water.

L. Environmental Hazards. Any hazard created by a condition of the environment such as fault line, liquefaction, flood danger, steep and/or unstable slope, etc.

M. Geologic Feature. A natural feature such as a geothermal pool, spring, mound, or other feature unique and indigenous to the area.

N. Grottos. Open areas or voids beneath pot rock or tufa, being open or closed, that form caverns or other open volumes, whether wet or dry.

O. High Water line. The elevation of a drainage occurring because of "100-year storm" flows, or by a FEMA map, or by steep banks, either adjacent to or some distance from the river bed, which act to contain flood waters.

P. Hot or warm water source. A source of groundwater where the temperature is warmer than normal groundwater, usually capable of depositing tufa mineral, typical of many Midway warm and hot springs.

Q. Hot Pots. Mounds or features made by geothermal activity, consisting of tufa, locally and commonly known as Pot Rock.

R. Inflection line. The line along either the top or toe of a bench area, where the most abrupt change of the slope begins and ends.

S. Major hot pots. Those at Mountain Spa, The Homestead, the Coleman Hot Spring Area, The Mound (400 North 200 West), and those active hot pots in the vicinity of Homestead Drive and Lime Canyon Road.

T. Minor hot pots. Smaller hot pots, whether wet or dry, as shown on the “2004 aerial photo and the 2000 Midway Irrigation Company 2-Foot Contour Map” greater than 3 feet in height.

U. Natural Grade. The grade of the land or property as defined by a combined study of the “2004 aerial photo and the 2000 Midway Irrigation Company Two-Foot Contour Map”. Natural grade shall conform to the Year 2000 elevations.

V. Normal High Water Line. The water elevation of a drainage occurring because of an approximate two year recurrence interval flows. The stream corridor also includes an area up to 60 feet beyond the high water line of the riverbed.

W. Planned Unit or Cluster Development. A development approach allowed under the Zoning Ordinance Land Use Title and the General Plan in which dwelling units are clustered in order to maximize economy, infrastructure, and open space. For the purposes of this title, “Cluster Zoning” or “Clustering” shall mean the same as a “Planned Unit Development.”

X. Ridgeline/Skyline Overlay Zone Map. A map provided by the City showing the overlay zone and applicability of ridgeline/skyline ordinance in the City. To be used in conjunction with the ridgeline methodology, but secondary to the GIS analysis and final field inspection.

Y. Ridgeline. The horizon between a land form and a visually higher land form to the rear, such as a hill in front of a mountain.

Z. Sensitive Vegetation. Vegetation that may be subject to this Chapter, for example, due to its association with wetlands, hillsides, geologic features, mature trees or natural vegetation indigenous to Midway.

AA. Sink holes. Areas where the ground is collapsed due to geological or hydrological activity.

BB. Skyline. The horizon between land and sky.

CC. Skyline/Ridgeline Area. An area in which all or part of a permanent structure constructed thereon would be visible along the skyline or ridgeline - i.e., it would extend higher than the highest land form located either in front or behind the structure - when viewed from any one or more of the Community Viewing Stations.

DD. Soils at Risk. Those soils that are unstable, collapsible, have shrink/swell characteristics or are part of an active fault zone as defined by geotechnical or other soils reports.

EE. Stream Corridor/Waterway. A drainage that supports running water or a riparian habitat and is regulated by the Utah State Engineering Office, Division of Water Rights and/or the Army Corps of Engineers, or is an area of potential water or flood flow, or as regulated by FEMA.

FF. Traditional Subdivision Development. A residential development approach where lots are relatively uniform in size and dispersed consistently throughout the development and streets are generally laid out in a standard grid pattern.

GG. Water source. A source of groundwater, such as a surface spring, subsurface spring or wetland.

HH. Waterway. The area between the high water mark on either bank.

II. Wetland. An area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to maintain saturated conditions and to support a prevalence of vegetation. These may be either preexisting natural wetlands (e.g. marshes, swamps, bogs, etc.) or constructed wetland systems; also defined by certain species of plants and soil types. Further definitions are given in the wetland general provision.

### **Section 16.14.3            Area, Scope, and Applicability**

A. Area. The Sensitive Lands Overlay Zone and Chapter, and every sensitive land concept incorporated therein, shall apply to the full incorporated limits of the City of Midway, and to any proposed annexation.

B. Scope. Though, not every one of the seven sections shall be fully applicable to all areas of the City, the intent is to insure that a review of all seven sections of the Chapter is performed for all applications. Though not all may be found applicable, all must be reviewed. The Sensitive Lands Chapter will be applied to those areas throughout the corporate limits of Midway City that fit within the definitions of sensitive areas contained in this section, or as mapped and adopted by Midway City or other regulatory bodies having jurisdiction. Any development project or structure proposed or other land use which could affect the sensitive lands within the City shall be reviewed by City staff for compliance with this section at the initial stage of the application process. City staff shall have the authority to direct the applicant to prepare the needed documents and/or studies to show compliance with this Chapter before the appropriate approving person or body.

C. Applications Affected. This Chapter shall apply to all land use applications and to any level of development or improvement or other use with the potential to change the sensitive character of the land, including, but not limited to: small and standard subdivisions and PUDs, amendments to current small and standard subdivisions and PUDs, and to all other land use applications, including residential and commercial applications.

D. Annexations. Annexation petitioners must conduct a sensitive lands analysis of the full area being considered for annexation. Any findings of sensitive lands will be updated into the City maps and inventories herein described. This initial annexation inventory notwithstanding, future development applications within the annexation must also submit to a future sensitive lands analysis at the time of application for development.

E. Conflict. In the event of overlapping or conflicting requirements between this Sensitive Lands Chapter and other provisions or regulations under other sections of the City Municipal Code, the more restrictive provision shall apply.

#### **Section 16.14.4 Sensitive Lands Identification and Review Procedure**

For all types of sensitive lands governed by this Chapter, the following general method and outline shall be employed: Initial baseline information and a sensitive lands checklist shall be provided by the City, along with information available from other public review agencies, to the extent that they have been previously identified. These resource guidelines, however, are only minimum guidelines, and are not considered all inclusive. It is not expected that these initial inventories, maps or regulations will comprehensively define all of the possible sensitive lands considerations for the City. Individual applicant analysis and review are an integral part of the process of confirming the applicability of sensitive lands herein identified to each project, and to further define sensitive areas not heretofore identified, but which conform to the definitions, purpose and intent of this Chapter. Therefore, for every development proposal or annexation brought before the City, the owner, developer or proponent shall, as part of the application for Preliminary Approval, evaluate and return the sensitive lands analysis checklist, along with supporting data for each section of the checklist concerning its applicability to the property. This completed checklist is to facilitate a review of the sensitive lands by the City Planning Staff, Planning Commission, and City Council. The checklist is by no means comprehensive, but is an initial guideline for the benefit of both the City and the applicant. Upon review, the City may require further and more comprehensive analysis of any of the sections. Analysis of each of the types of sensitive lands governed by this Chapter, and the applicable requirements contained herein, may be required to be conducted by professionally licensed engineers or the appropriate public review agency, or firms sanctioned by such agencies, at the expense of the owner or developer.

#### **Section 16.14.5 Reference Materials and Resources**

The following materials and resources may be available for reference by the applicant. These items are not exhaustive. The requirements of this Chapter apply to the types of sensitive lands described by this Chapter whether or not these materials specifically identify an applicant's particular parcel of land. Under all circumstances, the applicant has the responsibility to identify all sensitive lands on property proposed for development, and to comply with the requirements imposed by this Chapter for each specified type of sensitive land, regardless of the identification or non-identification of the property by any official or unofficial map, chart, study or survey.

- A. The 2004 Aerial Photo and the 2000 Midway Irrigation Company Two-Foot Contour Map showing natural grade.
- B. Hillside and bench area percent slope delineation map: a guideline to actual GIS analysis of each proposal.
- C. Ridgeline overlay map, along with view stations.
- D. Bench areas location map: a guideline to actual GIS bench area analysis of each proposal.
- E. Streams, waterways and ditches map of the 100-year flood plain.

F. Wetlands and other water resources map: a guideline to actual GIS analysis and extensive field inspection and Agency approval or denial of each proposal.

G. Spring and Well Protection Zone map identifying these locations and protection zones.

H. Geological and hydrological features map, delineating major features and marking minor features: a guideline to actual GIS analysis and extensive field inspection of each proposal.

I. Landslide areas map indicating the areas of known landslide hazard.

### **Section 16.14.6           Hillsides, Slopes, and Natural Grade**

A. Slope analysis and natural grade. Slope analysis and natural grade shall be as determined by the “2004 Aerial Photo and the 2000 Midway Irrigation Company Two-Foot Contour Map”, and the Percent Slope Delineation Map. “Natural grade” shall conform to the 2000 Midway Irrigation Company Two-Foot Contour Map. In areas of conflicting data or maps, the City Engineer shall be the authority advisor to the City.

B. Boundary Delineation. A sensitive hillside or slope area shall be delineated where any slope is 10 percent or greater.

C. Identification of Category of Use. Uses in the hillside areas shall be according to the following requirements:

1. Residential land uses shall be allowed on areas up to 25 percent slope if the development meets all the requirements of this Section. Slopes greater than 25 percent shall not be used for sites for building pad entitlement, but may be included within a lot boundary, used as open space, and/or for density credit, as described in this Chapter.
2. Commercial or office uses shall be allowed in areas with slopes of up to 12 percent.
3. Light industrial uses shall be allowed in areas of the appropriate zoning district with slopes up to 8 percent.
4. A geotechnical report is required for building on any slope over 10 percent.

D. Subdivisions. Allowable lot sizes, densities and credits, as a function of slope: Minimum lot sizes in the hillside and mountainside areas of the Sensitive Lands Overlay Zone shall be as indicated in Table 16.14.060-1, according to the corresponding slope. These densities shall apply to both subdivisions and individual parcels.

Table 16.14.060-1

<b>Per cent of slope</b>	<b>Acreage</b>	<b>Square footage</b>
Under 10%	As per zone requirement	As per zone requirement
10-14%	1.00	43,560
15-19%	5.00	217,800
20-24%	10.00	435,600
25% or greater	20.00 (see note*)	871,200

\*Note: A structure may not be built on a site of slope 25 percent or greater. However, land with slope 25 percent or greater is entitled to the density credit specified in the table, to be used elsewhere on the subject parcel, if possible, or on another parcel, as applicable. If a structure is proposed on a parcel containing slopes of 25 percent or greater, a suitable building pad with a slope less than 25 percent is required. The building pad must be able to be reached by a road or driveway meeting the standards contained elsewhere in this Chapter, and the building pad must have a home-and-garage footprint of at least 3,000 square feet, plus an average 30 feet extra border surrounding the home, with both the footprint and the border area being less than 25 percent in slope.

E. Planned Unit Developments. Allowable densities and credits, as a function of slope: PUDs in hillside and mountainside areas shall use the density requirements specified for their zones, except that the densities in those zones shall be modified to reflect the density shown in Table 16.14.060-2.

Table 16.14.060-2

<b>Per cent of slope</b>	<b>Density</b>
Under 10%	As per zone requirements
10-14%	1.00 unit per acre
15-19%	0.20 units per acre
20-24%	0.10 units per acre
25% or greater	0.05 units per acre (see note*)

\*Note: A structure may not be built on a site of slope 25 percent or greater. However, land with slope 25 percent or greater is entitled to the density credit specified in the table, to be used elsewhere on the subject parcel, if possible, or on another parcel, as applicable. If a structure is proposed on a parcel containing slopes of 25 percent or greater, a suitable building pad with a slope less than 25 percent is required. The building pad must be able to be reached by a road or driveway meeting the standards contained elsewhere in this Chapter, and the building pad must have a home-and-garage footprint of at least 3,000 square feet, plus an average 30 feet extra border surrounding the home, with both the footprint and the border area being less than 25 percent in slope.

F. Density Transfers. Owners and developers are encouraged not to build on slopes of 15 percent or greater. To this end, for slopes of 15 percent or greater, the applicant may ask the City to consider transfer of hillside entitlements to other areas of the development site or other areas in the City consistent with the zone in the area where the units are to be transferred or to transfer of development rights to receiving areas, or to retire the property from building development through the purchase of development rights if such a transfer policy is in effect for the City.

G. Grading, terracing, filling, benching and retaining wall considerations. The use of grading, filling, terracing or benching to either create or increase building lot size, numbers of pads to increase density, or to modify building height objectives, is prohibited. However, the practice of excavating to “nest” the basement and better preserve the natural grade is encouraged, so long as the material excavated from the cut is not used to alter the rest of the existing grade, except as

noted in this section. This concept notwithstanding, reasonable fill may be used within 30 feet of the dwelling to provide for driveways, parking, yard and public safety access. Furthermore, if it can be demonstrated that minor grading will facilitate or accommodate the clustering of units and provide for the preservation of more open space or of the reduction of access road cut requirements, such grading shall be considered. Grading in hillside areas shall be in accordance with City standards. In order to preserve the sensitive lands throughout the City, grading and filling permits and pre-inspections shall be required throughout the entire City, regardless of slope.

H. Retaining Walls. Retaining walls are discouraged, and the use of blended natural contours is encouraged. However, if it can be demonstrated by the applicant to the satisfaction of the Planning Staff, the Planning Commission, and the City Council that there is no other alternative, then a retaining wall may be constructed in order to reduce the impact of cut banks and fill slopes of more than 6 vertical feet. Such retaining walls must be made of natural stone and blend into the colors and contours of the hillside.

I. Allowable streets, driveways and grade crossings. The following restriction shall be placed upon the development of streets and driveways in a hillside sensitive area:

1. Maximum Grades.

- a. All streets shall be constructed at a maximum of twelve per cent grade. Streets in grade between 10 percent and 12 percent shall be no more than 250 feet in length and only upon written approval from both the City Engineer and Fire Marshal.
- b. Driveways to all residential dwellings shall be constructed at a maximum of 15 percent grade. However, driveways may be approved at a grade above 15 percent only if they receive written approval from the City Engineer.

2. Criteria for Streets and Driveways Traversing Steep Slopes.

All roads and driveways in hillside areas must receive full review from the City Engineer and Staff, and final approval from the City Council. Sensitivity to the land forms, erosion, plant life, wildlife and view shed are key considerations. Streets, roads, private access roads, driveways, and other vehicular routes shall not be allowed to traverse slopes between 25 percent and 50 percent unless specifically authorized by the City Council upon recommendation from the Planning Commission. Any drive so authorized shall meet the following criteria:

- a. No alternative location for access is feasible or available.
- b. No individual segment of the street, road, private access road, driveway or other vehicular route that will cross slopes between 25 percent and 50 percent shall exceed 100 feet in length or, if greater than 100 feet, 10 per cent of the total length of the street, road, private access road, or other vehicular route.
- c. No significant adverse visual, environmental, or safety impacts will result from the crossing.
- d. Fifty per cent slope crossings. Under no circumstances shall any street, road, private access road, driveway or other vehicular route cross slopes greater than 50 percent.
- e. Natural Contour. Streets, roads, private access roads, driveways and other vehicular routes shall follow the natural contour lines as much as possible. No street or road shall either traverse or follow a ridge or follow up a ridge line.

3. Grading for streets, roads, private access roads, and other vehicular routes shall be limited to the roadway portion of the right-of-way, plus up to an additional 10 feet on either side of the roadway as needed, except that when developing access on slopes in excess of 25 percent, only

the roadway portion of the right-of-way shall be graded, plus the minimum area required for any necessary curb, gutter, or sidewalk improvements. The remainder of the access right-of-way shall be left undisturbed to the maximum extent possible.

4. Other Roads. Roads, other vehicle routes, or trails may be required to provide access or maintain existing access to adjacent lands for vehicle, pedestrians, emergency services, and essential service and maintenance equipment.

5. Shared Driveways. Driveways in sensitive land hillside areas may be shared by no more than four residential dwelling units or by four or more principal nonresidential uses, provided such nonresidential uses together do not exceed a total of 25,000 square feet of gross floor area. Shared driveways are strongly encouraged in these areas.

6. Restoration. All cuts, fills, berms, roadside grades or other disturbances created as a result of the road or driveway construction shall be protected from erosion and be restored to as natural a state as possible by restoration of natural vegetation.

J. Landslide considerations. It is the intent of the City that no construction shall occur in areas susceptible to landslides, nor shall any construction or disturbance create an area more susceptible to erosion or landslides or that will destabilize a pre-existing landslide. Areas with potential for landslides may be identified on City maps. The applicant is responsible to search for, perform studies that will identify, and disclose any information that is available to identify areas of instability. For all areas identified on City materials as potential landslide areas, a slope stability analysis must be performed by a licensed geotechnical engineer before development is approved on those sites. The applicant, Planning and Engineering staff, the Planning Commission, and City Council must then use this information to guide the development of the property.

K. Architectural height, color, reflectivity, lighting, and fencing guidelines (to apply to all slopes over 10 per cent).

1. Maximum Height of Buildings. Buildings in the hillside and mountainside areas shall be not more than 35 feet in height, as measured from the lowest flooring level which has an exterior entrance or a partially or fully exposed wall on the downhill side of the dwelling, and then as measured from that flooring level to the highest point of the roof, chimney or parapet, except when the ridgeline provisions of this section require a lower height unless permitted by other criteria specified in this Chapter.

2. Color. All occupied and accessory structures and fencing shall be constructed and maintained so that the predominate exterior wall colors (including exposed basements) and roofing materials (a) repeat the predominant colors most commonly found in the land and vegetation surrounding the dwelling (earth tones) and (b) are materials and colors that are low gloss and of low and diffuse reflectivity. Reflective materials and bright colors or light colors that contrast dramatically with the land and vegetation shall not be used. An exception for solar panels will be considered.

3. Architectural review. The selections of materials, colors and lighting shall be reviewed and a written recommendation to the City Council shall be submitted by the City's Vision Architectural Committee.

4. Exterior lighting. Floodlights shall not be used to light all or any portion of any primary or accessory structure facade. All outdoor light sources mounted on poles or buildings or trees to illuminate streets, sidewalks, walkways, patios, porches, parking lots or driveways or other

outdoor areas shall use full cutoff fixtures. All such fixtures shall be installed or shielded so that the point light source or light bulb is not visible beyond the property boundary, and, in particular, is not observable as a point light source from the Community Viewing Stations, as defined in the ridgeline section of this chapter.

(2010-15, Subsection Amended, eff. 6/16/2010)

L. Vegetation preservation and re-vegetation guidelines. All disturbed slopes of greater than ten per cent grade shall be re-vegetated with native plants and trees, and properly maintained.

M. Fire Protection. The following fire protection measures shall be taken when developments are placed in hillside areas:

1. Each development site and building permit shall comply with current fire regulations.
2. Spark arresters shall be installed in every fireplace constructed indoors or outdoors. Screen openings in such arresters shall not be in excess of ¼-inch diameter.

### **Section 16.14.7            Ridgelines and Benches**

A. Purpose and Intent. Within the corporate limits of the City of Midway there are many significant land forms, including hills and mountains with distinct ridgelines and benches, at higher elevations than the surrounding flat lands. These topographical features constitute a unique natural resource meriting protection and preservation. Construction of structures in locations on these land forms, which are visible from many areas of the City and County, degrades this natural heritage. The regulations adopted by this Section place restrictions on the siting of any development in visually significant areas. These regulations are promulgated and applied as a zoning overlay district as a legislative exercise by the City Council of the police powers of the City. These regulations apply uniformly to all zoned development encompassing land forms with visually sensitive areas.

B. Ridgeline area definition map. A map, based on the “2004 aerial photo and the 2000 Midway Irrigation Company Two Foot Contour Map” will be prepared by City Staff as a general guideline to the location of ridgeline areas. This map constitutes an official delineation of the areas subject to this Chapter. It is the responsibility of the owner or developer of the property to provide analysis, per the methodology below, to identify effects of potential development on ridgeline and bench areas.

C. Ridgeline Building Restrictions. Development Prohibited. No development, as defined in this Chapter, shall be allowed to be located either on or across any ridgeline or skyline, as viewed from any single Community Viewing Station. Anyone desiring to build a structure or any other form of development within a Ridgeline/Skyline protection area, as delineated on the official map, shall submit the proposed building to the Planning Commission for a recommendation and the City Council for approval using the following GIS and field analysis: The highest point of any building or structure, whether the building or structure is on the near or far side of the subject hill, including roof lines, chimneys, steeples, parapets, and so forth, shall not be higher than an imaginary line drawn from six feet off the ground at any single Community Viewing Station viewing platform point to the ridgeline/skyline behind or in front of the

proposed structure. An initial prescreening analysis shall be performed by the applicant by suggested methods such as “topography line of sight” graphing from each viewing platform to the top of the proposed structure (using 2-foot or better resolution), through visual analysis from each viewing platform using raised balloons, laser analysis, GIS analysis, or any other method of pre-screening analysis found acceptable to the City Planner and Engineer in order to indicate that the proposed structure will not obviously breach the ridgeline. This initial analysis is for pre-screening purposes only, prior to submittal of official GIS analysis, and is performed so as not to create undue burden on the official GIS system. For those structures that do not obviously breach the ridgeline from any one of the viewing platforms on this pre-screening analysis, the proposal shall be submitted for final analysis to the official City GIS administrator for computer-generated finite element analysis. The results of this GIS finite element analysis must show that none of the proposed structures will violate the ridgeline ordinance from any of the viewing platforms. This analysis and result must be submitted as a condition of approval. All costs of analysis by the City shall be borne by the applicant.

D. Community Viewing Stations. Specific locations that are important to the City of Midway or the general public, and are public locations that protect the views of the ridgelines and skylines for the benefit of the City and the public. Specifically they are as follows:

1. State Park Visitors Center
2. Homestead Drive- Lime Canyon Road
3. Homestead Drive- Kohler Lane
4. 400 North- Pine Canyon Road
5. 400 West- Main Street
6. Town Square
7. Burgi Lane- Interlaken Drive
8. River Road- Dutch Fields
9. River Road- 600 North
10. 500 South- 250 West
11. 500 South at Cemetery
12. 960 South Center Street
13. Center Street and Tate Lane
14. Tate Lane and Stringtown Road
15. Stringtown Road -960 South

E. Single Station Policy. The Ridgeline/Skyline development restrictions shall apply when a ridgeline or skyline is visibly impeded from any single Community Viewing Station.

F. Bench Area Restrictions. A map shall be provided by the City showing the general areas of bench locations. A bench shall be defined as an abrupt rise in the land of at least 20 feet in elevation across a distance of 100 feet or less (20 percent grade or more) in otherwise level or near level land (5 percent grade or less). The 20-foot rise in elevation shall be measured from the bottom inflection to the top inflection of the slope. Structures along the top of the bench area, whether primary structures or secondary structures, shall be restricted in height as a function of their setback from the top inflection point of the bench. Single story dwellings shall be limited to 17 feet in height, at a setback of 40 feet from the inflection point. Two story structures shall be set back a distance of at least 80 feet and limited to 35 feet in height.

## **Section 16.14.8           Streams, Waterways, and Ditches**

A. Intent. The intent of this Section is to protect the stream corridors, waterways, riparian areas and ditches of Midway.

B. Classifications. There shall be two classifications of drainages considered in Midway City. They are:

1. Streams, creeks and rivers. These shall not be piped, covered, altered, moved or destroyed in any way, except by a City-approved roadway or driveway crossing. Irrigation ditches that do not follow the natural channel are not considered stream corridors unless the majority of the stream flow has been diverted from the natural channel to accommodate water flow and drainage.
2. Washes, drainages, and irrigation ditches. These types of waterways may be considered for piping if minimal impact and conveyance can be achieved as approved in writing by the City Engineer. Careful consideration for the use of irrigation ditches as historical or critical storm drain channels or as perennial wetland or water drainage channels, along with the historical nature and visual value of the open ditches, should be given priority when considering piping or closing of an irrigation ditch, along with appropriate drainage mitigation measures.

C. Boundary delineations: All construction or development on a parcel or lot that includes any delineated flood zones as per FEMA Flood Insurance Rate Maps (FIRM) and any parcel or lot that includes area in any Midway City Floodplain Overlay Maps (MCFOM) must meet the requirements of the Flood Damage Prevention ordinance found in the Midway Municipal Code and meet the following requirements:

1. Lots of record and previously platted lots: Any residential construction within 50 feet of a delineated flood zone shall have the lowest floor, including basements, elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence.
2. Small-scale subdivision: Lots may be approved within delineated boundaries of FIRM and MCFOM but the lowest floor of any residential construction, including basements, shall be elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence. Substantial efforts must be made to create building envelopes that are 50 feet from any delineated flood zones, though the lots themselves may encroach in the flood area.
3. Large-scale subdivisions: Lots may be approved within delineated boundaries of the FIRM and the MCFOM but building envelopes are required for all large-scale subdivisions and must be set back 50 feet from any flood zones to assure no residential buildings are constructed within 50 feet of any flood zones.
4. PUDs: All building footprints in a PUD shall have a 50 foot setback from any delineated flood zones.

(2010-11, Subsection Replaced, eff. 5/26/2010)

D. Stream and Waterway Building Restriction. Building within the above described boundary delimitations shall be prohibited.

E. Applicable Agencies. Written approval may be required from the following agencies, other than Midway City, for any proposed plan:

1. U.S. Army Corps of Engineers.
2. Utah State Engineers Office, Division of Water Rights.
3. U.S. Environmental Protection Agency (EPA).

F. Density. The stream, waterway, and ditch areas regulated by this Chapter shall receive a density credit of one unit per ten acres, to be applied to areas of unfilled but allowable densities located elsewhere within the project, or to future Transfer of Development Rights receiving areas, or retired through Purchase of Development Rights policies, if such policies are in effect in Midway City.

G. Grading. No grading shall be done within the stream corridor that will disturb the natural vegetation or natural terrain of the area.

H. Streets and Bridges.

1. Streets. No streets or roads shall encroach upon the stream bank as defined in this Section or as determined by the applicable agencies.
2. Crossings. The construction of crossings over a stream corridor and within the stream setback area is permitted, provided such crossings are planned and constructed so as to minimize impacts on the stream corridor to the maximum extent possible. Bridges shall be constructed where they reach from the top of the bank to the top of the bank on the other side of the waterway, as approved in writing by the City Engineer. Natural rock bottoms may be required where it is found that the velocity of water flow would cause erosion of surrounding banks.

I. Filling or Dredging of Waterways. Filling or dredging of watercourses, stream or creek beds, rivers, washes, drainages, swells, wetlands, gullies, or other storm water runoff channels is prohibited unless written approval is received by all applicable agencies listed in this Chapter, and the City Engineer.

## **Section 16.14.9 Wetlands and other Water Resources**

A. Purpose and intent. The following requirements and standards have been developed to promote, preserve, and enhance wetlands and to protect them from adverse effects and potentially irreversible impacts. Public access to or trail rights-of-way through wetland areas is highly encouraged.

B. Boundary Delineation. Unless previously delineated by Midway City or Wasatch County, boundaries for wetlands shall be delineated according to the following provisions: Boundary delineation for wetlands shall be established using the current version of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. No development or disturbance of any kind shall occur in areas of delineated wetlands and within a 25-foot buffer surrounding these areas. The following agencies, in addition to the staff of Midway City, may review and approve in writing any proposed plan, if needed: (1) U.S. Army Corps of Engineers (2) U.S. Environmental Protection Agency.

C. Density. Wetland areas and their buffer zones shall receive density credit for clustering purposes at the rate of one unit per ten acres, to be applied to areas of unfilled but allowable densities, located elsewhere within the project, to future Transfer of Development Rights receiving areas, or retired through Purchase of Development Rights policies, if such policies are in effect in Midway City.

D. Grading. No surface grading shall be done that will impact any wetland areas. Also, no surface grading shall be done within 25 feet of any wetland area unless necessary and approved in writing by the City Engineer.

E. Disturbance of Wetlands. No activity will be permitted which will disturb, fill, dredge, clear, destroy or alter any area, including water, soils and vegetation, within wetlands and their setbacks as set forth in this Section, except where approved in writing by the City, the U.S. Army Corp of Engineers and/or the U.S. Environmental Protection Agency.

#### **Section 16.14.10 Spring and Well Protection Zones**

A. Policy. Midway City will cooperate to protect areas within the Source Protection Area of a public drinking water source, as defined on the Midway City Spring and Well Protection Zone Map, or as such zones are defined by the Utah State Division of Drinking Water, from concentrated sources of pollution.

B. Procedure. All development affecting properties within these areas must be reviewed by the Wasatch County Health Department, City Engineer, and the Midway City Public Works Department, and also may be reviewed by others who have a property interest in the water source. The applicant shall prepare a request considering this information and other material relevant to the use of property within Source Protection Areas. The Planning Staff shall review this request and prepare a recommendation using this information and public health principles. The Planning Commission and City Council must consider the recommendations of City Staff and the Health Department before development can be approved in these areas.

#### **Section 16.14.11 Trees and Vegetation**

The following requirements shall apply throughout the City:

A. Existing Trees and Vegetation. Every effort to save all full size existing trees on a property proposed for development shall be made by the developer. Existing trees shall not be cut unless absolutely required for placement of structures or infrastructure or for public safety purposes. All existing trees, regardless of species, over five inches in diameter at breast height (DBH) in caliper, along with tree types and tree locations, shall be shown and submitted to the Planning Commission and City Council along with the landscape planting plan. In areas determined by the Fire Marshal to be highly susceptible to fire hazards, vegetation up to 30 feet from the perimeter of a structure shall be selectively pruned and thinned, but not clear cut, for fire protection purposes.

B. Replacement of Significant Trees. When trees of more than 5 inches in caliper are removed, the applicant or developer shall replace such trees. Replacement trees shall be maintained and guaranteed for a period of three years except for residential lots, where the period shall be one year. All replacement trees shall be selected by a licensed landscape architect. Trees shall be replaced according to the following schedule:

1. Deciduous trees removed: Replace with two trees with a minimum of two-inch caliper.
2. Coniferous tree removed: Replace with two trees with a minimum height of 5 feet.
3. Gamble oak (scrub oak): Due to the scenic quality and slow growing nature of this species, gamble oak trees shall only be selectively and minimally removed as required for a building pad and associated reasonable-sized yards, streets and driveways, or selective strategic removal to provide views. No additional clearing for yard or land use purposes shall be allowed, except as in section (a) above, per Fire Marshal written recommendations.

## **Section 16.14.12 Geological and Hydrological Features, Rocks and Soils**

A. Intent and purpose. The most singular and unique sensitive natural resource to Midway is its ancient heritage of geothermal activity, marked by the presence of many unique geological and geothermal features, both surface and subsurface. It is also important to note that many of these subsurface water features may or may not be interconnected. These geothermal features may be defined as:

1. Major hot pots, such as the Mountain Spa pot, the 400 North 200 West hill (the “Mound”), the Homestead, and the Coleman Hot Springs area.
2. Minor hot pots or mounds of tufa (pot rock), whether wet or dry, as identified on the 2004 Aerial Photo and 2000 Midway Irrigation Company Two-Foot Contour Map, or as otherwise identified at the time of application.
3. Hot or warm water sources, identified by water that deposits tufa.
4. Grotto or other underground hollow features.
5. Unstable, collapsible, shrink/swell or sinkhole soils or features.
6. Fault zones.
7. Landslide zones.

B. Protection.

1. Major hot pots.

The geographical extent of a major hot pot is identified and delineated by slope, inflection, rock type, vegetation, or warm water. These larger hot pots shall not be developed or disturbed.

2. Minor hot pots or mounds of tufa, whether wet or dry, as identified on the 2004 Aerial Photo and 2000 Midway Irrigation Company Two-Foot Contour Map, or as otherwise identified at the time of application, shall be fully protected if over three feet in height or if they are otherwise visually significant.

3. Hot or warm water sources, identified by water that deposits tufa, shall be protected in the same manner as wetlands and waterways.

4. Grotto or other underground hollow features.

Any area of extensive tufa/pot rock at or near the surface, or areas that exhibit mounds of tufa of any size, must be inventoried for the presence of underground hollow areas such as grottos or capped domes. This regulation is not only for the protection of Midway’s subterranean water resources, but also for the protection of the landowner or developer. Such studies must be

performed by licensed geological engineers, using techniques standard to the inspection of subsurface rock formations and strata, such as ground-penetrating radar (GPR), electrical resistivity techniques, high resolution gravimetric studies, near-surface seismic studies, or other techniques standard to the geotechnical community.

5. Soils at Risk: Areas of unstable, collapsible, shrink/swell or sinkhole soils shall be left undisturbed.

6. Fault zones, as identified by the Utah Geological Survey, must be considered as a part of any site development process.

7. Areas subject to landslides, as designated on the official map, are not suitable for development, but may be counted as part of otherwise buildable lots and given density credit.

C. No person shall disturb the natural flow or hydrostatic pressure associated with geothermal or geohydrological features because of the potential for irreversible disruption of historical water flows and water rights that may occur.

### **Section 16.14.13 Wildlife Habitat Areas**

A. Purpose and Policy. It is the policy of Midway City to provide for wildlife and wildlife habitat within the City limits to the extent that is practical and prudent. It is the intention of Midway City to administer this policy based on three principles: 1) The initiative and desires of individual City residents and landowners acting on the principle of informed consent; 2) A recognition that wildlife and wildlife habitat (open space) are in general highly valued amenities contributing to a high quality of life within the City and to property values within the City; and 3) An intention to provide incentives to the owners and developers of lands within the City that provide wildlife habitat, buffers and corridors.

B. Standards. All development and developments subject to this Chapter, to the maximum extent possible, as judged and recommended by the Planning Commission and approved by the City Council, shall incorporate the following principles and procedures when locating site elements in relation to wildlife habitat:

1. Applicable Areas. This policy shall apply to all Critical Habitat Areas as defined by the City map based on information from the Utah Division of Wildlife Resources and the Utah Sensitive Species List and other credible and documented sources. Critical Areas may also include other areas of important or critical habitat as determined by on-the-ground survey(s) conducted by the City wildlife biologist(s) and verified by a written report submitted to the Planning Commission and City Council.

2. Maintenance of Buffers. Buffers shall be maintained between areas dominated by human activities and core areas of wildlife habitat by relegating intense human activities such as automobile and pedestrian traffic to areas more distant from core habitat areas. The appropriate type and character of the buffer for a particular project shall be determined by the biological review process described in this Section.

3. Facilitation of Wildlife Movement. Development shall facilitate wildlife movement across areas dominated by human activities by:

- a. Maintaining connections between open space parcels on adjoining parcels of land.
- b. Minimizing fencing that unduly inhibits the movement of wildlife species.

c. Minimizing abrupt breaks in habitat between areas dominated by human activities, including individual lots, roads, etc. and less disturbed terrain in surrounding areas (for example, by retaining or establishing native vegetation).

4. Control of Domestic Pets. Residents and visitors to the City are responsible to maintain control of domestic pets and to prevent pets from molesting wildlife within the City.

C. Notice of Wildlife Policy. Notice shall be included on development plats and in development agreements and covenants, conditions and restrictions (CC&Rs), as appropriate, of the City's wildlife policy and the requirements thereof.

D. Procedures. The following procedures shall apply when applications are made in or adjacent to critical or important wildlife habitats:

1. Biological Review. Site development applications are subject to biological review and recommendations. Based on the standards contained in this section, the Planning Department shall make a determination as to whether a biological review is necessary for a given application. Review shall be performed by a qualified wildlife biologist retained by the City. The cost of the review and report shall be borne by the applicant. If applicants desire, they may also retain their own qualified biologist separately to prepare an additional report. Comments from the above review(s) shall be incorporated into the staff report or in some other way transmitted in writing to the Planning Commission and City Council prior to preliminary action on the submitted development application. The Planning Commission and City Council shall consider and decide any disputes contained in different reviews submitted in applying the standards contained in this Chapter.

2. Special Considerations for Wildlife. The Planning Director, Planning Commission, and City Council shall follow the Purpose and Policy which introduces this Section to the extent possible and shall give special consideration to important wildlife habitats as identified on the City map and overlays and to habitats identified during a biological review to be of unique or critical value. Upon recommendation from the Planning Commission, the City Council shall require that modifications or special conditions, as recommended to mitigate impacts on critical wildlife habitat, be considered and incorporated into development plans.

3. Denial Based on Significant Adverse Impacts. The City Council, upon recommendation from the Planning Commission, may deny a development proposal if it finds that the proposed development will have significant adverse impacts on critical wildlife habitat that cannot be adequately mitigated.

4. Definition of Significant Adverse Impact. For the purposes of this Chapter, "significant adverse impact" shall mean the elimination, reduction, and/or fragmentation of wildlife habitat to the point that the viability of an individual species and the diversity of wildlife species occurring within the boundaries of Midway City are reduced.

#### **Section 16.14.14 Approval Procedures**

Determinations as to compliance with the procedures and regulations of the sensitive lands provisions of this Chapter shall be recommended by the Planning Commission and decided by the City Council as part of the consideration of preliminary approval of a development application. The Planning Commission may recommend, and the City Council may impose,

conditions pursuant to which preliminary approval is granted in order to uphold and enforce the provisions of this Chapter.

**Section 16.14.15      Appeal and Variance Procedures**

Appeal of determinations made by the City Council pursuant to this Section shall be governed by the Appeal Authority, as outlined in Title 16. Variances to the requirements of this Section shall be governed by Utah law and by appeal and decision of the Midway Board of Adjustment, also as outlined in this Title.

## **CHAPTER 16.15 RECREATIONAL RESORT ZONES (RZ)**

<b>Section 16.15.1</b>	<b>Purpose and Intent</b>
<b>Section 16.15.2</b>	<b>Applicability</b>
<b>Section 16.15.3</b>	<b>Procedure</b>
<b>Section 16.15.4</b>	<b>Resort Master Plan</b>
<b>Section 16.15.5</b>	<b>Preliminary Approval</b>
<b>Section 16.15.6</b>	<b>Final Approval</b>
<b>Section 16.15.7</b>	<b>Development Agreements</b>
<b>Section 16.15.8</b>	<b>Developer Obligations</b>
<b>Section 16.15.9</b>	<b>Completion and Recordation</b>

### **Section 16.15.1 Purpose and Intent**

Our vision is for the City of Midway is to be a place where citizens, businesses and civic leaders are partners in building a city that is family-oriented, aesthetically pleasing, safe, walk able and visitor friendly, a place that proudly enhances its small town Swiss character and natural environment, while remaining fiscally responsible.

Midway City has unique characteristics that make it attractive to resort development. It is located near major metropolitan areas and airports which are accessible over good roads in and out of the Heber Valley. It is blessed with spectacular scenery, natural geothermal springs, National Forests and Utah State Parks which provide an abundance of fishing, hiking, skiing and other recreational opportunities.

The purpose of the Recreational Resort Zone standards set forth in this Chapter is to guide the creation as well as continuation, of resort development configured around the unique physiographic characteristics of the Midway City area. Its intent is to:

- A. Encourage recreational activities that rely on natural attributes of the area, respect the sensitive land and water constraints present in the Midway City area, contribute to the community's character and economy, and have had a long-standing, beneficial role in the community;
- B. Provide flexibility for planning and developing recreational resort facilities in a creative, efficient, and coordinated manner in order to provide quality visitor experiences;
- C. Create a process in which applicants and Midway City collaborate with landowners and citizens in planning and designing resort master plans that meet community goals and respond to the unique circumstances of the resort area;
- D. Ensure that resort plans incorporate a mix of land uses, promote alternative modes of transportation, and provide a pedestrian-oriented community in order to alleviate traffic-related impacts;

E. Ensure that resort plans are consistent with the Midway City General Plan, and therefore, are beneficial to the community;

F. Enable long-range planning for infrastructure, capital facilities, and community land use patterns by establishing a level of predictability in the maximum potential size and character of each resort area;

G. Produce resort plans that make significant contributions toward protecting attributes of the community that are considered critical to the community's long-term health, welfare, and well being; and

H. Ensure a balance is maintained between tourism and community that promotes social diversity but does not cause undesired shifts away from rural community character.

I. Midway City encourages builders, particularly those undertaking large projects such as resorts, to participate in the Leadership in Energy and Environmental Design (LEED) program. Midway City would be pleased to see builders utilize proven "green building practices." Note: LEED is a rating system devised by the United States Green Building Council (USGBC) to evaluate the environmental performance of a building and encourage market transformation towards sustainable design. LEED was launched in an effort to develop a "consensus-based, market-driven rating system to accelerate the development and implementation of green building practices." The system is credit-based, allowing projects to earn points for environmentally friendly actions taken during construction and use of a building.

### **Section 16.15.2            Applicability**

Only those land areas described below shall be eligible for Recreational Resort (hereinafter RZ) zoning. The intent is that only a limited number of RZ zones be created in locations that are consistent with the Midway City General Plan.

A. There are two areas presently within Midway City that are large enough to support recreational resort hotel development and operation that have been designated as Resort Zones.

1. Homestead Drive. The Homestead Drive resort zone is made up of several parcels of land, presently dominated by two large resort hotels, which will continue to be zoned RZ.

2. Historic Mountain Spa area (approximately 800 N 200 E). The area surrounding the old Mountain Spa is a traditional resort area and will continue to be zoned RZ.

B. There are four small resort facilities in the Homestead Drive area and one off Main Street on the east boundary of the City (approximately 200 N 900 E) that are designated presently RZ zones. This zoning shall also continue.

C. There are three areas contiguous to Midway City, and within its annexation policy declaration boundary, that if annexed, would be considered for RA-1-43 or RZ zoning. These properties are designated on the zoning map as RA-1-43/RZ and may be considered for future recreational resorts when developed. These areas are not considered to be reserved for

recreational resorts but rather may be available for such development if one or more of the land owners desire to apply for annexation to develop the property for resort use. It is not necessary that all the land owners in an RZ zone make the same choice as to how their land is to be developed. Each of these potential resort development areas will be considered for annexation and resort zoning only if land owners and developers come to the City to express their interest.

### **Section 16.15.3 Procedure**

The procedure set forth is intended to promote collaboration among landowners and Midway City in designing land development standards specific for resort areas.

A. Pre-Application Conference with Planning Staff. Any person wishing to construct a Recreational Resort shall meet with planning staff, check and review the zone information, obtain application and review procedures, obtain written information from the City regarding the City's plan for land use, streets, water, sewer, traffic, trails, parks, and public facilities; and discuss public participation meetings and other requirements affecting the land to be developed.

B. Development of a Master Plan. The purpose of a Recreational Resort Master Plan is to establish the development standards that will serve as a guide to all future development within a Recreational Resort Area. The Recreational Resort Master Plan is intended to be of sufficient detail to describe the amount, type, size and location of all proposed buildings in the resort and the impact of the proposed resort on surrounding neighborhoods and Midway City as a whole. Although technical specifications of the proposed development, such as fully engineered plans or fully detailed architectural drawings, are not required as part of the Master Plan, it must be prepared by a development team composed of at least a civil engineer, an architect, a landscape architect, and an attorney, all of whom must be licensed to practice in the State of Utah.

1. Participation in the Master Plan. While one or more landowners within a City defined potential Recreational Resort area may propose a Master Plan and maintain the role of the applicant as identified herein, all landowners within a resort area are encouraged to participate in the design of the Master Plan. Participation of all landowners within a potential RZ zone, however, is not required for the City to approve a Master Plan for a Recreational Resort.

2. Review and Approval of the Master Plan. Public review and approval for Recreational Resort Master Plans parallels the procedures set forth for a Concept Plan in other large scale development regulations of this Title. The standards for review of the Master Plan, however, are the standards set forth in this Chapter, in order to allow for flexibility and creativity in the development and review of the Master Plan.

3. Recordation of the Master Plan. Upon approval, the Recreational Resort Master Plan and a Certificate of Standards and Conditions, and any amendments thereto, shall be recorded in the Wasatch County, Utah Recorder's Office. The Planning Director shall prepare the affidavit certifying the details and conditions of the Recreational Resort Master Plan approved and the development standards to be applied within the recreational resort area, along with any other standards, conditions, or agreements pertaining to future development or responsibilities of landowners within the Recreational Resort Area. A detailed description of the submittals required for a Recreational Resort Master Plan is presented in the Recreational Resort Master Plan Section of this Chapter.

C. Preliminary Development Plan Review and Approval. After approval of a Recreational Resort Master Plan, a Preliminary Approval is required prior to preparation of final architectural and engineering drawings and specifications for any new land use within the Recreational Resort are submitted for final approval and issuance of building permits.

1. The Application. Preliminary Development Plan applications shall be in accordance with the Recreational Resort Master Plan and shall be reviewed and approved pursuant to the Preliminary Development Plan Section of this Chapter. No Preliminary Development Plan shall be approved unless the proposal is consistent with the Recreational Resort Master Plan and the Midway City General Plan.

2. The Plan. A Preliminary Development Plan shall be prepared and submitted for approval for a Recreational Resort, or approved Phase thereof, within the Recreational Resort Master Plan Area. The project Preliminary Plan must be prepared by a design team composed of at least a civil engineer, an architect, a landscape architect and an attorney, all of whom must be licensed to practice in the State of Utah.

a. The purpose of the Preliminary Plan is to demonstrate that the plans proposed for development will meet the standards required under the Midway City Land Use Title and other applicable laws, regulations, conditions and recommendations specified in the approval of the Master Plan.

b. While the Preliminary Plan is not expected to contain construction drawings, it is expected that the level of technical detail in this plan will demonstrate compliance with this Chapter.

c. Upon receipt and review of the Preliminary Plan documents, the Planning Commission shall recommend the application as submitted, recommend it be accepted with conditions or refer it back to the developer for one or more of the reasons set forth in this Chapter.

i. If the Preliminary Plan is recommended, or recommend with conditions, the project will be referred to the City Council for a public hearing and City Council action on the proposed Preliminary Plan.

ii. If the plan is referred back to the developer he/she must meet with Planning Department Staff, correct plan deficiencies, resubmit the Preliminary Plan and documents and schedule another appearance before the Planning Commission.

d. Time Limit on Preliminary Plan Approval. Any failure to submit a proposed final plan and final approval submittal package for Planning Commission consideration within one year of the approval of the Preliminary Plan by the City Council shall terminate all proceedings and render the Preliminary Plan approval null and void.

D. Final Development Plan Review and Approval. After approval of a Recreational Resort Preliminary Plan a Final Plan Application must be presented for review and approval prior to the issuance of building permits and the start of construction.

1. The Final Plan shall be demonstrably consistent with the Recreational Resort Master Plan, or an approved amendment thereof.

2. The Final Plan shall present a detailed written and graphic representation of the proposed development and shall, at a minimum, contain the following elements:

a. Detailed architectural and engineering plans, specifications and plat maps,

b. Evidence that demonstrates that all conditions and restrictions specified at Preliminary Plan Approval have been met, and

c. Evidence that all the necessary construction drawings and specifications are complete and in compliance with this Chapter.

3. The Final Plan shall provide all legal documentation specified by this Chapter and be accompanied by a Final Development Agreement.

#### **Section 16.15.4      Resort Master Plan**

A Recreational Resort Master Plan application shall include all lands in a City proposed resort area, as listed in this Chapter, Applicability. The minimum requirements for a Master Plan application shall be established by the Planning Department and Planning Commission and shall include, but not be limited to, the submittal components listed below:

A. A completed application form.

B. A Statement of Purpose. The statement of purpose shall provide the project name, the applicant's rationale for establishing the resort, the development's objective and design theme, and how it will promote Midway City's Vision and comply with its General Plan.

C. A demonstration that the developer understands the City's Land Use Title and commits to meet its requirements. A Recreational Resort Master Plan shall comply with the standards of Midway City Land Use Title. Notwithstanding, the applicant for a Recreational Resort Master Plan may propose, and the City Council may approve, alternative standards for a development that is consistent with the unique circumstances of, and community objectives for, resort development.

D. A Site Plans. Three site plans shall be provided that clearly illustrate:

1. The proposed development's location within Midway City (a vicinity map) showing major roads and streets and the layout of adjacent development within one mile of the outside boundary of the proposed resort;
2. The unique natural features of the proposed Recreational Resort location, indicating topography, sensitive lands, roads and other notable existing conditions within a quarter (1/4) mile of the outside boundary of the development; and
3. The unique natural features of the proposed development property indicating topography, sensitive lands, roads and other existing conditions within the Recreational Resort Area and the size and conceptual layout of the major buildings and amenities of the development. Provide enough detail to demonstrate that size and conceptual layout of the buildings and amenities are compatible with natural features of the site.

E. A Citizen Participation Plan. Citizen participation is an essential element in the formulation of any large development Master Plan. This is particularly true for recreational resort planning.

1. Therefore a Citizen Participation Plan shall be prepared to:

- a. Insure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community;
- b. Insure that the citizens and property owners within Midway City have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process; and

- c. Facilitate ongoing communication between the applicant, interested citizens and property owners, City staff, and elected officials throughout the application review process.
2. To achieve these ends the developers proposing recreational resorts shall comply with all requirements set forth in the Citizen Participation Chapter of this Title.
3. A report of the results of Citizen Participation Plan activities shall be prepared and presented to the Planning Commission and the City Council as a part of the Master Plan Application review. This report shall include at least the following information:
  - a. Dates and locations of all meetings where citizens were invited to discuss the applicant's proposal, including the number of citizens who attended;
  - b. Geographical area in which residents, property owners, and interested parties receiving notices, newsletters, or other written materials are located;
  - c. Copies of any response letters received by the applicant or City staff; and
  - d. A summary of concerns, issues and problems expressed during the process, including:
    - i. The substance of any concerns, issues, and problems raised by the citizen participants;
    - ii. How the applicant has addressed or intends to address concerns, issues and problems expressed during the process; and
    - iii. Concerns, issues and problems the applicant is unwilling or unable to address and why.

F. A Land Use Plan. The Recreational Resort Master Plan shall define the land use elements that are proposed for the development. The land uses shall be consistent with both the applicant's design theme, the character objectives of the resort and Midway City's land use ordinances.

Permitted uses shall include:

1. Residential uses.
2. Uses necessary for operation of the resort's primary recreational activities (hot springs, swimming, golf, fishing, hiking, equestrian, etcetera.)
3. Nonresidential uses that provide for the basic needs of resort lodging guests and day visitors.
4. Special events such as music and dance festivals, art and craft shows, concerts, live theater, and similar events which are compatible with the resort character and its facilities. Permits for special events where attendance may exceed the established facility capacity shall be obtained from the City Planning Department and a mass gathering permit from Wasatch County if required.
5. Other specific uses related to the resort's objectives and character as approved by the City Council.

G. Design Guidelines. The purpose of Midway City's design guidelines is to encourage visual compatibility, in both scale and character, among structures and other design elements in the resort with the surrounding built environment and the natural environment without unduly limiting variety in design.

1. General. The Recreational Resort Master Plan shall lay out the applicant's response to each of the design guidelines listed herein and propose a mechanism for their implementation to establish design parameters for both buildings and exterior spaces in the recreational resort area.
  - a. The applicant's response to design guidelines and their implementation in setting resort design parameters shall be prepared by architects and landscape architects licensed to practice in the State of Utah.

b. The appropriateness of these design parameters shall be judged on whether or not they are consistent with the development's objective and design theme, promote Midway City's Vision Statement and comply with its General Plan and Land Use Ordinances.

2. Definition of the Resort Theme.

a. The theme of a Recreational Resort shall be consistent with the recreational activities associated with the resort and create a sense of place. A sense of place is created when site planning and architecture:

i. Concentrate activities and human interaction into identifiable spaces, such as a plaza or mall;

ii. Assemble a built environment that connects buildings, spaces and structures through common scale, design, and materials;

iii. Incorporate into the built environment the natural features and cultural heritage of the area; and

iv. Produce an identifiable image that is associated with the Recreational Resort and with Midway.

b. The design theme and associated design concepts proposed by the applicant shall be submitted to the Midway City Vision Architectural Committee (VAC) for review. The VAC shall forward their comments and recommendations to the Planning Commission and City Council for their consideration.

3. Building design guidelines shall reflect:

a. The community's architectural character choices emphasizing Swiss/European Alpine themes (or other themes as approved by the City Council after a recommendation from the VAC and Planning Commission).

b. A built environment that emphasizes a human scale, pedestrian-orientated environment;

c. A built environment that is harmonious with the cultural and aesthetic values of Midway;

d. The natural physical attributes of the immediate vicinity;

e. The use of building materials and colors that are compatible with the surrounding natural and built environment, and

f. The bulk and scale of individual buildings within the Recreational Resort area shall be compatible with, other structures within the resort when the resort is completed, with neighboring structures that are not a part of the resort and with the natural environment.

4. Landscape Design Guidelines shall highlight the natural resources within the resort and integrate them into the layout of the site in order to promote a connection to the natural environment.

a. Natural features of the site, such as significant vegetation, geologic features, rock outcroppings, water bodies, wildlife habitat, and animal use pattern, shall be preserved and incorporated into the project design to the extent practicable.

b. Project landscaping, including hardscape areas, shall be consistent with the overall design theme of the resort. Use of indigenous plant materials is encouraged. Existing vegetation shall be preserved and incorporated into the design of the project to the extent practical, especially wooded areas and other significant vegetation which provides shelter, feed or habitat for wildlife.

5. Transportation Plan. The Resort Master Plan transportation element shall include a traffic impact analysis and a transportation demand management plan. The plan will determine the impact of increased vehicular traffic due to the resort and mitigates the impact of increased vehicular traffic due to the resort. Further, the plan will assess the compatibility of the resort plan with the Midway City Master Transportation Plan and demonstrate that traffic within the resort confines moves efficiently and safely.

- a. Traffic Impact Analysis. At a minimum, this analysis shall contain:
  - i. Projections of external vehicle trips generated by the Recreational Resort.
  - ii. Analysis of levels of service impacts on roadway system segments and intersections serving the Recreational Resort and surrounding neighborhoods, and
  - iii. Specification of improvements needed to any public roadway system segments and intersections that are needed as a result of increased traffic to and from the Recreational Resort.
- b. Transportation Demand Management Plan: At a minimum the Transportation Demand Management Plan shall:
  - i. Manage the generation of resort related traffic to avoid undermining community character or endangering the public health, safety, and welfare. It shall encourage an optimum mix of automobile and pathway facilities within the resort;
  - ii. Promote multiple forms of transportation that are consistent with the transportation goals of the Midway City General Plan by providing safe, convenient, and direct access to transportation services and facilities (i.e., public transportation, paths and trails);
  - iii. Layout resort streets, alleyways, and parking lots in a pattern that is sensitive to the natural terrain and landscape by minimizing cut and fill areas and preserves, to the maximum extent possible, all the natural features of the site such as wooded areas, rock outcroppings, and water bodies, streams, meadows and pastures. (Note that this admonition applies to all the property, not simply the portion of the property that is protected under the Midway Sensitive Land Ordinance requirements);
  - iv. Manage the transportation demands of the Resort so that it is consistent with the allocation of vehicle trips to the various roadway segments that serve the Resort; and
  - v. Identify an equitable resort area cost sharing plan for transportation facilities and services.
- c. Service Vehicle Transportation Management Plan. This plan shall provide vehicular access appropriate for:
  - i. Emergency services, paying particular attention to fire and EMS access;
  - ii. Recycling and refuse removal;
  - iii. Goods and services delivery; and
  - iv. Construction equipment during all phases of construction.
- 6. Parking and Loading Plan. The Recreational Resort Master Plan shall conform to the general requirements of the parking sections of the Midway City Land Use Title. Further the plan shall meet provisions for sufficient parking and loading areas of appropriate type specified in the Dimensional Limitation Plan of this Chapter.
  - a. Parking areas must accommodate the Resort's projected demand for:
    - i. Lodging guests;
    - ii. Visitors, conference and special events attendees;
    - iii. Amenities patrons if available to non-lodging guest;
    - iv. Staff and employees; and
    - v. Delivery and service vehicle loading.
  - b. Service vehicle access shall not create unsafe conflicts with automobile and pedestrian access to primary destinations within the Resort. Loading areas must accommodate delivery vehicles and waiting and loading areas for transit vehicles and their passengers.
  - c. Delivery locations and time of arrival shall be arranged to not create a nuisance for guests and neighbors.
  - d. Parking shall be designed to encourage non-motorized transportation, transit and high occupancy vehicle use and discourage single-occupancy vehicle use.

7. Trails and Pedestrian Facilities Plan. Trails and pedestrian facilities, including access for the disabled, shall be integral components of the site design. The plan shall provide:
  - a. Trails and pedestrian systems that shall provide safe, convenient, and direct access throughout the resort and to public lands, to transit facilities and to existing or future adjoining community pathway system, when they are adjacent to the resort.
  - b. Trails shall be provided for non-motorized transportation, except that motorized wheelchairs for the disabled shall be permitted. Bicycle racks and trail side seating, etc., shall be provided at various destination points within the resort.
8. Water Use Plan. As water is so often a limiting factor for large scale developments in Midway City and surrounding areas a water use plan is a necessary element of a Resort Master Plan. The Water Use Plan shall demonstrate compliance with Midway City's Water Use Title.
9. Other Utility Service Plans:
  - a. The plan shall provide identification and acknowledgment of service providers. The applicant shall identify the provider of all infrastructure services and any associated facilities required to support the plan.
  - b. Where services are to be provided by an entity other than the applicant an impact analysis shall be performed if requested by the Planning Director. At a minimum a document shall be obtained from each service provider demonstrating their commitment and ability to provide the required service to the Recreational Resort defined by the Master Plan. 'Will serve' letters shall be required from:
    - i. Midway Sanitation District;
    - ii. Solid waste disposal;
    - iii. Electrical service;
    - iv. Natural gas service;
    - v. Telephone, internet and other electronic services; and
    - vi. Any other utility service entity involved in the project.
10. A Phasing Plan. The Recreational Resort Master Plan shall have a phasing plan to ensure that development within a resort, including amenities and necessary public service expansions, occurs in logical sequence.
  - a. The phasing plan shall identify the sequence in which resort structures, recreational facilities, amenities and the installation of infrastructure is to be implemented.
  - b. This phasing plan shall also specify the sequence in which the elements of the Transportation Demand Management Plan are to be implemented and the Recreational Resort Master Plan conditions of approval that are to be met.
  - c. All structures, land use activities, mitigation strategies and infrastructure expansions proposed, including any such activities and improvements on public lands, shall be included in the phasing plan.
  - d. Each phase shall be self-sufficient, in conjunction with existing elements of the Recreational Resort, i.e., transportation and parking needs, as well as amenities, for each phase shall be satisfied within each phase and shall not be dependent upon a future phase.
  - e. Each phase shall represent a logical and compact extension of infrastructure and public services. In order to develop certain improvements in logical increments that provide for economies of scale, the phasing plan may propose that improvements required for an earlier phase be provided in a later phase only if:
    - i. The delayed construction of the improvement does not create a negative impact or exacerbate an existing problematic condition; and

ii. Financial assurance, in a form acceptable to the City Council such as a bond, that the improvement required for the earlier phase will be developed within a certain time-frame, even if later phases remain undeveloped.

f. Each phase shall be coordinated with scheduled capital improvements provided by public or semipublic service entities.

g. After the initial approval of the Master Plan, order and timing of the phasing may be varied only after approval of the City Council.

11. Housing Plan. The Recreational Resort Master Plan shall have a housing element that is to ensure a supply of affordable and employee housing that is commensurate to the demand for housing created by development within the Recreational Resort.

a. Affordable housing. Affordable housing shall be provided in conjunction with residential development pursuant to Residential Affordable Housing Standards of this Land Use Title.

b. Employee housing. Employee housing shall be provided in conjunction with nonresidential development pursuant to appropriate governmental regulations and laws for Employee Housing Standards, and consistent with other Midway City Land Use Ordinances and Standards.

i. Employee housing calculations. Development of a Recreational Resort may span time periods over which numbers of employees and their salaries may fluctuate. The plan shall be prepared using calculations performed to develop a rational number of employee housing units by considering the needs of the resort and housing suitable for employees throughout Heber Valley. This analysis shall be based on data current for the most recent full year prior to application shall serve as the employee housing mitigation plan for Recreational Resort Master Plan.

ii. The Master Plan employee housing mitigation plan shall also contain a proposed financing and construction plan coordinated with the Phasing Plan required earlier in this Section.

iii. Each Master Plan employee housing mitigation plan shall be coordinated with the Affordable Housing Plan and approved by the City for inclusion in the Master Plan only after receiving approval from the Wasatch County Affordable Housing Board and after a recommendation from the Planning Commission.

iv. Master Plan employee estimate. The number of employees required to be housed and the locations where they will be housed, as presented in the Recreational Resort Master Plan, shall be treated as an estimate. The exact number shall be finalized by the City after receiving a recommendation from the Planning Director as part of the development plans within each phase of the Recreational Resort as the Master Plan is implemented. Each approved Final Development Plan shall establish the actual number of employees required to be housed onsite and offsite and the specific locations where they will be housed for that portion of the Recreational Resort Master Plan.

H. A Dimensional Limitation Plan. The Dimensional Limitation Plan shall specify, at a conceptual level, the dimensional limitations necessary to comply with Midway City's standards and regulations and achieve the design theme identified by the applicant. The plan shall address:

1. Building density, bulk and scale relative to its built environment and surrounding natural features. At a minimum;

a. Building footprint per acre shall not exceed 12,000 square feet. The determination of building coverage shall include all structures in the resort.

b. All recreational resorts shall have at least 55 percent open space. Open space is defined as a portion of a development site that is permanently set aside for public and/or private use and that will not be sold to individual owners.

- i. Improvements such as club houses, shelters, covered swimming pools, and gazebos may be included within the open space along with recreational facilities such as football fields, baseball diamonds, basketball courts and playgrounds.
  - iii. Land proposed to be devoted to parking, vehicular streets or roads, and drives shall not be included in the enumeration of open space. Nor shall land proposed for any type of residential use.
  - iv. An open space area shall have a minimum dimension of at least 100 feet. However entry features such as roundabouts, median planter strips, fountains, etc. may count as open space if the design of such features is recommended by the Planning Commission and approved by the City Council. At least half of the land considered open space should be contiguous and as nearly rectangular as is practical.
  - v. Resort common area may be enumerated as open space if it meets all of the above requirements.
  - vi. A portion of a resort area permanently deeded to the City for public use as a park may be enumerated as part of the resort's open space if this action is recommended by the Planning Commission and approved by the City Council.
2. Building height and envelope restrictions. This plan shall present the proposed length, width and height from the existing natural grade of all resort buildings.
- a. The standard maximum building height for buildings in Midway is 35 feet. The City Council may, at their discretion, allow greater height in resort developments. If any buildings in a resort are proposed to have heights greater than 35 feet the applicant shall provide the City Council the following documentation to justify the increased height:
    - i. A statement of all reasons the structure can not be built without heights exceeding 35 feet.
    - ii. A clear illustration of the impact of building heights over 35 feet on views from public roads and adjacent developed property. This documentation may take the form of a physical model or electronic graphic representations of the site, the buildings and the visual background of mountain and valley views. The model or electronic representation shall specifically compare the proposed site and building configuration with an alternative building configuration that provides the same usable space and meets the thirty-five foot height and other configuration requirements of this Chapter.
  - b. If any building in the resort is proposed to have vertical envelope surfaces with one orientation of more than 70 feet in length, the applicant shall propose architectural features, such as relief or changes in texture or color that can be employed to moderate the appearance of single large planar surfaces.
  - c. The applicant shall illustrate the building envelope styles, surface textures and colors that will be proposed to assure that the resort buildings will be compatible with the natural features of the site and neighboring developments.
4. Building Setbacks. Resort building and parking areas shall be setback from resort boundaries as follows:
- a. Buildings and parking areas in resort developments shall be setback at least 100 feet from all external public roads.
  - b. Building setbacks from internal streets shall be a minimum of 30 feet unless otherwise permitted by the Planning Commission.
  - c. Resort buildings shall be setback at least 100 feet from other resort development perimeter boundaries except;
    - i. Other setbacks have been negotiated with adjacent landowners prior to development, or

ii. The applicant can demonstrate, by means of a physical model or electronic graphic representations of the site and proposed building locations, that resort buildings will not obscure neighbor views of the background of mountain and valley more than a normal residential structures at a standard setback of 30 feet.

5. Interior space standards. The minimum room size for overnight accommodations in a resort building shall be 300 square feet. All other requirements and standards for spaces such as conference rooms, restaurants, retail space, offices and pools in this Title shall be satisfied.

6. Parking and loading standards. No parking will be allowed on public roads. All requirements and standards for parking and loading in this Title shall be satisfied including, but not limited to:

a. Guest lodging:

i. Homes and condominiums; two spaces per unit.

ii. Hotel room; one space per key.

b. Restaurant; four parking spaces per 1,000 square feet of dining space.

c. Retail / Commercial; four parking spaces per 1000 square feet of retail or commercial space.

d. Conference Center; one space per two occupants based on design occupancy.

e. Swimming pool; one space per two occupants based on design patron occupancy.

f. Employees; one space per employee on site during daylight hours.

g. Uses not mentioned; The required parking for uses not mentioned and for loading shall be determined by the Planning Director.

h. If uses a. through e. are in close proximity, share a common parking area, and the applicant can show, using parking analysis based on nationally recognized standards, that above requirements are excessive, the City Council may choose to reduce the amount of parking in favor of an increase landscaped common area.

7. Other lines delineating areas on which restrictions on development are to be imposed by requirements of Midway City ordinances including sensitive lands, wildlife corridors, open space and trails.

8. Any dimensional limitations unspecified by the Recreational Resort Master Plan shall be established by the standards set forth in the Other Development Options Section of this Chapter.

I. Planning Commission Action. Upon completion of the Master Plan review, the Planning Commission shall recommend approval of the application as submitted, recommend approval with conditions or may refer the application back to the developer for one or more of the following reasons:

1. The site and building design, layout or structure are inconsistent with the intent of this Title or the City General Plan.

2. Project plans and/or supporting documents have not been brought to a satisfactory state of completion.

3. All applicable fees have not been paid by the developer.

J. City Council Action. Upon receiving planning staff and Planning Commission recommendation, reviewing the proposed Resort's Master Plan Application and conducting the required public hearing the City Council shall:

1. Approve the Master Plan Application,

2. Approve the Master Plan Application with conditions,

3. Refer the Master Plan Application back to the Planning Commission and/or planning staff for further consideration, or

#### 4. Deny the Application.

K. Development Agreement. The last step in the Master Plan application is to prepare a Development Agreement. This document provides a durable definition of the developer's entitlements, the developer's responsibilities and the City's responsibilities as the Recreational Resort proceeds to completion. The content and format of this agreement are described under the Development Agreement Section in this Chapter.

### **Section 16.15.5 Preliminary Approval**

Application for Preliminary Approval of a Recreational Resort, or a phase thereof, must begin with a careful review of the plans, development agreements and other documents resulting from the Master Plan approval. If any aspects of the resort development proposed for Preliminary Approval are significantly different than what was approved in the Master Plan it is required that such changes be annotated, explained and justified. Any substantial change in the plans approved in the Master Plan, or any requests for modifications of conditions set by either the Master Plan or the Development Agreement, will require further review by the Planning Department and may require additional hearings before the Planning Commission and the City Council.

The Preliminary Approval Application shall include, but not be limited to, the following elements:

A. Review of approved Master Plan documents. The developer shall prepare an annotated summary of all conditions and issues noted in the Master Plan or in the Development Agreement, highlighting those that must be resolved at the time of the Preliminary Application. This annotated summary shall be used as reference in measuring the applicant's progress toward meeting the goals set out in the Master Plan and agreed to in the Development Agreement throughout the Preliminary Application review process. This summary shall, at a minimum, address:

1. Conditions set, and recommendations made, by the following Midway City committees and boards:

- a. Midway Water Advisory Board,
- b. Midway Sanitation District Board,
- c. Trails Committee,
- d. Vision and Architecture Committee; and
- e. Historic Preservation Committee, if applicable.

2. Conditions set by planning and engineering staff relative to:

- a. Further technical studies;
- b. Environmental assessments; and
- c. Plans for roads, trails, utilities (including storm water and irrigation) and emergency access.

B. Submit the following Preliminary Approval Application elements:

1. A completed Application Form. The Application Form requires the following identifying information:

- a. Name of development.
- b. Type of development.

- c. Applicant entity name, primary contact name, civil engineer, architect, designer and attorney, all licensed to practice in the State of Utah, with respective contact addresses, phone numbers, fax numbers, and email addresses for each.
2. An updated Statement of Purpose. The statement presented in this application must conform to the approved purpose as stated in the Master Plan and Development Agreement.
3. A current Title Report. Along with the title report the applicant shall provide a statement that verifies that all property owners and any lien holders with interest in the property or improvements thereon, consent to the approval of this application.
4. An updated Citizen Participation Plan. The entitlement for the resort project for which this application is filed was established as part of Master Plan approval. Citizen Participation was a major focus of the Master Plan Approval process. Conditions contained in the Master Plan and the associated Development Agreement have been agreed to by the City and the applicant. It is not the purpose of the Preliminary Approval process to re-plan the project if its proposed phase by phase implementation is consistent with the approved Master Plan. Nonetheless a plan shall be proposed to inform the citizens of this community if, during the phased implementation of the project, any modifications of the Master Plan are brought to the Planning Commission and the City Council for their consideration or approval. If the developer or the City request any significant deviation from the approved Master Plan or Development Agreement, public hearings and more citizen participation may be required. Thus, an updated Citizen Participation Plan shall be provided with any proposed Preliminary Approval application that requests a substantive change in the Master Plan.
5. An updated phasing plan. The proposed Preliminary Application package shall include an updated phasing plan that has been reconciled with the approved Master Plan and the Development Agreement. If it can be demonstrated to the Planning Commission that the updated phasing plan satisfies the criteria enumerated in a. and b. below the Planning Commission may choose to recommend and the City Council may choose to approve the requested changes.
  - a. The Phasing Plan in the Preliminary Application is consistent with the phasing plan in the Master Plan and Development Agreement in all particulars; or
  - b. If there is variation from the initial phasing proposed, and it can be demonstrated that:
    - i. All development agreement conditions requiring action prior to the beginning of Phase 1 will be met;
    - ii. Any delay in scheduled construction of any land use activities, mitigation strategies or infrastructure expansions will not create a negative impact or exacerbate an existing problematic condition, and
    - iii. All buildings proposed in the current phase are independent of any buildings or systems proposed for later phases in terms of:
      - a) Culinary, irrigation or any other water uses,
      - b) Transportation infrastructure including roads, fire apparatus access roads, parking stalls or structures, trails and transit provisions, on and off site, necessary to serve this phase
      - c) The ability to provide all facilities necessary for the health and safety of resort guests and the public who utilize the proposed phase as well as earlier phases of the project,
  - c. It shall also be necessary that the criteria of (iii) above are met for any activities and improvements on public lands, on lands to be dedicated for public use, or on lands off site, owned by the applicant to be reserved as open space associated with the resort.

d. Finally, if the new phasing plan is to be accepted, the Planning Commission must be able to find that the notice requirements and review procedures used for the Preliminary Application have been consistent with those set forth in the Master Plan Section of this Chapter.

C. Submit required preliminary architectural and engineering plans. In addition to the review and updates noted above, Preliminary Approval will require more detailed architectural design plans be submitted. These submittals shall include, but not be limited to, the following sets of plans:

1. Updated Master Site Plan. The Updated Master Site Plan shall including the following components:

a. North point and a scale consistent with one on a standard engineering or architect scale ruler.

b. A topographical map (or maps), with contours at no greater interval then two feet, showing:

i. Zone boundaries and designations;

ii. The outside boundaries of the project;

iii. Boundaries of sensitive lands, with appropriate indication of geologic features, wetlands, wildlife corridors; and

iv. Delineated parks, open spaces, specified common areas and required building and road setbacks.

c. Document any proposed adjustments to the site Master Plan that lead to:

i. Change in building size, height, footprint, bulk or configuration;

ii. Change in project layout for amenities or circulation (roads, walkways and trails) and landscape features will require documentation and justification. This documentation and justification shall include but will not be limited to an analysis of the impact of any such changes on existing or proposed roads, water and sewer utilities, and the character of neighboring development within 1/4 mile of the outside boundary of the resort development. If such changes are substantial a public hearing before the City Council will also be required.

d. An updated infrastructure plan showing:

i. Circulation plan including private and public streets, sidewalks and trails;

ii. Existing and planned easements, waterways, utility lines, canals or ditches, are also required.

e. Analysis of the impact of any of the above changes on existing external roads or neighboring development character or amenity within 1/4 mile of the outside border of the development is also required.

2. Updated Land the Use Plan. A disaggregated, descriptive tabulation of land use is required for:

a. Residential uses;

i. Guest and individual owner lodging,

ii. Employee lodging, or

iii. Affordable housing;

b. Nonresidential uses that provide for the needs of resort lodging guests and day visitors;

i. Restaurants and other food service,

ii. Conference and business center services.

c. Retail.

d. Uses necessary for operation of the resort's primary recreational activities (hot springs, swimming, golf, fishing, hiking, equestrian trails, etcetera).

e. Any special events such as music and dance festivals, art and craft shows, concerts, live theater, and similar events which are compatible with the resort character and its facilities.

f. Other specific uses related to the resort's objectives and character as approved in the Master Plan or Development Agreement.

3. Submit an updated Dimensional Limitation Plan. Specific site building density and configuration limits were set at Master Plan Approval. Similarly individual building footprint, height and volume limits were set. Preliminary Approval will require that the building architectural and landscaping plans prepared for this application conform to limits set forth in the Master Plan and Development Agreement. This conformance shall be demonstrated by reconciling the following information from the current plans with that gathered in the Annotated Summary of this Section.

- a. Building density, footprint, mass, envelope and height descriptions. Dimensioned plans are required for building placement, footprint and elevations.
- b. Building floor plans indicating individual areas and floor area ratios.
- c. Definition of building setback, parking area, etcetera.
- d. Areas in square feet for any sensitive lands and other open space, dedicated roads and for separately defined lots or ancillary buildings.
- e. Other delineated areas on which restrictions of development are to be imposed by requirements of Midway City ordinances.
  - i. Specific delineation of sensitive lands and wildlife corridors.
  - ii. Specific delineation of open spaces, common areas, trails, and walkways
  - iii. Landscape ratios for sensitive lands, wildlife corridors, open space, common area and trails.

4. Submit an updated Design Elements Plan. The design theme of the Recreational Resort and its recreational activities and amenities were approved with the Master Plan. More detailed architectural plans are required in this submittal to demonstrate that the applicant has developed a sound implementation of the elements previously approved. The Vision Architecture Committee and the Planning Commission will review the implementation of the chosen theme. Their comments and recommendations will be made with the intention of providing necessary information without limiting creativity in design. The Planning Commission will then forward their recommendation to the City Council. The preliminary site and architectural plans shall demonstrate that:

- a. The Design Elements Plan has been prepared by architects and landscape architects licensed to practice in the State of Utah.
- b. The Building Design Guidelines adopted in the Master Plan are reflected in the detailed architectural plans, renderings and/or models presented for Preliminary Approval review demonstrate:
  - i. That the architectural character choices in these plans are consistent with those proposed in the Master Plan;
  - ii. That the built environment proposed emphasizes human scale, pedestrian-orientated space;
  - iii. That the built environment proposed is in harmony with the cultural and aesthetic values of Midway and the natural physical attributes of the immediate vicinity;
  - iv. That the use of building materials and colors is compatible with the surrounding natural and built environment;
  - v. That the bulk and scale of individual buildings within the Recreational Resort are compatible with other structures within the resort, in neighboring developments and throughout the community at large; and
  - vi. That the bulk and scale of the resort is compatible with local natural features and views of distant mountains.

- c. The Landscape Design Plans submitted with the Preliminary Application shall demonstrate that the natural resources within the resort have been appropriately preserved and integrated into the layout of the site so that:
  - i. The proposed design promotes a connection to the natural environment;
  - ii. Natural features of the site, such as significant vegetation, geologic features, rock outcroppings, water bodies and animal habitat and use pattern, are preserved and incorporated into the project design to the extent practicable;
  - iii. Project landscaping, including hardscape areas, is consistent with the overall design theme of the resort and utilizes indigenous plant materials wherever possible;
  - iv. The existing vegetation has been preserved and incorporated into the design of the project to the extent practical, especially wooded areas and other significant vegetation which provides shelter, feed or habitat for wildlife;
  - v. Further, the landscaping plans shall indicate areas of landscaping, proposed landscaping materials and layout of any required irrigation system; and
  - vi. Include a noxious weed control plan.
- d. An Environmental Assessment Review Statement updating plans to mitigate all technical issues related to sensitive land, including but not limited to:
  - i. A review of all new technical reports and/or analyses of any geotechnical, wetland, slope and wildlife issues undertaken in response to conditions set at the time of Master Plan approval;
  - ii. A report on progress towards resolving all conditions specified in the Development Agreement.

D. Submit Required Infrastructure Plans. Preliminary plans for the following resort infrastructure elements shall be submitted for review.

1. Water Use Plan. The water use plan approved as part of the Master Plan must be updated and again reviewed by the Midway Water Advisory Board. Following this review the Water Use Plan shall be forwarded with recommendations to the City Council for its consideration. This updated plan shall:
  - a. Demonstrate compliance with Midway City's Water Use Title; and
  - b. Report Midway Water Advisory Board recommendations;
    - i. Indicate the water rights required to complete the entire resort project;
    - ii. Indicate they have found that the applicant has a sufficient quantity of acceptable water rights to meet the established needs of the entire resort;
    - iii. Indicate that the applicant has agreed to protect all water rights required to complete the resort project from alienation from the resort land designated in the Master Plan and Development Agreement during development and construction; and
    - iv. Indicate that the applicant has agreed to convey to Midway City all water rights required to meet the needs of the phases covered by the current application after Final Approval is granted but before recordation.
  - c. Describe all existing and proposed water systems, identifying the size of all water lines and the location of any pressure regulating components and all fire hydrants.
2. A Sanitation System Plan. The Sanitation System Plan shall:
  - a. Indicate the routes and easements for all proposed systems; and
  - b. Specify all line types and sizes.
3. A Storm Drainage System Plan. The Storm Drainage System Plan shall:
  - a. Provide a summary of calculations for:

- i. Runoff from the site, indicating that which leaves via a City storm drain and that which leaves via natural drainage routes approved by the City; and
- ii. Line and easements sizes.
- b. Indicate the size, routes and easements of all proposed or existing system lines and components.
- 4. Other Utility Service Plans. All other infrastructure services shall be identified.
  - a. The applicant shall verify the providers of all additional infrastructure services and any associated facilities required to support each service plan presented in the Master Plan submission. Any change from the Master Plan submittal shall be noted and appropriate document and 'will serve' letters shall be provided.
  - b. An impact analysis shall be performed, if requested by the Planning Director, for all utility facilities and services.
  - c. All existing or planned easements, utility lines, waterways, canals and ditches shall be indicated and noted on the plat.
  - d. The applicant shall provide evidence that 11"x17" copies of preliminary plans have been sent to all potential utility providers and to the Midway Post Master, Wasatch County Solid Waste Disposal District, and The Heber Valley Fire Protection Special Service District.
- 5. Submit an updated Transportation Plan. The Recreational Resort Preliminary Application shall include:
  - a. An updated Traffic Impact Analysis. At a minimum, this analysis shall review:
    - i. Projections of external vehicle trips generated by the Recreational Resort;
    - ii. Projection of level of service impacts on roadway system segments and intersections serving the Recreational Resort and surrounding neighborhoods; and
    - iii. Specify the improvements needed to any public roadway system segments and intersections that are needed as a result of increased traffic to and from the Recreational Resort.
  - b. An updated resort Transportation Demand Management Plan and review of alternative transportation options. At a minimum, this plan shall:
    - i. Describe actions taken to manage the generation of resort related traffic to avoid undermining community character or endangering the public health, safety, and welfare. Indicate efforts to optimize mix of automobile and pathway facilities within the resort;
    - ii. Review plan to manage the transportation demands of the resort and update them if necessary to:
      - a) Determine if the allocation of vehicle trips to the various roadway segments that serve the Recreational Resort in the Master Plan is still appropriate. If not, adjust the allocation to reflect current plans and revise the impact analysis.
      - b) Summarize plans to promote multiple forms of transportation that are consistent with the transportation goals of the Midway City General Plan.
      - c) Review commitment to support a resort area Public Transportation Plan and participate in a cost sharing plan for transportation facilities and services connecting the resort to, Main Street Midway, other Midway resorts, regional recreational areas and resorts, regional urban centers (Salt Lake and Provo) and airports.
    - iii. Updated resort specific Transportation Element Plans. At a minimum, this updated plan shall:
      - a) Present detailed plans for resort streets, alleyways, and parking lots in each phase of the resort covered by the application.
      - b) Assure that the Transportation Elements Plan demonstrates a continued sensitivity to the natural terrain and landscape by minimizing cut and fill areas and preserves, to the maximum

extent possible, all the natural features of the site such as wooded areas, rock outcroppings, and water bodies, streams, meadows and pastures. Note that this admonition applies to all the property, not simply the portion of the property that is protected under the requirements of the Midway Sensitive Land Section of this Chapter.

iv. Updated Service Vehicle Transportation Management Plan: At a minimum, this updated plan shall verify that plans for vehicular access to the Resort in each phase covered by the application are appropriate for service vehicle access and shall not create unsafe conflicts with automobile and pedestrian access to primary destinations within the Resort.

c. An updated plan for all parking and loading areas within each phase of the resort covered by the application that:

i. Conforms to the requirements of the parking Sections of the Midway City Land Use Title.

ii. Verify that sufficient parking and loading areas proposed in the Master Plan will accommodate the updated resort phase application for:

a) Lodging guests and visitors;

b) Amenities patrons, if the amenities are available to non-lodging guest;

c) Staff and employees;

d) Delivery and service vehicle loading. Loading areas must accommodate delivery vehicles and waiting and loading areas for transit vehicles and their passengers. Delivery locations and time of arrival shall be arranged so as not to create a nuisance for guests and neighbors.

e) Parking shall be designed to encourage non-motorized transportation, transit and high occupancy vehicle use and discourage single-occupancy vehicle use within the resort area.

d. Updated trails and pedestrian facilities within each phase of the resort covered by this application. At a minimum this plan shall include:

i. A description of an updated trail and pedestrian system that shall provide safe, convenient, and direct access throughout the resort and to public lands, to transit facilities and to existing or future adjoining community pathway system, that may be adjacent to the resort;

ii. Trails that will provide for non-motorized transportation. However motorized wheelchairs for the disabled shall be permitted on all trails. Bicycle racks and trail side seating, etcetera, shall be provided at various destination points within the resort;

E. Community Support Requirements. Preliminary Approval requires that specific plans be formulated to meet any employee and affordable housing commitments resulting from phases submitted for approval.

1. Employee Housing. The Employee Housing Plan shall:

a. Define the extent of employee housing to be provided in conjunction with nonresidential development within the Resort. This definition shall be prepared in accordance with appropriate governmental regulations and laws for Employee Housing Standards and Midway City Code requirements and standards;

b. Estimate the number of employees required to be housed and identify the locations where they might be housed. This analysis shall use data current for the most recent full year prior to application for Preliminary Approval;

c. The Preliminary Approval application Employee Housing Plan shall also contain a proposal for financing and constructing any employee housing needed.

2. Affordable Housing

a. Affordable housing and employee housing are not necessarily equivalent. However, it is possible that employee housing is also affordable housing. If the employee housing meets the

criteria and follows the standards of affordable housing, the applicant may request the City to agree to an offset in the requirements for affordable housing proportional to the equivalent residential units of affordable housing required for approval for the project. Such request must clearly demonstrate how the employee housing will meet the objectives and goals of affordable housing which are required under applicable City standards.

b. Affordable housing shall be provided in conjunction with any residential development within the resort pursuant to the Affordable Housing Standards in this Title.

F. Definition of Open Space. Preliminary Approval requires:

1. Verification of all open space property and open space easements as defined by the Master Plan accompanied by a complete textual descriptions of this property.
2. An updated plat of all property designated as open space within the Resort identified as such in the Master Plan and as proposed in the Preliminary Approval application. Any differences shall be discussed and justified.
3. The location and description of all off site recreational and open space areas and facilities associated with the resort shall be provided.
4. A description of the disposition of title for all open space property and open space easement associated with the resort shall be provided.
5. All land designated as open space shall be left in its natural state or landscaped so as to preserve natural features to the maximum extent possible while complementing the theme and amenities of the resort.
6. All land designated as open space, except as allowed under a specific development agreement, shall be free from development in perpetuity.

G. Planning Commission Action. Upon completion of the Preliminary Plan review, the Planning Commission shall recommend approval of the application as submitted, recommend approval with conditions or may refer the application back to the developer for one or more of the following reasons:

1. The site and building design, layout or structure are inconsistent with the project Master Plan, the intent of this Title or the City General Plan.
2. Project plans and/or supporting documents have not been brought to a satisfactory state of completion.
3. All applicable fees have not been paid by the developer.

H. City Council Action. Upon receiving planning staff and Planning Commission recommendations, reviewing the proposed Resort's Preliminary Applications and conducting the required public hearing, the City Council shall:

1. Approve the Preliminary Application,
2. Approve the Preliminary Application with conditions,
3. Refer the Preliminary Application back to the Planning Commission and/or planning staff for further consideration, or
4. Deny the Application.

## **Section 16.15.6 Final Approval**

The Final Plan is a detailed written and graphic representation of a proposed development. The purpose of the Final Plan is to depict a proposed development in sufficient detail to clearly demonstrate that it is consistent with the Midway City General Plan and to determine if it is in compliance with the specific standards and criteria of these Land Use Codes. It is the intent of this Section that upon its approval by the Midway City Council the applicant may obtain Final Plat approval and applicable building permits for the phases addressed in the application. The Final Approval submittals shall provide, at a minimum, the following:

A. A final statement of project information, providing at a minimum:

1. A current and complete Final Application Form which identifies the developing entity, primary contact name, architect, landscape architect, lead design engineers (civil, structural, mechanical, electrical), and attorney, with contact addresses, phone numbers, fax numbers, email addresses and Utah license status for each.
2. A complete legal description of all resort property and supporting title report(s). The title report(s) must be current, having been verified within the last 30 days. Along with the title report the applicant shall provide a statement that verifies that all property owners and any lien holders with interest in the property or improvements thereon, consent to the approval of this application. A report that shows that all equity parties as shown on the updated title report for all land within the boundary of the Final Plat will sign the dedication documents that implement the project shall also be included.

B. Final architectural and engineering plans and specifications. Final Approval requires detailed architectural and engineering design plans be submitted. The submittals shall include, but not be limited to, the following sets of plans:

1. Final Site Plan. The Site Plan shall be updated to its final configuration. Any significant changes in the site plan from that approved with the Preliminary Application shall require documentation and justification. This documentation and justification shall include, but not be limited to, an analyses of the impact of any such changes on existing roads, water and sewer utilities, and the character of neighboring development within 1/4 mile of the outside boundary of the resort development. If such changes are substantial a public hearing before the City Council will also be required. Changes in any of the following shall be noted:
  - a. Circulation plan including private and public streets, sidewalks and trails,
  - b. Existing and new easements, waterways, utility lines, canals or ditches.
2. Updated Land Use Plan. A disaggregated, descriptive tabulation of the final land use for all
  - a. Residential uses;
  - b. Nonresidential uses that provide for the needs of resort lodging guests and day visitors;
  - c. Uses necessary for operation of the resort's primary recreational activities (hot springs, swimming, golf, fishing, hiking, equestrian trails, etcetera).
  - d. Any special events such as music and dance festivals, art and craft shows, concerts, live theater, and similar events which are compatible with the resort character and its facilities.
  - e. Other specific uses related to the resort's objectives and character as approved in the Master Plan or Development Agreement.
3. A complete final Dimensional Limitation Plan. This plan shall at a minimum provide final engineering drawings (plans and profiles) that address:

- a. All roads and other public and private improvements, final grading plan, and final drainage and run-off plan.
  - b. Final site building density and configuration, individual building footprint, height and volume descriptions that conform to the building limits set forth in the Master Plan and Development Agreement or as amended with the approval of City Council.
  - c. Plans that define final building setback, parking area, etcetera demonstrating compliance with all requirements and conditions imposed in the Master Plan and Development Agreement or as amended with the approval of City Council.
  - d. All landscaping and irrigation plans.
  - e. Specific delineation of open spaces, common areas, trails, walkways, sensitive land and wild life corridors.
  - f. Landscape ratios for sensitive land, wildlife corridors, open space, common area and trails.
  - g. All other lines delineating areas on which restrictions of development are to be imposed by requirements of Midway City ordinances.
4. A Final Design Elements Plan supported by detailed architectural plans and specifications. The design theme of the Resort and its recreational activities and amenities were approved with the Master Plan. A final version of this plan shall be prepared and submitted to the Vision and Architecture Committee for final review and comment. The VAC shall then forward this plan and their recommendations to the Planning Commission for their review.
- a. The Design Elements Plan shall have been prepared by architects and landscape architects licensed in the State of Utah.
  - b. This document shall demonstrate how the building design guidelines adopted in the Master Plan to define the architectural character of the development have been implemented in development of the final architectural plans submitted with this application. The Vision and Architecture Committee and the Planning Commission recommendations shall attest that this goal has been met. Further the architectural plans shall clearly illustrate:
    - i. Building height, elevation, length, and mass;
    - ii. The use of exterior architectural features such as material, color, texture and relief to establish a theme, add interest to the structure and blend with the natural environment;
    - iii. Floor plans that define the use of interior space and assure conformance with fire and other safety codes and meet all access requirements.
  - c. The Landscape Design Plans submitted with the Final Application shall demonstrate that the natural resources within the resort have been appropriately preserved and integrated into the layout of the site. Further the landscaping plans shall demonstrate that:
    - i. The existing vegetation has been preserved and incorporated into the design of the project to the extent practical, especially wooded areas and other significant vegetation which provides shelter, feed or habitat for wildlife;
    - ii. Plans for all landscaping have been completed, proposed landscaping materials have been identified and plans for any required irrigation system have been completed and are consistent with those approved with the Preliminary Plan;
    - iii. A noxious weed control plan has been initiated;
    - iv. An Environmental Assessment Review report shall be prepared and submitted. This report shall review all issues related to sensitive land and demonstrate that steps taken to appropriately mitigate all possible impact of site development. This report shall include a review of all new technical findings and/or analyses of geotechnical, wetland, slope and wildlife issues undertaken in response to conditions set at the time of Master Plan approval.

5. A final Engineering Infrastructure Plan and supporting specifications shall be presented for review by planning staff and the City engineer. This plan shall address each infrastructure requirement, presenting:
  - a. A complete Water Use Plan with supporting system plans and specifications. These documents:
    - i. Shall demonstrate compliance with Midway City's Water Use title;
    - ii. Shall verify that the water rights required to complete the entire Resort project, as determined by the Midway Water Advisory Board has been secured, and that the water rights necessary for the phase(s) covered this application will be submitted to the City after Final Approval and before recordation; and
    - iii. Shall provide detailed final water systems construction plans, identifying the size of all water lines and the location of any pressure regulating components and all fire hydrants for the current project phase.
  - b. A complete Sanitation Plan and supporting system plans and specifications. These documents shall:
    - i. Include complete sanitation system construction plans for the current project phase, and
    - ii. Demonstrate compliance with Midway Sanitation District requirements and standards.
  - c. A detailed storm drainage system construction plan and run off calculations for the current phase.
  - d. Verify that all 'will serve' letters have been submitted for other utility services required for the current phase, including:
    - i. Solid waste disposal;
    - ii. Electrical service;
    - iii. Natural gas service;
    - iv. Telephone, internet and other electronic service; and
    - v. Any other utility service entity involved in the project.
  - e. All existing or planned easements for these utility services including, utility lines, waterways, canals and ditches shall be indicated and noted on the Final Plat.
6. A detailed final Transportation Plan. This plan shall provide:
  - a. A final traffic impact analysis.
  - b. Final resort Transportation Demand Management Plan and review of alternative transportation options. This plan shall:
    - i. Summarize plans to promote multiple forms of transportation that are consistent with the transportation goals of the Midway City General Plan.
    - ii. Review commitment to support a resort area Public Transportation Plan and participate in a cost sharing plan for transportation facilities and services connecting the resort to; Main Street Midway and other Midway resorts, regional recreational areas and resorts, regional urban centers (Salt Lake and Provo) and airports.
  - c. Provide all final resort specific Transportation Element Plans. At a minimum, this final plan shall:
    - i. Present completed construction plans for resort streets, alleyways, and parking lots in each phase of the resort covered by the application;
    - ii. These construction plans shall demonstrate adequate sensitivity to the natural terrain and landscape by having minimized cut and fill areas and preserved, to the maximum extent possible, all the natural features of the site such as wooded areas, rock outcroppings, water bodies, streams, meadows and pastures. Note that this requirement applies to all the property, not simply

the portion of the property that is protected under the Midway Sensitive Land Ordinance requirements.

d. Provide a final Service Vehicle Transportation Management Plan: At a minimum, this plan shall verify that plans for vehicular access to the resort in each phase covered by the application are appropriate.

e. Verify that the Final Parking Plan is consistent with the Preliminary Parking Plan specifications and provides sufficient parking and loading areas to accommodate the updated resort phase projected demand for:

i. Lodging guests;

ii Visitors, conference and special events attendees;

iii. Amenities patrons if available to non-lodging guest; and

iv. Staff and employees.

f. Verify that loading areas accommodate delivery vehicles and waiting and loading areas for transit vehicles and their passengers. Delivery locations and time of arrival shall be arranged so as not to create a nuisance for guests and neighbors.

g. Assure that parking has been designed to encourage non-motorized transportation, transit and high occupancy vehicle use and discourage single-occupancy vehicle use within the resort area.

7. Updated Trails and Pedestrian Facilities Plans for each phase of the resort covered by this application. At a minimum this plan shall include:

a. Final plans for trails and pedestrian systems that shall provide safe, convenient, and direct access throughout the Resort to public lands, to transit facilities and to existing or future adjoining community pathway system that may be adjacent to the resort.

b. Final plans for trails that shall provide for non-motorized transportation. Note however motorized wheelchairs for the disabled shall be permitted on all trails. Bicycle racks and trail side seating, etcetera, shall be provided at various destination points within the resort.

C. Employee and Affordable Housing Plans. Preliminary Approval required that general plans to meet any employee and affordable housing commitments for each phase covered by the application be submitted for approval. Final approval now requires enumeration of employee and affordable housing needs and specific plans for meeting all these needs for phases covered by this application.

1. Employee Housing. The extent of employee housing to be provided in conjunction with nonresidential development within the resort shall be determined in accordance with appropriate governmental regulations and standards for employee housing. The determination procedure shall also be consistent with all other Midway City requirements and standards.

a. Each application for Final Approval shall establish the actual number of employee housing units to require for all phases covered by the application. This analysis shall use data current for the most recent full year prior to application for Final Approval.

b. The number of on site and off site housing units, and their actual location, shall also be defined. The employee housing plan may consider the availability of housing suitable for employees throughout Heber Valley. They may also consider housing made accessible through transport from other areas provided by the resort.

c. The Final Approval Application Employee Housing Plan shall also contain a proposal for financing and constructing the employee housing needed.

2. Affordable Housing. Affordable housing shall be provided in conjunction with any residential development within the resort pursuant to the Residential Affordable Housing

Standards title in this code. Affordable housing and employee housing are not necessarily equivalent. However, it is possible that employee housing may also qualify as affordable housing. If the proposed employee housing meets all the goals, criteria and standards set for affordable housing, the applicant may request the City to agree to an offset in the requirements for affordable housing for the project.

D. Designated Open Space. Final Approval requires:

1. A textual descriptions of all open space property and open space easements as defined by the Master Plan.
2. An updated plat of all property designated as open space within the resort identified as such in the Master Plan and as proposed in the Final Approval Application. Any differences shall be discussed and justified.
3. The location and description of all off site recreational and open space areas and facilities associated with the Resort shall be provided.
4. A description of the disposition of title for all open space property and open space easement associated with the resort shall be provided.
5. All land designated as open space shall be left in its natural state or landscaped so as to preserve natural features to the maximum extent possible while complementing the theme and amenities of the Resort.
6. All land designated as open space, except as allowed under a specific development agreement, shall be free from development in perpetuity.

E. Final Midway City Approval

1. Planning Commission. After receiving a complete proposed final plat and the Final Approval submittal package, the Planning Commission shall consider the development for Final Approval. If the Planning Commission finds that all of the requirements of this title and all the conditions of Preliminary Approval of the development imposed by the City have been met, the Planning Commission shall recommend Final Approval of the development to the City Council. If the Planning Commission finds that any requirements or conditions have not been met, the Planning Commission shall forward such information on to the City Council with a recommendation as to how the City Council should act with respect to Final Approval of the development.
2. City Council. After receiving the recommendation of the Planning Commission with respect to Final Approval, the City Council shall consider the development for Final Approval. The City Council shall determine whether the proposed final plat and final submittal package meet all requirements of this title and the conditions of the development's Preliminary Approval by the City. The City Council shall consider the information and recommendation forwarded to it by the Planning Commission.
  - a. Based on the Planning Commission's recommendation and the City Council's own review and deliberation the Council shall approve, approve the conditions, or deny Final Approval of the development.
  - b. If the City Council denies Final Approval, the City Council shall state in detail the basis for its denial, referring specifically to the requirements or this title and the conditions of preliminary approval. For a one-year period after such denial of Final Approval by the City Council, the applicant may re-apply to the Planning Commission and then to the City Council if the City Council's reasons for denial have been resolved.

#### F. Duration of Final Development Agreement

The duration of Final Approval shall be for one year from the date of approval of the development by the City Council. If the Final Plat is not recorded with the County Recorder within the one-year period of time, the development's approval shall be voided, and both Preliminary and Final Approvals must be re-obtained to reinstate the project, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that:

1. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;
2. The property must be maintained in a clean, dust-free, and weed-free condition at all times;
3. Each extension will be for a one-year period only, after which time an annual review must be requested by the applicant and presented before the City Council; and/or
4. No more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Sub-section Amended, eff. 12/14/2011)

### **Section 16.15.7            Development Agreements**

A. Development Agreement sets forth the obligations of both the development applicant and Midway City. It is a contract between the City and an applicant for a development project which complies with the local land use requirements in force at the time the development agreement is approved. It is intended to provide assurance to the applicant that an approved project may proceed regardless of changes to City policies, rules, and regulations after project approval. In return, the City may be assured that the approved project will contain all the elements and components proposed and approved in the best interest and welfare of the City. Development Agreements shall be required for the entire resort area at the conclusion of the Master Plan Approval and for each phase of the development as it receives Final Approval.

B. The developer's obligation. The City and the developer shall acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth in this agreement is material consideration for developer's agreement to perform and abide by the covenants and obligations of developer set forth herein. The Development Agreement(s) shall document all of the terms and conditions of development imposed by City Council as set forth as a consequence of Master Plan, Preliminary and Final reviews and approvals. These terms and conditions shall include, but not be limited to, the following:

1. The payment of all fees.
2. A current Phasing Plan. This Phasing Plan shall demonstrate that:
  - a. All Development Agreement conditions requiring action prior to the beginning of Phase 1 construction have been met.
  - b. Any delay in construction of scheduled land use activities, mitigation strategies or infrastructure expansions will not create a negative impact or exacerbate an existing problematic condition.

c. All buildings proposed in a current phase are independent of any buildings or systems proposed for later phases in terms of culinary, irrigation or any other water uses; transportation infrastructure including roads, fire apparatus access roads, parking stalls or structures, trails and transit provisions, on and off site, necessary to serve the current phase; the ability to provide all facilities necessary for the health and safety of resort guests and the public who utilize the proposed phase and earlier phases of the project.

d. It shall also be necessary that the criteria of (b) above are met for any activities and improvements on public lands, on lands to be dedicated for public use, or on lands off site, owned by the applicant to be reserved as open space associated with the resort.

### 3. Designation of Open Space.

a. A complete textual descriptions of all open space property and open space easements as defined by the Master Plan shall be provided.

b. A current plat of all property designated as open space within the resort identified as such in the Master Plan and as proposed in the Preliminary Approval application shall be provided. If there are any differences between the updated plat and those previously approved they shall be discussed and justified.

c. The location and description of all off site recreational and open space areas and facilities associated with the resort shall be provided.

d. A description of the disposition of title for all open space property and open space easement associated with the resort shall be provided.

e. All land designated as open space shall be left in its natural state or landscaped so as to preserve natural features to the maximum extent possible while complementing the theme and amenities of the resort.

f. All land designated as open space, except as allowed under a specific development agreement, shall be free from development in perpetuity.

4. In the event the resort, or any portion thereof, will subdivide property for individual ownership, a Subdivision Plat or, in the case of condominiums, a Record of Survey Map shall be prepared for recordation.

a. For subdivided property the Final Plat presented for approval shall be consistent with that approved as part of the Preliminary Application in terms of:

i. Unit size and location;

ii. Traffic pattern and parking;

iii. Property ownership; private areas and common areas.

b. For a development with individually owned condominiums, the Condominium Record of Survey Maps shall be prepared and they too shall address the same three items plus demonstrate compliance with all the requirements of the State Condominium Ownership Act.

c. All individually owned property within a resort shall be part of a homeowners association (HOA). All legal documents and supporting material, such as Declaration of Covenants, Conditions and Restrictions shall be prepared and recorded at the Wasatch County Recorder's Office along with the Final Plat and/or Record of Survey Map prior to application for building permits.

d. The following standards shall apply to HOA Declaration of Covenants, Conditions, and Restrictions associated with Resort properties:

i. The Declaration shall provide for the creation and perpetual provision of an architectural committee, the number of members and composition of which shall be clearly stipulated. The

Declaration shall also establish design guidelines governing the appearance of the site buildings, signs, lighting, landscaping, street furniture, fencing, and mechanical equipment;

ii. The Declaration shall stipulate the method and procedure by which the Declaration may be amended;

iii. The Declaration shall specify the final conditions of approval of the Planning Commission and City Council.

iv. The Declaration may also contain use restrictions which are more restrictive than the City's zoning provisions, but in no case shall they be more permissive;

v. The Declaration shall set up the provisions for maintenance of all common area, including open space, private streets and utilities;

vi. The Declaration shall state the following: Midway City shall have the right, but not the duty, to require, and if necessary, perform at the Association's expense, landscaping, maintenance, and snow removal within the common area and open space if the Association fails adequately to perform such duty. In the event Midway City exercises this right, the City shall be entitled to recover any associated costs and attorney fees from the Association. This Section shall not be amended or deleted without the approval of Midway City; and

vii. The Declaration shall state that the Homeowners Association will comply with all relevant requirements of the Transient Rental Title of the Midway City Code pertaining to individually owned units within the resort development.

e. In addition the agreement between the developer and the City these documents shall state, among other things:

i. That in the event of failure or neglect on the part of the owners, successors, or assigns to maintain the water and sewage facilities, common area, landscaping or other improvements in good condition, the City may perform the necessary work and for that purpose may enter upon the land and do the work and charge the cost thereof, including reasonable attorney fees, to the owners or their successors or assigns;

ii. That the owners, successors, or assigns will reimburse the City for all costs which the City incurs in performing the necessary work;

iii. That the terms of the contract shall be binding upon the heirs, assigns, receivers, and successors of the project for the life of the project or building;

iv. That a phasing plan showing and construction schedule for streets, infrastructure, amenities and other improvements shall be provided as each phase is presented for Final Approval.

Phasing plans shall be structured such that each phase can stand alone in terms of all requirements set forth in this title, including, but not limited to open space, traffic safety and circulation, infrastructure requirements and so forth;

v. A maintenance schedule shall be prepared and agreed to for all undeveloped land within the approved master plan area; and

vi. Any other agreements between the developer and the City and any conditions of approval that the Planning Commission and/or City Council deems to be reasonably necessary to carry out the intent of this title.

f. The developer shall also provide a summary report of any Citizen Participation activities during the prior application reviews, resolutions of concerns raised or efforts to yet resolve any citizen concerns.

g. In addition to all other requirements, the proposed Final Plat shall show an address block containing addresses for each dwelling unit and for each main building within the plat, subject to approval by the Wasatch County Recorder's office.

h. The City planner and/or the City attorney may also ask the developer to address additional issues raised by the project.

C. The City's obligation. The parties shall acknowledge and agree that developer's agreement to perform and abide by the covenants and obligations of developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein:

1. The City shall not impose any further conditions to current approvals other than those detailed in this Agreement and on the project plat, unless agreed to in writing by both parties.
2. The City agrees to accept all project improvements constructed by developer, or developer's contractors, subcontractors, agents or employees, provided that:
  - a. The Midway City planning and engineering departments review and approve the plans for any project improvements prior to construction;
  - b. Developer permits Midway City planning and engineering representatives to inspect upon request any and all of said project improvements during the course of construction;
  - c. The project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications;
  - d. Developer has warranted the project improvements as required by the Midway City Planning and Engineering Departments; and
  - e. The project improvements pass a final inspection by the Midway City planning and engineering departments.
3. The City agrees that as of the effective date of the Final Development Agreement, the developer shall have the vested right to develop the property only in accordance with this agreement and applicable law.

D. Duration of Approvals and Development Agreements.

1. Master Plan. The duration of the Master Plan Approval and the Master Plan Development Agreement shall be determined by the City and the applicant as part of the Master Plan Development Agreement.
  - a. All matters relating to amendment, default, termination, review or renewal of the Master Plan or the Master Plan Development shall be governed by statements set forth in the Master Plan Development Agreement.
  - b. Once recorded with Wasatch County the terms of the Master Plan Development Agreement shall be binding upon the heirs, assigns, receivers, and successors of the project for the life of the project or resort unless amended or terminated by agreement of all parties.
  - c. The resort property delineated by the Master Plan shall be maintained in a clean, dust-free, and weed-free condition at all times until construction has been completed or the project has been terminated.
2. Preliminary Approval. A developer's failure to submit a proposed Final Plan and Final Approval Application to the City within one year of the approval of the Preliminary Plan by the City Council shall terminate all proceedings and render the Preliminary Approval null and void.
3. Final Approval and Final Development Agreement. The duration of Final Approval shall be for one year from the date of final approval of the development by the City Council.
  - a. Once recorded with Wasatch County, the terms of a phase Final Development Agreement shall be binding upon the heirs, assigns, receivers, and successors of the project for the life of the project or resort unless amended or terminated by agreement of all parties.

b. Should Final Development Agreement and a Final Plat not be recorded with the County Recorder in the one-year period of time, the development's Approval shall be voided, and both Preliminary and Final Approvals must be re-obtained, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that:

- i. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;
- ii. Each extension will be for a one-year period only, after which time an annual review must be requested by the applicant and presented before the City Council; and/or
- iii. No more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Sub-section Amended, eff. 12/14/2011)

### **Section 16.15.8            Completion and Recordation.**

A. Plat Recordation. No plat shall be recorded until all required water rights and/or water shares have been tendered to the City and assurances are provided to the City to ensure completion of all required improvements, including landscaping. No building permit application shall be submitted prior to the recording of the plat by the County Recorder.

B. Completion of Infrastructure Construction and Issuance of Permits. No building permits application shall be submitted until the infrastructure construction of the development is substantially complete; provided, however, that the developer in whose name the bond for the project is issued may submit a building permit application once the fire flow mechanisms are installed, operating and approved by the City engineer. Once installed, operating and approved, fire flows must remain operating continuously thereafter. No certificate of occupancy will be issued until infrastructure construction on the phase, or phases, under development reaches Final Approval.

C. Landscaping Bond. Before recording any Subdivision Plat or Condominium Record of Survey of Map, a bond equal to 110 percent of the cost for construction and completion of the landscape plan shall be posted. The Landscaping Bond can be posted as a designated part of the Construction Bond.

D. Construction Bond. Prior to plat recordation the developer shall submit a bond to the City in the amount of 110 percent of the cost of all improvements and inspections, as determined by the City Engineer.

E. Default. In the event the developer defaults, fails or neglects to satisfactorily install the required improvements within one year from plat recordation, the City Council may declare the bond forfeited and the City may install or cause the required improvements to be installed using the proceeds from the collection of the bond or other assurances to defray the expense thereof.

F. Final Disposition and Release. The developer shall be responsible for the quality of all materials and workmanship. At the completion of the work, or not less than ten days prior to the release date of the bond or other assurance, the City representatives shall make a preliminary inspection of the improvements and shall submit a letter to the City Council setting forth the conditions of such facilities. If conditions thereof are found to be satisfactory, the City Council shall release the bond or other assurance. If the condition of materials or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, the City Council may declare the developer in default.

G. Record Drawing Submittal and Contents. Prior to final bond release, an electronic copy of the final drawings in the latest version of AutoCAD or DXF or other acceptable format shall be submitted to the City engineer. This drawing file needs to include adequate information regarding position and basis of bearing tied to established control as approved by the City engineer.

As-built information shall be overlaid on this final drawing. The as-built drawing must be based upon actual field survey of the items on the following list:

1. Established survey monuments, benchmark, and permanent horizontal and vertical control.
2. Water: valves, fire hydrants, blow-offs, flush valves, and water meters.
3. Sewer: laterals and manholes with rim and elevations.
- 4 Storm drain: catch basins, curb inlets, and manholes with rim and elevations, size and type of pipe, storm outlets and detention / retention systems.
- 5 . Miscellaneous: light pole locations, street sign locations, and utility box/transformer locations.
6. Pressurized irrigation: valves, blow-offs, flush valves, drains and water lateral locations.

H. Total Compliance with all Regulations. In case of failure or neglect to comply with any and all conditions as established during the approval process or regulations as identified in this Title, the City may refuse additional building permits and stop construction of all work at the site until such violations or non-compliant conditions have been eliminated.

I. Warranty Bond. The City Council shall authorize the release of all but 10 percent of the Construction and Landscaping Bond amount upon verification by the City engineer that all work is complete and acceptable. The remaining ten percent of the Construction Bond amount shall be retained by the City for a period of two years in order to insure quality of improvements as a Warranty Bond. If improvements are found to be unacceptable to the City at any time during the two-year period, the City may use the bonding funds to replace or repair any improvements not installed acceptably.

(2016-09, Section Amended A&B, eff. 05/11/2016)

## **CHAPTER 16.16 PLANNED UNIT DEVELOPMENTS AND STANDARD SUBDIVISIONS**

<b>Section 16.16.1</b>	<b>Purpose and Intent</b>
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<b>Section 16.16.26</b>	<b>Landscaping Bond</b>
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<b>Section 16.16.30</b>	<b>Record Drawing Submittal and Contents</b>
<b>Section 16.16.31</b>	<b>Total Compliance with all Regulations</b>
<b>Section 16.16.32</b>	<b>Warranty Bond</b>

### **Section 16.16.1 Purpose and Intent**

The intent of this Chapter is to provide regulations that will further the objectives of the Community Master Plan relating to large scale residential developments Planned Unit Developments (PUD)s and Standard Subdivisions. It is the intent of the City to achieve a balance between open space and buildings, encourage harmony between new development and the surrounding area, promoting a longer life expectancy for buildings, and provide for superior

maintenance and appearance of structures and premises and an overall project atmosphere that concurs with goals for a more attractive City. A developer should demonstrate by the materials submitted for approval that the objectives and goals of the Midway Vision Statement and the General Plan have been fostered. It is further intended to create regulations that encourage the use of Swiss/Alpine architecture and native bedrock in the design of fences and permanent structures. Upon approval of a Planned Unit Development (hereinafter referred to as “PUD”) or standard subdivision, the approved site plan shall then constitute the zoning restrictions and regulations of the zoning district as applied to the territory shown on the plan.

(2012-04, Section Amended, eff. 4/11/12)

## **Section 16.16.2        Definitions**

A. Common Area. Property that is owned, regulated or maintained by the Homeowners Association but that is provided for the common use and enjoyment of the owners of the facility through an easement granted to association members which defines the member’s rights and responsibilities This includes complementary structures, roads and other improvements.

B. Condominium Plat. An instrument that is used to convey real property, known as units, in three dimensions to individuals who use undivided or common properties and other elements to maintain and use their property. Condominiums are defined in State law, nothing in this definition is meant to limit or change the effects of Utah State Law.

C. Home Owners Association. A lawfully incorporated organization which is created to serve the common interests, and hold the common property of, more than one property owner within a PUD or a Subdivision.

D. Master Plan. A plan approved by Midway City for a PUD or Standard Subdivision that maps the boundaries of the property, pads, units and the location of all common areas, common amenities, roadways, parking areas, landscape features, including irrigation systems, water, sewer, power and other public utilities prepared at the Concept Plan standards. The Master Plan is usually used when the project is built in phases that require more than one site plan and is built over time.

E. Pad. The building area of land in a PUD upon which a residential building may be built in accordance with the standards of this chapter wherein ownership is separate from the common areas. Pads are specified areas of property prepared and graded for the erection of structures and sold by deed. Pads will not have frontage on any public or private street. Often Pads are sold on subdivision maps as lots within common area.

F. Planned Unit Development. A residential project which consists of individually owned units which whose owners are part of a property owners association which holds title to certain common areas, provides services to their constituent property owners, enforces and administers certain covenants and restrictions common to the project. The PUD regulations are intended to create residential development which offers a better more aesthetic and efficient living environment than obtained through standard lot by lot development.

G. Standard Subdivisions. Any proposal to create four or more residential dwelling units and/or building lots from one or more existing lots of record. Once a standard subdivision has been approved by the City Council and recorded, no further subdivision of that plat will be approved by the City of Midway, except as may be required by allowed under Utah law.

H. Subdivision Lot. A parcel of property occupying a specific piece of real estate as defined on a subdivision plat and sold to individual owners who own the property within the boundaries of their lot. Subdivision lots are almost always burdened with public utility easements and often carry with them the responsibilities and privileges associated with a Home Owners Association and covenants governing the use of the lots.

I. Unit. A particularly described place in a PUD that represents property to be sold individually to separate owners as shown on a Plat. It is possible that there may be more than one unit sold on a particular building pad.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.3            Pre-Application Conference with Staff Member**

Any person wishing to construct a PUD or standard subdivision shall meet with a Planning staff member, check and review the zone information, obtain application and review procedures, obtain information from the City regarding the City's plan of land use, streets, water, sewer, traffic, trails and parks, and public facilities; and have discussion about public participation meetings and other requirements affecting the land to be developed. The developer shall then prepare plans and seek approval based on the written information received and the process outlined below in this Chapter.

### **Section 16.16.4            Concept Plan/Master Plan**

The purpose of the Concept Plan Review is to explore general feasibility early in the planning process. The Concept Plan helps avoid unnecessary and costly delays when information or necessary resources are not available because they were not addressed until later in the process. While the Concept Plan procedure is not an approval, it is still an important part of the overall approval process. While more flexible in nature than the subsequent steps of preliminary and final approvals, it still needs to be carefully prepared and thoroughly reviewed to be useful. As part of the Concept Plan, the developer shall submit:

- A. An application for development with the following elements:
1. The names, addresses and contact information of the applicant and owners of the property.
  2. Written description of how the development will comply with and promote Midway City's Vision and Land Use Ordinance (Title 16).
  3. A declaration about whether this application is for a PUD or a Standard Subdivision and the project name.

4. A site plan prepared to scale on a topographic base by a professional planning team which shows the concept of the major features of the project, including roads in relation to existing conditions and developments within one-fourth of a mile of the outside boundaries of the development. Handwritten plans will not be accepted. Twenty copies of the Concept Plan on 11"x 17" size paper shall be submitted to the Planning Department for review by the Planning Commission.
5. Applicant entity name, primary contact name, civil engineer, architect and attorney, with respective contact addresses, phone numbers, fax numbers, and email addresses for each.
6. Development plan showing lot, pad or unit location and size(s).
7. Number of lots, pads, or units and how they conform to the underlying zone.
8. The types of buildings in the project by use and by architectural style, accompanied by conceptual architectural renderings.
9. All proposed common areas and/or amenities.
10. Any proposed public dedications proposals.
11. Conceptual Landscape Plan.
12. Open space provisions including the following information:
  - a. Location.
  - b. Size.
  - c. Description of how the open space plan conforms to the standards for open space.
  - d. Proposal for the final disposition and management of open space property.
  - e. Any off-site open space trading provisions as allowed by this Code shall be approved by the City Council before applying for preliminary plan approval; however, any proposals for this purpose should be disclosed as much as possible now.
13. Any trails proposed within the project including an analysis that shows how this trail plan works in conjunction with the City Trails Master Plan.
14. A topographic map that is suitable for GIS and CAD analysis or other acceptable digital format.
15. Sensitive Lands.
  - a. Topographic information.
  - b. Identify potential sensitive land issues and a plan for how to address these issues.
  - c. Potential wildlife issues with the project and on the site.
16. A description of how public participation will be conducted consistent with the Citizen Participation requirements of the City, as outlined in Title 16.
17. A summary of the water needed for the proposed project showing how much is owned now compared to how much is estimated to be needed to complete the project.
18. Letter of submittal for the concept plans to the Heber Valley Fire Special Service District that transmits the plans to them.
19. Plans for Swiss/Alpine architecture, as applicable.
20. The Concept Plan may be used as a guide to request a Master Plan Development Agreement that will be used to guide the development of a PUD or subdivision in phases over more than one building season and which will require recording of more than one subdivision or condominium plat. Master Plan Development Agreements may be requested prior to Preliminary and Final Approval because they provide the basis for the portion of the Development Agreement that describes the zoning entitlements of the property. A Master Plan request shall have the following characteristics:

- a. Phases that implement Master Plans shall prepare applications for Preliminary and Final Approvals as otherwise required under this Chapter for PUDs and Standard Subdivisions for each phase prior to implementation. The Master Plan request must show each of the proposed different phases and their construction sequence relative to each other.
- b. In addition to the utility requirements for Concept Plans, the Master Plan application must be prepared in sufficient additional detail to receive preliminary approval from the Midway City Water Board and the Midway Sanitation District, provide for the scheduling of all necessary water rights, water mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.
- c. A Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases.
- d. Special information must also be prepared for Master Plan applications to demonstrate that all facilities necessary to implement all life safety codes in effect at the time of application will be constructed and be maintained at the time the first phase is requested of the City.
- e. Master Plan applications must be reviewed by the Planning Commission and approved by the City Council.
- f. No City Council approval may be considered until after a public hearing has been held to consider the recommendation of the Planning Commission with regard to the Master Plan.
- g. The Planning Commission and City Council may schedule such public hearings and extra meetings as they deem necessary to find the information necessary to make a recommendation to the City Council for a Master Plan.
- h. After approval by the City Council a Development Agreement must be prepared and executed by the applicant and the City, sufficient to describe the entitlement granted to implement the Master Plan. The Development Agreement must be signed by the applicant within 45 days of approval. If the Development Agreement is not signed within 45 days of Final Approval then all approvals are null and void.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.5      Preliminary Plan**

After review of the Concept Plan by the Planning Commission, the developer shall prepare a Preliminary Plan and shall submit 20 copies of the plan on 11" x 17" size paper to the Planning Department, to then be sent to the Planning Commission for its review and recommendation. The purpose of the Preliminary Plan is to demonstrate how the proposed development plan will be able to meet the standards required under the Land Use Title and other applicable laws or regulations after considering the issues and recommendations found during the Concept Review phase. While the Preliminary Plan is not expected to contain construction drawings, it is expected that the Preliminary Plan will demonstrate compliance with this Title. The Preliminary Plan shall contain the following information (If any of the following information has been satisfied by the information submitted during the Concept Plan Review, that same information must be included again with the Preliminary Plan Application.)

- A. Description of how the development will implement Midway City's Vision.
- B. Type of development.
- C. Name of development.
- D. Applicant entity name, primary contact name, civil engineer, architect, designer and attorney, with respective contact addresses, phone numbers, fax numbers, and email addresses for each.
- E. Legal description with section tie.
- F. Zone boundaries and designations.
- G. North point and a scale consistent with a scale that is on a standard engineering scale ruler.
- H. A statement that lists the issues discussed during the Concept Review and reconciles those issues with the Preliminary Application being submitted at this time. If this Preliminary Application is to implement part of a previously approved Master Plan, this application must:
  - 1. Disclose the approved Master Plan that is being implemented;
  - 2. Disclose all conditions that were attached to that Master Plan for subsequent implementation;
  - 3. Contain a reconciliation between the Development Agreement approved for the Master Plan and this application that shows how this application conforms to the previous approval.If the applicant wishes to amend the Master Plan approval, then the applicant may not submit a Preliminary Application alone, but must submit a Master Plan amendment request consistent with the requirements of this Chapter for a new Master Plan.
- I. A site plan showing location of all buildings, building pads, lots or structures, the elevation view of all structures including a description of building materials to be used in the construction of all units.
- J. Dimensions of side, rear and front yards, and the location of all building pads for residential and all other building sites.
- K. Location and description of all common areas, sensitive lands, recreational and open space areas and facilities. (Note: Any off-site open space trading provisions allowed by this Title shall have been taken to the City Council for approval before applying for Preliminary Plan recommendation to the City Council by the Planning Commission submitting an application for preliminary approval.)
- L. Topography shown by contours at no greater interval than 2 feet except that a greater interval may be permitted when the property is outside the survey boundary, if specifically authorized by the City Council.
- M. The outside boundary of the project.
- N. Tabulation of land use by acres or other applicable units:

1. Total area, open space, building area, and dedicated streets.
2. Drives and parking (all the above shown in acreage and percentage).
3. Number of units, pads or lots and project density.
4. Types of units by number of bedrooms, where applicable.
5. Parking spaces (covered and uncovered).
6. The identification of all sensitive lands and a preliminary proposal to protect such lands for damage due to development during and after construction.

O. Schedule and description for ownership of title for any open space property, open space easements, or conservation easements.

P. Adjacent property owners.

Q. Proposed circulation pattern including private and public streets and sidewalks.

R. A detailed statement and illustration of how the project will meet sensitive lands requirements.

S. Existing and proposed easements, waterways, utility lines, canals and ditches.

T. A plan for accommodating waterways, ditches and canals.

U. Proposed and existing sewage disposal facilities.

V. Existing and proposed storm drain system with the related run-off calculations for the development site including routing the runoff water that leaves the site to a City storm drain or natural drainage approved by the City to accept the water.

W. Existing and proposed water systems indicating size of water lines and fire hydrant locations. Indications as to the capacity of the water system as it relates to the project.

X. More detailed (than concept) landscape plan indicating areas of landscaping and irrigation and the various types of landscape materials, coordinated with a preliminary grading plan and all the sensitive lands.

Y. A preliminary noxious weed control plan showing which noxious weed species need to be controlled during construction, up to completion of the project and after construction with the County Weed Supervisor as evidenced by a dated acknowledgement on the plan.

Z. Letter of intent signed by the applicant stating the following information, when applicable:

1. Design theme of project.
2. Description of common areas and amenities.
3. Time schedule for completion of common areas and amenities.

AA. When the project contains 15 or more lots/units, traffic analysis survey results and proposed response must be discussed.

BB. Environmental Assessment Review, as outlined in this Title.

CC. Any other information Staff, the Planning Commission, or the City Council may determine necessary relating to the particular site of the proposed project as a result of the Concept Review.

DD. Evidence of sending an 11" x 17" copy of the Preliminary Plan to US West, Questar Gas, Heber Light & Power, Comcast (Cable Company), Midway Post Master, Heber Valley Fire Protection Special Service District, Wasatch County Solid Waste Disposal District.

EE. A title report as of the date of the Preliminary Application.

FF. A list of the documentation that will be required at Final Approval to implement the plans for the development and keep it maintained after approval.

GG. A written Citizen Participation Plan as described in this Title which documents the information supplied to the public, the issues addressed with the attendees at the first Citizen Participation Meeting and other written or verbally communicated comments received from the public as a result of the Citizen Participation Plan.

HH. Preliminary approval from the Midway City Water Advisory Board.

II. Preliminary approval from the Midway Sanitation District.

JJ. A completed Fiscal Analysis Checklist.

KK. Disposition of requests for Swiss/Alpine architecture bonus as applicable.

LL. Preliminary recommendation from the Trails Advisory Committee, the Historic Preservation Committee, and Vision Architectural Committee (VAC), where applicable.

MM. A geotechnical report as requested by City staff.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.6 Permitted Uses**

A. The principal land use permitted in PUDs and standard subdivisions is the residential living unit. Other uses may be permitted where it can be shown they are an accessory and incidental to the project. All uses permitted shall be reviewed and then recommended by the Planning Commission and approved by the City Council. They shall then be identified on the site plan and mentioned and approved as part of the application process. Uses not approved specifically by the City Council are prohibited.

B. Where the size, location and scope of a proposed development are such that a convenience center would add to the convenience of the people living in the development, the City Council

may authorize the construction of such a convenience center when the size of the project so justifies. The convenience center may only be constructed after the residential units have been completed. The acreage of the project used to determine density shall be decreased by the amount of property used for the convenience center and its associated parking.

## **Section 16.16.7            General Standards and Requirements**

A. The following standards and requirements shall apply to all PUDs and standard subdivisions:

1. The project must be prepared by a design team composed of at least a civil engineer, an architect and an attorney, all of whom must be licensed to practice in the State of Utah.
2. All dwelling units shall be served by a public sewer and a City-approved water supply. All utilities within the development shall be placed underground, including telephone, power and television. All dwelling units shall have separate utility connections and metering.
3. The area proposed for a PUD or standard subdivision shall be in one ownership during development to provide for full supervision and control of said development and to insure conformance with these provisions and all other conditions recommended by the Planning Commission and set by the City Council upon the preliminary and final development plans.
4. In the event that the land contained within a development is traversed by a proposed street, the development shall be designed in accordance therewith and the right-of-way across the development for the class of the proposed street .If the proposed street is one of the collector or arterial streets the appropriate right-of-way width shall be dedicated to the public, with improvements.
5. All areas not covered by buildings, parking areas, streets or drives shall be developed according to a grading plan which integrates the developed areas with the natural landscape, streets, buildings, sensitive lands and landscape area.
6. All areas not covered by buildings, parking, streets or drives shall be planted with grass, trees, shrubs or other plant materials to preserve and protect the final grading plan and the drainage plan proposed are part of the project as part of the submittal of the final landscape plan. Areas may be allowed to be left in a natural state, or xeriscaped, if the Planning Commission and City Council find this more desirable than traditional landscaping; also, a permanent sprinkler system shall be installed in all landscaped areas to provide irrigation of planted areas.
7. The landscaping plan must also provide for a noxious weed control plan applicable before, during, and after construction of the development. All landscaped areas shall be planted and landscaped within one year after posting the landscape bond.
8. The required yard space as a result of setbacks from public streets shall not be used for parking, but shall be landscaped as required in item 5 above.
9. The maximum height of buildings within a PUD shall be 35 feet above natural grade as outlined in this Title unless otherwise provided in this Title.
10. All parking spaces, parking areas and driveways must be hard-surfaced and properly drained with no drainage running across public or private sidewalks.
11. The developer shall install all public improvements on-site and off-site as identified by the City Council.
12. All street construction improvements in PUDs and standard subdivisions shall be constructed according to public street construction widths and cross-section standards.
13. All parking areas shall be screened from public view when possible with berms and landscaped features.

14. Provisions of the Sensitive Lands section Chapter of this Title shall be adhered to within all PUDs and standard subdivisions.
15. The project shall connect any trails shown on the City Trails Master Plan for the area. A favorable recommendation from the Midway City Trails Advisory Committee shall be required before final approval shall be granted.
16. When it is necessary in order to implement the intent of this Chapter, the City may impose development standards in excess of the minimums identified herein.
17. Gated communities shall not be permitted.
18. The developer shall be responsible to pay all costs incurred by the City in processing and reviewing the development proposal, including but not limited to all engineering, attorney, and outside consultant fees.
19. The applicant must demonstrate that the development proposed will be able to meet the water provision requirements set forth in Title 10.

### **Section 16.16.8            Standards and Requirements Specific to Planned Unit Developments**

A. The following standards, requirements and conditions shall specifically apply to all PUDs:

1. The permitted base densities allowed in a PUD for each zoning district are listed below:

R-1-7 5.0 units per acre

R-1-9 4.0 units per acre

R-1-11 3.0 units per acre

R-1-15 2.5 units per acre

R-1-22 2.0 units per acre

RA-1-43 1.5 units per acre

An additional one-quarter unit per acre shall be permitted when Swiss-Alpine architecture is used in the design of the development. The determination regarding the usage of the Swiss-Alpine architecture shall be recommended by the Vision Architectural Committee and determined by the City Council as part of the conditional use process.

2. The minimum land area for a PUD shall be ten acres.

3. The minimum number of units in a PUD shall be 40.

4. All streets in a PUD will be privately owned and maintained except for any street that the City Council specifically agrees will be owned and maintained publically. Public streets will generally be Collector Roads and will most likely be listed in the Capitol Facilities Plan.

5. With the following exceptions, dwelling and permitted structures may be located as approved by the City Council in the final development plans. Buildings should be arranged as to best comply with the intent of this Title. These exceptions shall be considered, as minimum requirements as they apply:

a. Setbacks along the peripheral property lines of the PUD shall be a minimum of 30 feet. For safety reasons, buildings may be required to be set back further from recreational areas.

b. Setbacks adjacent to existing public collector streets or collector streets to be dedicated to the City shall be a minimum of 100 feet for all structures and parking. This setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads. For aesthetic and open space purposes, the Planning Commission and City Council may require further setbacks from the following roads:

i. Burgi Lane;

- ii. River Road;
- iii. Pine Canyon Road;
- iv. Homestead Drive;
- v. Michie Lane;
- vi. Center Street (SR 113);
- vii. Tate Lane;
- viii. Stringtown Road; or
- ix. 200 North, west of 200 West.

No accesses to individual dwelling units within a PUD shall be allowed directly from the above streets. Access must be made from streets within the development.

c. Front setbacks for buildings from all private streets within the PUD shall be staggered at seven and one-half feet variances, with 25 feet the minimum setback. One-third of the buildings containing dwelling units shall be at each of at least three different setbacks as recommended by the Planning Commission and approved by the City Council. For example, one-third at 25 feet, one-third at 32 ½ feet and one-third at 40 feet. Setbacks for accessory buildings shall be as recommended by the Planning Commission and approved by the City Council. Setbacks from private streets shall be measured from top-back of curb or back of sidewalk or trail, whichever is further from the street centerline. The City Council may waive this requirement when a curvilinear street design is used and shown to create the same varying setback effect.

5. Two parking spaces per unit shall be provided for all units within the project. One space per unit shall be covered. One-half space for every unit shall be provided for guest parking.

6. Building sizes shall be limited to four units per structure unless a larger number of units per structure are specifically approved by the City Council following a recommendation by the Planning Commission. The Planning Commission and City Council shall make this determination based on specific site considerations regarding open space, building height and mass, and the geography of the site.

7. In all PUDs, all portions of all structures, whether on the ground, above the ground, or below the ground, must be contained within the confines of the building pad identified on the plat. This restriction shall apply to all protrusions, protuberances, and overhangs, including but not limited to all portions of all walls, roofs, doors, windows, bay windows, cantilevers, fireplaces, chimneys, support posts or structures, window wells, and/or decks.

(2012-04, Section Amended, eff. 4/11/12; Omission corrected in Subsection 16.16.8(A)(5)(b) with “streets” changed to “collector streets”, eff. 1/19/16)

## **Section 16.16.9 Standards and Requirements specific to Standard Subdivisions**

A. The following standards, requirements and conditions shall apply specifically to all standard subdivisions:

1. The minimum permitted lot size allowed in a standard subdivision for each zone shall be as specified in the zoning requirements set forth in this Title., except as modified by the open space and/or affordable housing provisions of this Chapter.

2. Dwellings and permitted structures shall be located so as to best comply with the intent of this Title and shall meet the following standards:

a. Setbacks along the peripheral property lines of the subdivision shall be a minimum of 30 feet except for side setbacks for lots that front a street that will be extended to a neighboring property.

The side setback for those lots will need to comply with the minimum for the zone in which the property is located. For safety reasons, the City may require buildings in any subdivision to be set back further from certain areas, such as sensitive lands or combustible native vegetation.

b. Setbacks adjacent to existing and proposed minor collector and collector streets or streets to be dedicated to the City shall be a minimum of 30 feet within a standard subdivision

c. This setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads.

d. Notwithstanding the setback requirement noted earlier in this Section, no accesses directly to individual dwelling units within a standard subdivision shall be allowed directly from the following streets; rather, access must be made from streets within the development, unless this is a practical impossibility.

i. Burgi Lane;

ii. River Road;

iii. Pine Canyon Road;

iv. Homestead Drive;

v. Michie Lane; vi. Center Street (SR 113);

vii. Tate Lane;

viii. Stringtown Road; or

ix. 200 North, west of 200 West.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.10      Open Space General Requirements**

A. Open space is defined as a portion of a development site that is permanently set aside for public or private use and that will not be developed or sold to individual owners. Open space shall not contain residences. Improvements such as club houses, shelters, covered swimming pools, and gazebos may be included within the open space requirement along with uncovered recreational facilities such as football fields, baseball diamonds, basketball courts and playgrounds. Open space shall be planned and designed to encourage and promote its proper use, care and ongoing maintenance. Specifics of vegetation, landscaping, amenities, improvements, recreational facilities, etc. within the open space shall be proposed by the applicant, approved by the Planning Commission and City Council, and then set forth in detail in the development agreement for the project.

(2012-04, Sub-section Amended, eff. 4/11/12; 2013-16, Sub-section Amended, eff. 03/18/15)

B. Land proposed to be devoted to vehicular streets or roads, parking, and drives shall not be included in the computation of open space and shall not be considered to be density-qualifying acreage, except as provided elsewhere in the open space provisions.

C. Entry features such as roundabouts, median planter strips, fountains, etc. may count as open space if the design of such features is recommended by the Planning Commission and approved by the City Council.

D. Sensitive lands, as defined elsewhere in this Title, may be counted as open space, provided the lands also satisfy the other characteristics of open space set forth herein and shall be protected by the proposed development plan. Development alterations of any sensitive lands shall be prohibited except as allowed and defined elsewhere in this Title.

E. The open space areas required by this Section shall not be satisfied by any areas contained within a designated building lot. This provision is subject to the following exception: on a building lot of two or more acres, areas contained within the lot boundaries may be counted as open space provided that those areas are designated on the plat as unbuildable areas permanently preserved as open space pursuant to the standards specified in this Title.

F. At least one-half of the required open space shall be retained in a single open space area in as much of a square shape as possible with the preference that the open space be placed along collector streets.

G. To the greatest extent possible, open space areas shall be placed so as to be visible from both inside and outside the development.

H. The permitted maximum density allowed in a development that is subject to the open space requirements of this section shall be calculated by dividing the total density-qualifying acreage of the project by the minimum lot size requirement of the zone in which the development is located, and then adding any density additions or bonuses allowed by this Title.

I. The open space area requirements may be met by purchasing or providing property, development rights, or conservation easements on other properties deemed of value to the community and approved by the City Council on a value for value ratio. Such areas may be hillsides, stream corridors, agricultural lands, fields along Main Street and other open space areas, within the City limits or annexation area, as may be approved by the City Council. Approval of open space exchanges must be made by the City Council before the applicant applies for preliminary approval. Upon approval by the City Council, such offsite open space areas shall be included in calculating the development's density-qualifying acreage and, in addition, a density bonus of one unit per acre of offsite open space will be allowed to encourage creation of such offsite open space areas.

J. Developments subject to the open space requirements of this Chapter shall be required to either:

1. Deed to each owner in the development an undivided ownership interest in the open space contained within the development and form a homeowners' association which shall be responsible for maintaining such open space according to Covenants, Conditions and Restrictions recorded with the Condominium Record of Survey map or subdivision plat; or,
2. Place the open space in a perpetual conservation easement granted to an established conservation organization, as approved by the City Council. If the open space is placed in a conservation easement, a maintenance agreement shall be entered into with the conservation organization to guarantee proper maintenance of the open space. Open space included within the boundaries of two (2) acre or larger building lots shall not be subject to the restrictions of this paragraph.

K. Open space shall be either appropriately and attractively landscaped or actively used for agricultural purposes.

L. An acceptable landscaping plan as defined elsewhere in this Title, including a noxious weed plan, must be submitted before preliminary approval of the development and complied with thereafter. The landscaping plan shall protect the grading plan elevations from unreasonable degradation, help implement the storm drainage plan where appropriate, protect sensitive lands from degradation, protect the project and surrounding properties from unreasonable infestations of noxious weeds and promote a clean, neat and restful natural setting for the project and surrounding properties.

M. If the homeowners association or conservation organization fails to adequately maintain the open space, the City, after 15 days prior written notice, may perform the necessary maintenance and bill the homeowners or conservation organization for the expense. In addition, the City shall be authorized in the covenants, conditions and restrictions of the development to place and record a lien on the open space property for the amount of the maintenance cost and, if necessary, to maintain legal action against the homeowners association or conservation organization to collect on the debt and foreclose against the lien property. This provision shall be included in the recorded declaration of covenants, conditions and restrictions for the development.

(2012-04, Sub-section Amended, eff. 4/11/12; 2013-16, Sub-section Amended, eff. 03/18/15)

### **Section 16.16.11      Open Space Requirements Specific to PUDs**

A. Not less than 50 percent of the area of the PUD shall be retained in permanent open space, parks and playgrounds.

B. Common areas and other open space areas with a width smaller than 100 feet in any direction shall not be counted as open space.

C. At least one-half of the required open space shall be retained in a single open space area.

D. Area qualifying for open space shall not contain parking stalls; however, structures which enhance the protection and approved uses of the open space by the HOA may be included in open space areas so long as they do not occupy more than 10 percent of the open space area. A single open space area shall be defined as an open area not broken into small portions with the large majority of its land mass in as much of a square as possible. Because of the increased density afforded to PUDs, open space areas shall be placed so as to benefit the health, safety and general welfare of the whole community and not merely the development. Due to the various configurations of property in the City, the Planning Commission and City Council shall determine the extent of compliance with this standard.

## **Section 16.16.12      Open Space Requirements Specific to Standard Subdivisions**

A. All standard subdivisions six or more acres in size located in the R-1-11, R-1-15, R-1-22 zones, and all standard subdivisions ten or more acres in size located in the RA-1-43 zone shall reserve a minimum of 15 per cent of the total acreage of the subdivision in open space. To prevent circumvention of this requirement, a subdivision less than six acres in the R-1-11, R-1-15, R-1-22 zones, and a subdivision less than ten acres in the RA-1-43 zone, shall not be approved without complying with the 15 percent open space requirements of this section if there is a reasonable basis to believe that:

1. both the land comprising the subdivision and the land comprising a contiguous subdivision of less than 6 acres (10 acres in the RA-1-43 zone) that did not reserve open space and that was approved less than five years earlier was owned by the same or a related individual, person, entity or group as the current applicant or owner at the time the earlier subdivision was approved, or
2. a contiguous parcel of less than 6 acres (10 acres in the RA-1-43 zone) owned by the same or a related individual, person, entity or group as the current applicant or owner is simultaneously under a pending standard subdivision application and is not proposing to meet the open space requirements of this section. This provision shall have prospective application only, and shall not take into account any approvals granted prior to the enactment of this section.

B. Areas with a width less than 50 feet in any direction shall not be counted as open space.

C. Due to the open space requirements imposed herein, lot size in standard subdivisions subject to the open space requirements of this section may be reduced to 50 percent of the minimum lot size required in the zone in which the subdivision is located. This provision therefore explicitly allows for the creation of building lots smaller than the minimum lot size required in the zone in which the subdivision subject to open space requirements is located. The permitted reduction in lot size shall be directly proportional to the total amount of non-developable open space reserved in the subdivision. For example, a subdivision that reserves the minimum 15 percent open space required by this section shall be allowed to reduce any of its lots to 85 percent of the size required in the zone. A subdivision that reserves 30 percent of its total acreage for open space shall be allowed to reduce any of its lots to 70 percent of the required size in the zone. Frontage requirements will also be reduced by the same percent as explained above.

(2012-04, Section Amended, eff. 4/11/12; 2013-16, Section Amended, eff. 03/18/15)

## **Section 16.16.13      Preliminary Planning Commission Action**

A. Upon presentation of the Preliminary Plan and documents, the Planning Commission shall recommend approval as submitted, recommend approval with conditions or may refer them back to the developer for one or more of the following reasons:

1. Due to the type of buildings, layout of structures, design of plan, or other aspects of the preliminary submittal, the Planning Commission determines the project to be inconsistent with the intent of this Code or the City General Plan.
2. The Planning Commission recommends that certain specific changes be made within the plans.

3. The plans or documents have not been completed.
4. All applicable fees have not been paid by the developer.

B. This project is in substantial compliance with the intent of this Section as stated previously. The Planning Commission may recommend to the City Council such conditions on preliminary development plans as it may deem appropriate to meet the goals and objectives of this Chapter. The Planning Commission may recommend disapproval of a large scale residential development which is found to be deficient in meeting the intent of these provisions. Any such disapproval may be appealed to the City Council within ten days after the decision of the Planning Commission.

C. Before recommending approval of the Preliminary Plan, the Planning Commission must also make the following findings in PUDs:

1. That the proposed PUD will provide a more aesthetic and efficient living environment than a conventional residential development.
2. That the proposed development will create no detriment to adjacent properties or to the general area in which it is located.
3. That the project will provide more efficient use of the land and more usable open space than a standard subdivision permitted in the surrounding area.
4. That increased densities allowed within the proposed PUD will be compensated by better site design and by increased amenities and recreational facilities.
5. That the development will not create hazards above those of a standard type development to the health, safety, and general welfare of the residents of the proposed PUD or adjacent areas.

#### **Section 16.16.14 Recommendation of Preliminary Plan to City Council**

Upon the Planning Commission's completed review and recommended approval of a Preliminary Plan of a PUD or standard subdivision, the Planning Commission shall recommend the Preliminary Plan to the City Council for approval or denial.

#### **Section 16.16.15 Public Hearing**

After receiving notice of Planning Commission recommended approval of the Preliminary Plan, or upon the City Council's reversing on appeal the Planning Commission's recommended disapproval of a Preliminary Plan, the City Council shall set and hold a public hearing to consider preliminary approval of the project. The hearing shall be completed as set forth in Title 16.

#### **Section 16.16.16 Preliminary Approval of City Council**

After holding the public hearing, the City Council shall approve, approve with conditions, or deny the Preliminary Plan based on the same standards as required above for preliminary approval by the Planning Commission.

### **Section 16.16.17 Time Limit for Preliminary Plan Approval**

Any failure to submit a proposed final plan and final approval submittal package within one year of the approval of the Preliminary Plan by the City Council shall terminate all proceedings and render the Preliminary Plan null and void.

### **Section 16.16.18 Final Approval Submittal Package**

If the Preliminary Plan is approved by the City Council, the developer shall submit three full size copies and fifteen 11" x 17" copies of the proposed final plat and a final approval submittal package to the Planning Commission composed of the following:

A. All material, studies and requirements as requested by the Planning Commission or City Council as conditions of preliminary approval.

B. A final plat map in compliance with the approved Preliminary Plan (in PUDs, this includes a final Record of Survey Map in compliance with the approved Preliminary Plan and the State Condominium Ownership Act). This plat is to implement among other things, the approved site plan, buildings, proposed ownership areas, utility easements, public dedications, open space, limited common areas, common areas, roads and private areas.

C. Detailed landscaping plan and sprinkler plan that implements the approved Preliminary Plan.

D. Final engineering drawings (plans and profiles) for all public and private improvements, final grading plan, and final drainage and run-off plan with run-off calculations.

E. All documents and legal material necessary to implement the application for Final Approval as well as those to be recorded.

F. Deeds of dedication for all public lands as required by the City or other public entity, when such dedications are not shown on a final plat.

G. An updated title report for all land within the boundary of the final plat.

H. Provisions for bonding of all improvements including landscaping in a form acceptable to the City. The bond amount is to be 110 per cent of the City Engineer's estimated cost for improvements.

I. Payment of all required final plat fees and any other outstanding fees.

J. Phasing plan for final plats.

K. In the event the project will not be divided into separate ownership, the developer shall submit the same information as requested above except for the Record of Survey Map. A final site plan shall be submitted totally dimensioned conforming to the approved Preliminary Plan.

L. Will serve letters from Qwest, Questar Gas, Midway Sanitation District, Heber Light & Power, Comcast (cable company), and Midway Post Master.

M. Final Approval letters from the Midway Water Advisory Board and the Midway Sanitation District. Final approval letters from the Vision Architectural Committee (VAC), Historic Preservation Committee and the Trails Advisory Committee shall be required at this time, when applicable.

N. Declaration of Covenants, Conditions and Restrictions for said development (if any) to be recorded with the Wasatch County Recorder's Office with the Final Plat. The following standards shall apply to the Declaration of Covenants, Conditions, and Restrictions recorded in conjunction with any subdivision development:

1. The Declaration may provide for the creation and perpetual provision of an architectural committee, the number of members and composition of which shall be clearly stipulated. The Declaration shall also establish design guidelines governing the appearance of the site buildings, signs, lighting, landscaping, street furniture, fencing, and mechanical equipment.
2. The Declaration shall stipulate the method and procedure by which the declaration may be amended.
3. The Declaration shall specify the final conditions of approval of the Planning Commission and City Council.
4. The Declaration may also contain use restrictions which are more restrictive than the City's zoning provisions, but in no case shall they be more permissive.
5. The Declaration shall set up the provisions for maintenance of all open space, common areas and private streets and utilities.
6. The Declaration shall state the following: Midway City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal, as applicable, within the common areas and open space if the Association fails adequately to perform such. In the event Midway City exercises this right, the City shall be entitled to recover any associated costs and attorney fees from the Association. This section shall not be amended or deleted without the approval of Midway City.
7. Transient Rental Declaration. Midway City has established a Transient Rental Overlay District (TROD) to regulate short term rental. Units in a PUD or standard subdivision may not be offered for transient rental unless it is within a TROD. The Homeowners Association is required to declare in its Declaration of Covenants, Conditions and Restrictions (CC&R's) whether or not transient rentals will be allowed as part of the developments final application. Midway City will not allow transient rental in a PUD or standard subdivision, even if it is in a TROD, if the development's CC&R's do not specifically permit such rental.

### **Section 16.16.19      Development Agreement**

An agreement between the developer and the City stating among other things:

A. That the property owners association created by the developer shall in the event of failure of the owners, successors or assigns to maintain the water and sewage facilities, common areas, open space, landscaping or other improvements in good condition, the City may perform the

necessary work and for that purpose may enter upon the land and do the work and recover the cost thereof, including reasonable attorney fees, to the owners or their successors or assigns.

B. The obligations of the developer and or other parties under the approval and the obligations of the City under the approval.

C. That the terms of the contract shall be binding upon the heirs, assigns, receivers, and successors of the project for the life of the project or building.

D. If the development is to be phased, a phasing plan showing construction schedule of streets, infrastructure, amenities and other improvements. Said plan shall be made to make each phase stand alone in all requirements of this Title, including, but not limited to open space, traffic safety and circulation, infrastructure requirements and so forth.

E. A development and maintenance schedule for all undeveloped land within any approved Master Plan and throughout the City under the approval.

F. Any other agreements between the developer and the City.

G. An agreement for the developer to provide financial assurances to ensure completion of all required improvements, including landscaping.

**Section 16.16.20 Final Plat**

In addition to all other requirements, the proposed final subdivision or condominium plat shall show an address block containing addresses for each dwelling unit and for each main building within the plat, subject to approval by the Wasatch County Recorder's office.

**Section 16.16.21 Final Approval Recommendation by Planning Commission**

After receiving a complete proposed final plat and final approval submittal package, the Planning Commission shall consider the development for final approval. If the Planning Commission finds that all of the requirements of this Title and all the conditions of preliminary approval of the development imposed by the City have been met, the Planning Commission shall recommend final approval of the development to the City Council. If the Planning Commission finds that any requirements or conditions have not been met, the Planning Commission shall continue the matter until such requirements or conditions have been met or forward such information on to the City Council with a recommendation as to how the City Council should act with respect to final approval of the development.

**Section 16.16.22 Final Approval by City Council**

A. After receiving the recommendation of the Planning Commission with respect to final approval, the City Council shall consider the development for final approval.

B. The City Council shall determine whether the proposed final plat and final submittal package meet all requirements of this Ordinance Title and the conditions of the development's preliminary approval by the City. The City Council shall consider the information and recommendation forwarded to it by the Planning Commission with respect to final approval. Based on all of these criteria, the City Council shall approve, approve the conditions, or deny final approval of the development.

C. If the City Council denies final approval, the City Council shall state in detail the basis for its denial, referring specifically to the requirements of this ordinance Title and the conditions of preliminary approval.

D. For no more than a one-year period after such denial of final approval by the City Council, the applicant may re-apply to the Planning Commission and then to the City Council for final approval pursuant to the above described process, but only if the City Council's reasons for denial have been resolved.

### **Section 16.16.23      Duration of Final Approval**

The duration of final approval shall be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within the one-year period of time, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that: (a) construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded; (b) the property must be maintained in a clean, dust-free, and weed-free condition at all times; (c) each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or (d) no more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Section amended, eff. 12/14/2011, 2012-04, Section Amended, eff. 04/11/12)

### **Section 16.16.24      Plat Recording**

No plat shall be recorded until all required water rights and/or water shares have been tendered to the City and assurances are provided to the City to ensure completion of all required improvements, including landscaping. No building permit application shall be submitted prior to the recording of the plat by the County Recorder.

(2016-09, Section Amended, eff. 05/11/2016)

### **Section 16.16.25      Completion of Infrastructure Construction and Issuance of Permits**

No building permits application shall be submitted until the infrastructure construction of the development is substantially complete; provided, however, that the developer in whose name the bond for the project is issued may submit a building permit application once the fire flow mechanisms are installed, operating and approved by the City Engineer. Once installed, operating and approved, fire flows must remain operating continuously thereafter. No certificate of occupancy will be issued until infrastructure construction on the development reaches final completion as determined by the City Engineer.

(2016-09, Section Amended, eff. 05/11/2016)

### **Section 16.16.26      Landscaping Bond**

Before recording any plat or condominium record of survey of map, a bond equal to 110 per cent of the cost for construction and completion of the landscape plan shall be posted.

### **Section 16.16.27      Construction Bond**

Prior to construction of a development and plat recordation, the developer shall submit a Construction Bond to the City in the amount of 110 percent of the cost of all improvements and inspections as determined by the City Engineer. The Construction Bond will include a line item for a weed control plan that has been approved by the City.

(2012-04, Section Amended, eff. 4/11/12)

### **Section 16.16.28      Default**

In the event the developer defaults, fails or neglects to satisfactorily install the required improvements within one year from the date construction begins, plat recordation, the City Council may declare the bond forfeited and the City may install or cause the required improvements to be installed using the proceeds from the collection of the bond or other assurances to defray the expense thereof.

### **Section 16.16.29      Final Disposition and Release**

The developer shall be responsible for the quality of all materials and workmanship. At the completion of the work, or not less than ten days prior to the release date of the bond or other assurance, the City representatives shall make a preliminary inspection of the improvements and shall submit a letter to the City Council setting forth the conditions of such facilities. If conditions thereof are found to be satisfactory, the City Council shall release the bond or other

assurance. If the condition of materials or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, the City Council may declare the developer in default.

### **Section 16.16.30 Record Drawing Submittal and Contents**

Prior to final bond release, an electronic copy of the final drawings in the latest version of AutoCAD or DXF or other acceptable format shall be submitted to the City Engineer. This drawing file needs to include adequate information regarding position and basis of bearing tied to established control as approved by the City Engineer. As-built information shall be overlaid on this final drawing. The as-built drawing must be based upon actual field survey of the items on the following list:

- A. Established survey monuments, benchmark, and permanent horizontal and vertical control.
- B. Water: valves, fire hydrants, blow-offs, flush valves, and water meters.
- C. Sewer: laterals and manholes with rim and inverts elevations.
- D. Storm drain: Catch basins, curb inlets, and manholes with rim and inverts elevations, size and type of pipe, storm outlets and detention / retention systems.
- E. Miscellaneous: light pole locations, street sign locations, and utility box/transformer locations.
- F. Pressurized irrigation: valves, blow-offs, flush valves, drains and water lateral locations.

### **Section 16.16.31 Total Compliance with all Regulations**

In case of failure or neglect to comply with any and all conditions as established during the approval process or regulations as identified in this Title, the City may refuse additional building permits and stop construction of all work at the site until such violations or non-compliant conditions have been eliminated.

### **Section 16.16.32 Warranty Bond**

The City Council shall authorize the release of all but 10 percent of the Construction and Landscaping Bond amount, including the weed control plan line item, upon written verification by the City Engineer that all work is complete and acceptable. The remaining 10 percent of the Construction Bond amount shall be retained by the City for a period of two years in order to insure quality of improvements as a Warranty Bond. If improvements are found to be unacceptable to the City at any time during the two-year period, the City may use the bonding funds to replace or repair any improvements not installed acceptably.

(2012-04, Section Amended, eff. 4/11/12)

## **CHAPTER 16.17    SMALL SUBDIVISIONS**

<b>Section 16.17.1</b>	<b>Purpose and Intent</b>
<b>Section 16.17.2</b>	<b>Pre-Application Conference with Staff Member</b>
<b>Section 16.17.3</b>	<b>Concept Plan</b>
<b>Section 16.17.4</b>	<b>Preliminary/Final Plan</b>
<b>Section 16.17.5</b>	<b>Lot Size</b>
<b>Section 16.17.6</b>	<b>Permitted Uses</b>
<b>Section 16.17.7</b>	<b>Standards and Requirements</b>
<b>Section 16.17.8</b>	<b>Preliminary/Final Planning Commission Action</b>
<b>Section 16.17.9</b>	<b>Recommendation of Preliminary/Final Plan to City Council</b>
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<b>Section 16.17.11</b>	<b>Preliminary/Final Approval of City Council</b>
<b>Section 16.17.12</b>	<b>Time Limit for Preliminary/Final Approval</b>
<b>Section 16.17.13</b>	<b>Final Plat</b>
<b>Section 16.17.14</b>	<b>No Building Permits Issued Prior to Plat Recording</b>
<b>Section 16.17.15</b>	<b>Completion of Construction and Issuance of Permits</b>
<b>Section 16.17.16</b>	<b>Construction Bond</b>
<b>Section 16.17.17</b>	<b>Default</b>
<b>Section 16.17.18</b>	<b>Final Disposition and Release</b>
<b>Section 16.17.19</b>	<b>Record Drawing Submittal and Contents</b>
<b>Section 16.17.20</b>	<b>Total Compliance with all Regulations</b>
<b>Section 16.17.21</b>	<b>Warranty Bond</b>

### **Section 16.17.1        Purpose and Intent**

The intent of this Section is to provide regulations that will further the objectives of the Community Master Plan relating to residential developments. This Chapter shall apply to the creation of any small subdivision. A small subdivision is defined as any proposal to create three or fewer residential dwelling units and/or building lots from one or more existing lots of record; another requirement is that the subdivision cannot create any new roads or streets. Once a small subdivision has been approved by the City Council and recorded, no further subdivision of that plat will be approved by the City of Midway, except as may be required by Utah law. It is also the intention of this Section to require the developer to demonstrate by the materials submitted for approval that the objectives and goals of the Community General Plan have been fostered.

### **Section 16.17.2        Pre-Application Conference with Staff Member**

Any person wishing to construct a small subdivision shall meet with a staff member, check and review the zone information, obtain application and review procedures, obtain information from the City regarding the City's plan of land use, streets, water, sewer, traffic, trails and parks, and public facilities; and have discussion about public participation meetings and other requirements

affecting the land to be developed. The developer shall then prepare plans and seek approval based on the information received and the process outlined below.

### **Section 16.17.3            Concept Plan**

The purpose of the Concept Plan Review is to explore general feasibility early in the planning process. The concept plan helps avoid unnecessary and costly delays when pivotal information or necessary resources are not available because they were not addressed until later in the process. While the concept plan procedure is not an official approval, it is still an important part of the overall approval process. While more flexible in nature than the subsequent steps of preliminary and final approvals, it still needs to be carefully prepared and thoroughly reviewed to be useful. As part of the concept plan, the developer shall submit:

- A. An application for development.
- B. A written description of how the development will comply with and promote Midway City's Vision and Zoning Ordinance.
- C. A description of the type of development and project name.
- D. A plan prepared by a professional planning and engineering team which shows a simple concept of the major features of the development, including roads in relation to existing conditions and developments within one-fourth mile of the outside boundaries of the development. Handwritten plans will not be accepted. The concept plan shall be submitted on fifteen 11" x 17" copies and an electronic PDF version.
- E. Title ownership information and a current Preliminary Title Report. If the applicant is not the owner listed on the Preliminary Title Report a written consent to the application signed by the title holder must be provided.
- F. Applicant entity name, primary contact name, civil engineer, architect and attorney, with respective contact addresses, phone numbers, fax numbers, and email addresses for each.
- G. Lot size(s).
- H. Number of lots or units and conformance with the zone.
- I. The types of buildings in the project by use and by architectural style.
- J. Any public dedication proposals.
- K. Any trails proposed within the project including an analysis that shows how this trail plan works in conjunction with the City Trail Master Plan.
- L. A topographic map that is suitable for GIS and CAD analysis.

M. Any sensitive land designations and response thereto.

N. A description of how public participation will be conducted consistent with the Citizen Participation requirements of the City.

O. A summary of the water rights status for the proposed project detailing how much is owned now versus how much is estimated to be needed to complete the project.

#### **Section 16.17.4 Preliminary/Final Plan**

After review of the Concept Plan by the Planning Commission, the developer shall prepare a preliminary/final plan and shall submit fifteen copies of the plan on 11" x 17" size paper to the Planning Commission for its review. The purpose of this plan is to demonstrate how the proposed development plan will be able to meet the standards required under the zoning ordinance and other applicable laws or regulations after considering the issues and recommendations found during the Concept Review phase. The Preliminary/Final Plan is expected to contain construction drawings, and it is also expected that it will demonstrate compliance with this code. The Preliminary/Final Plan shall contain the following information (if any of the following information is satisfied by the information submitted during the Concept Plan Review, that same information must be included again with the Preliminary/Final Plan.):

A. Type of development.

B. Name of development.

C. Applicant entity name, primary contact name, civil engineer, architect, designer and attorney, with respective contact addresses, phone numbers, fax numbers, and email addresses for each.

D. Legal description with section tie.

E. Zone boundaries and designations.

F. North point and a scale consistent with a scale that is on a standard engineering scale ruler.

G. A statement that lists the issues discussed during the Concept Review and reconciles those issues with the Preliminary/Final Application being submitted at this time.

H. A site plan showing location and dimensions of all lot lines, along with building feasibility for each lot.

I. Dimensioned side, rear and front yards.

J. Location and description of recreational facilities within the development.

- K. Topography shown by contours at no greater interval than two feet except that a greater interval may be permitted when the property is outside the survey boundary if specifically authorized by the Planning Commission.
- L. The outside boundary of the project.
- M. Tabulation of land use:
1. Total area and building area.
  2. Drives and parking (all the above shown in acreage and percentage).
  3. Number of units and project density.
- N. Adjacent property owners.
- O. Public streets and sidewalks.
- P. Typical street or roadway cross sections.
- Q. A detailed statement and illustration of how the project will meet sensitive lands requirements.
- R. Existing and proposed easements, waterways, utility lines, canals and ditches.
- S. A plan for accommodating waterways, ditches and canals.
- T. Proposed and existing sewage disposal facilities.
- U. Existing and proposed storm drain system with the related run-off calculations for the development site including routing the runoff water that leaves the site to a City storm drain or natural drainage approved by the City to accept the water.
- V. Existing and proposed water system indicating size of water lines and fire hydrant locations. Indications as to the capacity of the water system as it relates to the project when required.
- W. More detailed (than concept) landscape plan indicating areas of landscaping and irrigation and the various types of landscape materials.
- X. Environmental Assessment Review Statement.
- Y. Any other information Staff or the Planning Commission may determine necessary relating to the particular site of the proposed project.
- Z. Evidence of sending an 11" x 17" copy of the preliminary/final plan to US West, Questar Gas, Heber Light & Power, Comcast (Cable Company), Midway Post Master, Heber Valley Fire Protection Special Service District, Wasatch County Solid Waste Disposal District.
- AA. An updated preliminary title report as of the date of the Preliminary/Final application.

BB. Final approval from the Midway City Water Advisory Board.

CC. Final approval from the Midway Sanitation District.

DD. Final approval from the Midway Trails Advisory Committee.

EE. A completed Fiscal Analysis Checklist.

### **Section 16.17.5      Lot Size**

The minimum permitted lot size allowed in a small subdivision for each zone shall be as specified in the zoning requirements set forth in Title 16.

### **Section 16.17.6      Permitted Uses**

The principal use permitted in the small subdivision is the residential living unit. Other uses are permitted as allowed by the zoning regulations governing the zone in which the small subdivision is located.

### **Section 16.17.7      Standards and Requirements**

The following standards, requirements and conditions shall apply to all small subdivisions:

A. The project must be prepared by a design team composed of at least a civil engineer, land surveyor or landscape architect, all who must be licensed to practice in the State of Utah.

B. All dwelling units shall be served by a public sewer and a city-approved water supply. All utilities within the small subdivision shall be placed underground, including telephone, power and television. All dwelling units shall have separate utility connections and metering.

C. The area proposed for a small subdivision shall be in one ownership during development to provide for full supervision and control of said development and to insure conformance with these provisions.

D. In the event that the land contained within a development is traversed by a proposed local collector, minor collector, or collector street, the small subdivision shall be designed in accordance therewith.

E. All areas not covered by buildings, parking, streets or drives shall be planted with grass, trees, shrubs or other plant materials as shown in the submittal of a final landscape plan. A permanent sprinkler system shall be installed in all landscaped areas to provide irrigation of planted areas. Xeriscaping shall be encouraged.

F. Dwellings and permitted structures shall be located so as to best comply with the intent of this Ordinance and shall meet the following standards:

1. The following streets shall require a minimum 50-foot setback for all structures and parking (this setback area shall be landscaped in such a way as to reduce the visual impact of the buildings of the development from the public roads and yet not hide the view of the mountains and hillsides from the same public roads):

- a. Burgi Lane;
- b. River Road;
- c. Pine Canyon Road;
- d. Homestead Drive;
- e. Michie Lane;
- f. Center Street (SR 113);
- g. Tate Lane;
- h. Stringtown Road; or
- i. 200 North, west of 200 West.

G. The maximum height of buildings within a small subdivision shall be 35 feet above natural grade.

H. All parking spaces, parking areas and driveways shall be hard-surfaced asphalt or concrete, and properly drained with no drainage running across public or private sidewalks.

I. The developer shall install all public improvements on-site and off-site as identified by the Planning Commission and City Council.

J. All street construction improvements in subdivisions shall be constructed according to public street construction widths and cross-section standards.

K. All parking areas shall be screened from public view when possible with berms and landscaped features.

L. Provisions of the Sensitive Lands Section of this ordinance shall be adhered to within the small Subdivision.

M. The subdivision shall connect any trails shown on the City Master Trails Plan for the area. Approval of trails by the Midway City Trails Committee shall be required before final approval shall be granted.

N. Gated communities shall not be permitted.

O. Final engineering drawings (plans and profiles) for all public and private improvements, final grading plan, and final drainage and run-off plan with run-off calculations.

P. All documents and legal material shall be ready for recording.

Q. Deeds of dedication for all public lands as required by the City, when not shown on a final plat.

R. A title report for all land within the boundary of the final plat.

S. Provisions for bonding of all improvements in a form acceptable to the City. The bond amount is to be 110 percent of the engineer's estimated cost for improvements.

T. All required final plat fees.

U. Phasing plan for final plats.

V. In the event the project will not be divided into separate ownership, the developer shall submit the same information as requested above except for the Record of Survey Map. A final site plan shall be submitted totally dimensioned conforming to the approved preliminary plan.

W. Approval letters from the Midway Water Advisory Board and the Midway Trails Advisory Committee.

#### **Section 16.17.8 Preliminary/Final Planning Commission Action**

Upon presentation of the preliminary final plan and documents, the Planning Commission shall approve them as submitted, approve them with conditions or may refer them back to the developer for one or more of the following reasons:

A. Due to the type of buildings, layout of structures, design of plan, or other aspects of the preliminary/final submittal, the Planning Commission determines the project to be inconsistent with the intent of this Ordinance or the Community General Plan.

B. The Planning Commission requires that certain specific changes be made within the plans.

C. The plans or documents have not been completed.

D. The fees have not been paid by the developer.

E. That this project is in substantial compliance with the intent of this Section as stated previously. The Planning Commission may impose such conditions on preliminary development plans as it may deem appropriate to meet the goals and objectives of this Chapter. The Planning Commission may disapprove the small subdivision, which is found to be deficient in meeting the intent of these provisions. Any such disapproval may be appealed to the City Council within ten days after the decision of the Planning Commission.

#### **Section 16.17.9 Recommendation of Preliminary/Final Plan to City Council**

Upon the Planning Commission's approval of the preliminary/final plan of a small subdivision, the Planning Commission shall recommend this plan to the City Council for direction, with or without conditions.

**Section 16.17.10 Public Hearing**

After receiving notice of Planning Commission approval of the preliminary/final plan, or upon the City Council's reversing on appeal the Planning Commission's disapproval of a preliminary/final plan, the City Council shall set and hold a public hearing to consider preliminary/final approval of the project.

**Section 16.17.11 Preliminary/Final Approval of City Council**

After holding the public hearing, the City Council shall approve, approve with conditions, or deny the preliminary/final plan based on the same standards as required above for preliminary/final approval by the Planning Commission.

**Section 16.17.12 Time Limit for Preliminary/Final Approval**

A. Any failure to submit a proposed preliminary/final plan application within one year of the approval of the concept plan by the Planning Commission shall terminate all proceedings and render the preliminary/final plan null and void.

B. The duration of Preliminary/Final Approval shall be for one year from the date of approval of the development by the City Council. If the Final Plat is not recorded with the County Recorder within the one-year period of time, the development's approval shall be voided, and both Preliminary and Final Approvals must be re-obtained to reinstate the project, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that:

1. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;
2. The property must be maintained in a clean, dust-free, and weed-free condition at all times;
3. Each extension will be for a one-year period only, after which time an annual review must be requested by the applicant and presented before the City Council; and/or
4. No more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

(2011-06, Sub-section amended, eff. 12/14/2011)

### **Section 16.17.13 Final Plat**

In addition to all other requirements, the proposed final plat shall show an address block containing addresses for each dwelling unit and for each main building within the plat, subject to approval by the Wasatch County Recorder's office.

### **Section 16.17.14 No Building Permits Issued Prior to Plat Recording**

No building permit applications shall be submitted prior to the recording of the plat by the Wasatch County Recorder.

(2016-09, Section Amended, eff. 05/11/2016)

### **Section 16.17.15 Completion of Construction and Issuance of Permits**

A. No building permits applications shall be submitted until the construction of the development is substantially complete; provided, however, that the developer in whose name the bond for the project is issued may submit a building permit application once the fire flow mechanisms are installed, operating and approved by the City Engineer. Once installed, operating and approved, fire flows must remain operating continuously thereafter.

B. No certificate of occupancy will be issued until construction on the development reaches final completion as determined by the City Engineer.

(2016-09, Section Amended, eff. 05/11/2016)

### **Section 16.17.16 Construction Bond**

Prior to beginning construction of a development, the developer shall submit a bond to the City in the amount of 110 percent of the cost of all improvements and inspections as determined by the City Engineer.

### **Section 16.17.17 Default**

In the event the developer defaults, fails or neglects to satisfactorily install the required improvements within one year from the date the plat is recorded, the City Council may declare the bond forfeited and the City may install or cause the required improvements to be installed using the proceeds from the collection of the bond or other assurances to defray the expense thereof.

### **Section 16.17.18 Final Disposition and Release**

The developer shall be responsible for the quality of all materials and workmanship. At the completion of the work, or not less than ten days prior to the release date of the bond or other assurance, the City Engineer shall make a preliminary inspection of the improvements and shall submit a letter to the City Council setting forth the conditions of such facilities. If conditions thereof are found to be satisfactory, the City Council shall release the bond or other assurance. If the condition of materials or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, the City Council may declare the developer in default.

### **Section 16.17.19 Record Drawing Submittal and Contents**

A. Prior to final bond release, an electronic copy of the final drawings in the latest version of AutoCAD or DXF format shall be submitted to the City Engineer. This drawing file needs to include adequate information regarding position and basis of bearing tied to established control as approved by the City Engineer.

B. As-built information shall be overlaid on this final drawing. The as-built drawing must be based upon actual field survey of the items on the following list:

1. Established survey monuments, benchmark, and permanent horizontal and vertical control.
2. Water: valves, fire hydrants, blow-offs, flush valves, and water meters.
3. Sewer: laterals and manholes with rim and inverts elevations.
4. Storm drain: Catch basins, curb inlets, and manholes with rim and inverts elevations, size and type of pipe, storm outlets and detention / retention systems.
5. Miscellaneous light pole locations, street sign locations, and utility box/transformer locations.
6. Pressurized irrigation: valves, blow-offs, flush valves, drains and water lateral locations.

### **Section 16.17.20 Total Compliance with all Regulations**

In case of failure or neglect to comply with any and all conditions as established during the approval process or regulations as identified in this Section, the City may refuse additional building permits and stop construction of all work at the site until such violations or non-compliance conditions have been eliminated.

### **Section 16.17.21 Warranty Bond**

The City Council shall authorize the release of 100 percent of the bond amount upon verification by the City Engineer that all work is complete and acceptable. The remaining 10 percent of the bond amount shall be retained by the City for a period of two years in order to insure quality of improvements. If improvements are found to be unacceptable to the City at any time during the two-year period, the City may use the bonding funds to replace or repair any improvements not installed acceptably.

**CHAPTER 16.18    RESERVED**

**CHAPTER 16.19      TRANSIENT RENTAL OVERLAY DISTRICT (TR-OD)**

**Section 16.19.1      Purpose**  
**Section 16.19.2      Definitions**  
**Section 16.19.3      Requirements for Transient Rentals**  
**Section 16.19.4      Transient Rental Overlay Districts**  
**Section 16.19.5      Characteristics of a Transient Rental Overlay District**  
**Section 16.19.6      Obtaining Necessary Business Licenses**

**Section 16.19.1      Purpose**

The Midway City Council finds it in the public interest to regulate the rental of properties in Midway City for periods less than 30 days. Therefore the City Council is establishing Transient Rental Overlay Districts to designate those areas of Midway City where individually owned transient lodging unit rental may be conducted in this Chapter. The procedures and standards for the operation of such rentals are found in Title 7 of this Code, Business Licensing and Regulations.

**Section 16.19.2      Definitions**

The terms listed below are defined as indicated for the purposes of this Chapter. General definitions, such as single family dwelling, may be found elsewhere in this Title.

- A. Individually owned lodging unit: an apartment, condominium, house or other building or structure, or a room or portion thereof, designed for human habitation not wholly owned by a commercial lodging facility.
- B. Commercial lodging facility. A motel, hotel, resort, bed and breakfast inn, or other facility, the operation of which is governed by the resort provisions of this code and/or a conditional use permit or development agreement issued by the City which allows, among other things, the rental of a lodging unit or units for periods of more or less than 48 hours.
- C. Lodging unit: a house, an apartment, a condominium, or other building or structure, or a portion thereof, designed for human habitation.
- D. Overlay District: Any of several additional districts established by the zoning regulators that may be more or less restrictive than the underlying primary zone(s). When a property is located within an overlay district, it is subject to the provisions of both the primary zone and the overlay district. Where the provisions are in conflict, the overlay district regulations govern.
- E. Transient lodging unit: a lodging unit which is rented for less than 30 days and which is not a commercial lodging unit.

F. Transient Rental Overlay District (TROD): an area in which a dwelling unit may be offered for nightly rental.

G. Zone: Specifically delineated area or district within the City in which uniform development standards govern the use, placement, spacing, and size of land and buildings.

H. Zoning: The divisions of the City, by legislative regulations, into areas in which specific allowable uses for real property are stated and the type and size of buildings within these areas are defined. Also, a program that implements the policies of the City general plan is referred to as zoning.

### **Section 16.19.3 Requirements for Transient Rentals**

A. Transient rental of any lodging unit shall be authorized only when the lodging unit is located within a Transient Rental Overlay District. Transient lodging unit rental in the Resort Zone (RZ) within the transient rental overlay district is a permitted use. Transient lodging unit rental in any other zone within the transient rental overlay district is a conditional use.

B. Transient rental of any individually owned lodging unit shall be authorized only after the appropriate unit and management business licenses, as set forth in Title 7 of the Midway City Code, have been obtained.

### **Section 16.19.4 Transient Rental Overlay Districts**

A. Midway City Commercial Zones, C2 and C3, are a Transient Rental Overlay District.

B. All Recreational Resort Zones are Transient Rental Overlay Districts.

C. In addition, Transient Rental Overlay Districts may be expanded beyond the boundary of existing or new Recreational Resort Zones to proximate properties through application for rezoning. Any such application shall undergo appropriate review to ascertain compliance with all requirements for zoning amendment set forth in this Title.

### **Section 16.19.5 Characteristics of a Transient Rental Overlay District**

A. Transient Rental Overlay Districts shall be reasonably contiguous and compact.

B. Any new Transient Rental Overlay District shall be consistent with the general characteristics of the underlying primary zone and be designed to avoid unreasonable negative impact on neighboring properties.

C. The offer of properties within a Transient Rental Overlay District is optional. Owners of property within a Transient Rental Overlay District shall not be required to offer their lodging unit for transient rental.

**Section 16.19.6            Necessary Business Licenses**

Individually owned lodging units offered for Transient Rental must obtain both unit and management licenses in compliance with all the requirements set forth in the Business Licensing and Regulations Title of the Midway City Municipal Code.

(2010-03, Chapter Replaced, eff. 5/26/2010)

## **CHAPTER 16.20      MODERATE INCOME HOUSING**

### **Section 16.20.1      Purpose and Intent** **Section 16.20.2      Inclusionary Zoning Lots**

#### **Section 16.20.1      Purpose and Intent**

The purposes of this Chapter are to:

- A. Provide requirements, guidelines, and incentives for the construction of affordable housing for low-income and moderate-income households in Midway City within large-scale subdivisions;
- B. Implement the affordable housing goals, policies, and objectives contained in the Midway City General Plan;
- C. Promote the opportunity of affordable housing for residents and workers in Midway City and Wasatch County;
- D. Maintain a balanced community that provides and integrates housing for people of all income levels and family sizes; and
- E. Implement planning for affordable housing as required by Utah Code.

#### **Section 16.20.2      Inclusionary Zoning Lots**

A. An Inclusionary Zoning Lot is an incentive or “bonus” lot that is designed to encourage the production of moderate income housing. Inclusionary zoning lots are smaller than other lots built within the subdivision, smaller than the minimum standards of the zone, and have a lesser amount of frontage than normally required. Inclusionary zoning lots may be created voluntarily by developers to promote affordable housing. Inclusionary Zoning Lots will not reduce the allowable number of standard lots nor reduce the open space requirements within a subdivision. The minimum sizes and frontage for the standard lots as required by the zoning within a subdivision will be proportionally reduced by the space used by the Inclusionary Zoning Lots, on the following terms: The applicant may receive a density lot bonus of up to five percent of the number of standard lots allowed by the zoning for the subdivision, provided that the minimum number of lots required in a subdivision to receive the density bonus is twenty.

(Twenty lots produces one bonus lot, forty lots produces two bonus lots, etc.) To ensure that that the reduction of square footage in the standard lots is spread over the development, yet also to leave some flexibility to the design of the subdivision, the reduction must be limited in any one standard lot to no more than two times the average square footage reduction from the size required per standard lot, unless specifically approved otherwise by the Midway City Council.

B. Regardless of the zoning or the type of units contained on the standard lots within a subdivision, Inclusionary Zoning Lots in a subdivision shall contain only single-family homes.

C. The minimum lot sizes and setbacks for dwellings on an Inclusionary Zoning Lot are as follows:

60 feet of frontage

Side setbacks: 10 feet and 15 feet

Front setback: 25 feet

Rear setback: 20 feet

In zones R-1-11, R-1-15, R-1-22, and RA-1-43 lots shall be at least 40% less in size than the minimum required for the zone in which the lot is located but cannot be less than 6,000 square feet.

In the R-1-9 zone, lots shall not be larger than 6,500 square feet and shall not be less than 6,000 square feet in size.

In the R-1-7 zone, lots shall be 6,000 square feet in size.

(2014-03, Chapter Replaced, eff. 1/8/2014; 2014-04, Chapter Replaced, eff. 2/12/2014)

## **CHAPTER 16.21 SIGNS**

### **CHAPTER 16.21 SIGNS**

#### **Section 16.21.1 Purpose**

#### **Section 16.21.2 Vision Architectural Committee**

#### **Section 16.21.3 Permits**

#### **Section 16.21.4 Definitions**

#### **Section 16.21.5 Abandoned or Obsolete Signs**

#### **Section 16.21.6 Non-Conforming Signs**

#### **Section 16.21.7 Sign Regulations**

#### **Section 16.21.8 Temporary Development Signs**

#### **Section 16.21.9 Real Estate For Sale, Rent, Lease and Open House Signs**

#### **Section 16.21.10 Design Guidelines**

#### **Section 16.21.11 Temporary Event Signs**

#### **Section 16.21.12 Street Pole Banners**

### **Section 16.21.1 Purpose**

Identification is vital to the success of any business. These provisions regarding the regulation of signage have been created to promote signage that will be consistent with the nature of the Midway City setting. The intention of this provision is to create signs that are interesting and tastefully designed and that will inform, stimulate interest and identify the business to which it is related.

### **Section 16.21.2 Vision Architectural Committee**

Prior to a permanent sign being approved for location or appearance, a recommendation shall be requested and received from the Vision Architectural Committee (VAC) regarding the sign unless otherwise noted in this Chapter. The Zoning Administrator and VAC shall act in a timely manner on the consideration of sign approvals. In review of signage, the VAC shall make its recommendations and evaluations based on sign compatibility with the property it represents and the immediate vicinity of the area in which it is located. The following regulations shall apply to all signs in Midway installed after the approval date of this Chapter.

### **Section 16.21.3 Permits**

Regardless of cost, no sign, unless specifically exempted in this Chapter, shall be erected or placed within the City without first making application for and obtaining a sign permit if required. Refer to Table 16.21.A and Table 16.21.B.

## **Section 16.21.4        Definitions**

A. For the general purpose of this Chapter, certain abbreviations, terms, phrases and their derivatives shall be construed as specified herein.

1. **Animated sign.** The movement or the optical illusion of movement of any part of the sign structure, design or pictorial segment including the movement of any illumination or the flashing, flickering, or varying of light intensity. The automatic changing of all or any part of the facing of a sign or any sign or part of a sign set in motion by movement of the atmosphere shall be considered to be animation under this Chapter.

2. **Banner.** Any temporary sign of lightweight fabric or similar material intended to be hung either with or without frames, possessing characters, letters, illustrations, or ornamentations of any kind. National flags, flags of political subdivisions or other public entity shall not be considered banners for the purpose of this Chapter. Refer to definition of Flag.

3. **Billboard.** A sign, regardless of type or size, that has a changeable face or faces, illuminated, electronic or otherwise, and said face or faces are leased for advertising business, services, entertainment, and so forth which is conducted or sold elsewhere than on the premises on which the sign is located.

4. **Building-mounted sign.** A sign directly mounted to a building. Building-mounted signs shall include canopy, fascia, parapet, projecting and wall mounted signs. Roof mounted signs are not permitted.

5. **Canopy Sign.** A type of building-mounted sign mounted and supported by a permanent canopy, arcade or portal and the faces of which are near perpendicular to the nearest façade.

6. **Center (Business, Commercial, or Industrial).** A group of three or more businesses associated by common agreement or under common ownership which comprises a contiguous land parcel unit with common parking facilities.

7. **Clear view triangle.** The area at a driveway and/or street intersection where signs or other structures must be placed outside of. It is measured from the right-of-way intersection corner on the subject property, a distance of forty five (45) feet in both directions, and then connected as a triangle.

8. **Decorative Sign.** A permanent sign and sign frame that are made of the following:

- a. Wood or simulated wood (carved, routed, and painted);
- b. Rock or stone. Boulders with engraved lettering or metal lettering: stones set in mortar, combined with wood or metal;
- c. Stucco;
- d. Metal – decorative (containing an element of wrought iron, brass, steel, copper or other painted metals);
- e. Architectural signs that make use of statuary, fountains, and old world/Swiss-European architectural elements;
- f. Signs painted on the exterior of the building in a European fashion; or,
- g. A combination of the above.

9. **Dedication Plaques.** Non-illuminated names of buildings, dates of erection, monument citations, commemorative tables and the like when carved in stone, concrete, metal, or any other permanent type construction and made an integral part of a permitted structure or made flush to the ground.

10. Development Entrance Sign. A permanent sign erected at the entrance(s) of a residential or commercial development.
11. Directional Sign. Any sign which is designed and erected solely for the purpose of traffic or pedestrian direction and placed on the property to which or on which the public is directed, and which contains no advertising copy.
12. Electronic Sign. A window, wall, or other sign that changes messages through a marquee, reader board, electronic center, or other replaceable copy area.
13. Flag. Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision or other public entity.
14. Freestanding Sign. A sign which is erected on its own self-supporting permanent structure and detached from any supporting elements of a building. Signs on walls or fences which are not an integral part of a building are freestanding signs.
15. Governmental Sign. A sign required by law or sign of a duly constituted governmental body, such as traffic sign, warning sign or no trespassing sign.
16. Grand Opening Sign, Banner, and Display. Those signs, banners, or displays used to announce the opening of a new business.
17. Historic Sign. A sign that by its construction materials, age, prominent location, unique design, or craftsmanship, provides historic character, individuality, and a sense of place or orientation regarding clues to a building's history.
18. Identification Sign. A sign which directs attention to a business, commodity, service, entertainment or product related to uses on the site where the sign is located and which is not otherwise defined in this Chapter.
19. Illuminated Sign. A sign whose surface is lighted internally (backlit) or externally (front lit).
20. Incidental Sign. A sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking", "entrance", "loading only", "telephone" and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.
21. Inflatable sign. A temporary sign consisting of a nonporous bag, balloon or other object inflated by any means and designed to draw attention to a commercial business. Inflatable signs are not permitted in any zone.
22. Maintenance. The repairing or repainting of a sign structure, changing of reader panels or directory signs, or renewing copy of which has been made unusable by ordinary wear or tear of weather or accident, which does not exceed 50 per cent of the total replacement value of the sign or sign structure as determined by the Zoning Administrator. "Maintenance" shall not include copy changes due to ownership changes or name changes.
23. Menu Board. A sign for drive-in and drive-thru businesses which list those items and services available at the premises. This does not include menu boards posted at a restaurant entrance door for review by a diner.
24. Monument or Ground Sign. A freestanding sign whose sign face is supported by a base or by uprights or braces placed upon the ground.
25. Non-conforming Sign. Signs which lawfully existed within the City of Midway prior to the effective date of this Chapter, but which do not comply with the requirements of this code Chapter, and which uninterruptedly continue to advertise the same business name and exist past the effective date of this Chapter in a state of non-compliance, shall be deemed non-conforming signs-

26. Off-premise Sign. A sign which directs attention to a business, commodity, service, entertainment or product not related to uses on the premises where the sign is located.
27. Open House Sign. A temporary on-site or off-premise sign to indicate that a particular property is open for viewing by the public.
28. Pennant. Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.
29. Permanent Sign. A permitted sign that has been reviewed by the VAC and approved by the Zoning Administrator. The sign is permanently attached to a building or to the ground.
30. Political Sign. A temporary sign which supports the candidacy of any candidate for public office or urges action of any other matter on the ballot of primary, general or special elections.
31. Portable Sign. A sign designed to be movable from one location to another and is not permanently attached to the ground or any structure. This includes portable A-frame type signs. Approved styles for portable A-frame signs include weighted slot styles and hinged handle styles with spread bases.
32. Projecting Sign. A type of building-mounted sign, other than a wall or canopy sign, which projects more than twelve inches from and is supported by a wall of a building.
33. Public Utility Sign. Signs placed by a public utility for the safety, welfare, or convenience of the public, such as signs identifying high voltage, public telephone or underground cables.
34. Real Estate For Sale, Rent or Lease Sign. An on-site temporary For Sale, Rent or Lease sign placed on the property to which the sign refers.
35. Sign. Any identification, description, illustration, or device which is affixed directly or indirectly upon a building, structure or land which directs attention to a product, place, activity, service, person, institution, or business, and which is visible from any public street, alley or public place, but not to include menu boards or banners as defined in this Section. A vehicle-mounted sign on a vehicle that is habitually parked or stationed at the site of a business and serves to advertise or identify the business shall be construed as a sign for the purpose of this Chapter. National flags and flags of political subdivisions shall not be construed as signs.
36. Sign Area. The smallest rectangle which encompasses all the letters or symbols. The permitted size of an entire permanent sign structure shall be recommended by the Midway Vision Architectural Committee (VAC) and approved by the Zoning Administrator.
37. Sign Structure. The supports and framework of the sign.
38. Street Pole Banners. A banner that is temporarily installed on select City light poles.
39. Temporary Development/Model Home Sign. A non-illuminated temporary sign allowed to be erected upon a parcel to designate future occupancy by a business, development or other concern designated thereon.
40. Temporary Event Sign. A sign, other than a commercial sign, posted to advertise a community event or series of events sponsored by a public agency, school, church, civic, fraternal organization, or similar noncommercial, not-for-profit organization.
41. Temporary Holiday Decorations. Those temporary decorations used to commemorate a recognized holiday.
42. Temporary detached sale promotion signs or banners. A professionally designed detached sign or banner that is temporarily displayed to identify or describe a promotional item or effort and is appropriately designed for primary exposure on Main Street. These are separate from the portable A-frame signs.

43. Vehicle Sign. Any identification, description, illustration, symbol, or device which is affixed directly or indirectly upon a truck, bus, car, boat, trailer or other vehicle which identifies or directs attention to a product, place, activity, service, person, institution or business. Signs upon a vehicle are exempt from permit requirements, provided that any such vehicle with a sign face of over two (2) square feet is not conspicuously parked so as to constitute a sign. Nothing herein contained shall prevent such a vehicle from being used for bona fide delivery or other vehicular purposes when all of the following conditions are adhered to:

- a. Primary purpose of such vehicle or equipment is not the display of signs.
- b. Such signs are magnetic, decals, or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.
- c. Vehicle/equipment is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used in the daily function of the business to which such signs relate.
- d. Vehicles and equipment are not used primarily as static displays, advertising an off-premise event, product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
- e. During periods of activity exceeding forty eight (48) hours such vehicles/equipment are not so parked or placed that the signs thereon are displayed to the public; and
- f. Vehicles and equipment engaged in construction projects, and the on-site storage of equipment and vehicles offered to the general public for sale, rent or lease, shall not be subjected to this condition.

44. Wall-mounted Sign: A sign mounted flat against a wall, projecting less than twelve inches, or painted on the wall of a building or structure with the exposed face of the sign in a plane parallel to the face of said wall.

45. Window Sign: Any sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service that is placed inside a window or upon the window panes of glass and is visible from the exterior of the window. Window signs are not regulated in this Chapter.

### **Section 16.21.5          Abandoned or Obsolete Signs**

Any sign which does not correctly direct or exhort any person, advertise a bona fide business, lessor, owner, product, service, activity conducted or product available either on or off the premises where such sign is displayed for a period of ninety (90) days or more shall be considered an obsolete sign. Sign structures that are abandoned or obsolete and not in compliance with this Chapter shall be removed. The owner of said abandoned sign structure may appeal this requirement for removal to the Board of Adjustment. The Board of Adjustment may allow the sign structure to remain in place for future or continued use if the Board finds that the sign structure is of historical value to the community. Obsolete sign copy and abandoned sign structures shall be removed by the owner of the property, his agent, or persons having the beneficial use of the building or structure upon which such sign or sign structure are erected within thirty (30) days after written notice from the Zoning Administrator, or in the case of an appeal, the Board of Adjustment.

**Section 16.21.6 Non-Conforming Signs**

A. Any change to the physical structure, shape, type, or size of an existing non-conforming sign shall immediately terminate the lawful nonconforming status of the sign, and said sign shall be required to come into compliance with this Chapter immediately.

B. Certain historical signs may be exempted from the requirements of this Chapter if the City Council finds that the signs have historical significance and that removal or alteration of the sign would be detrimental to the public interest.

**Section 16.21.7 Sign Regulations**

Signs shall be regulated according to Tables 16.21.A and B, including the notes at the end of the Table.

<b>Table 16.21.A</b>					
<i><b>NO PERMIT REQUIRED</b></i>					
<b>Type of sign</b>	<b>Number allowed</b>	<b>Maximum sign sq. ft. size</b>	<b>VAC</b>	<b>Fee</b>	<b>App</b>
<b>RESIDENTIAL</b>					
Nameplates	3	2 sq. ft. each	N	N	N
Address numbers	3	4 sq. ft. each	N	N	N
Real Estate For Sale/ Rent/Lease signs	1	See Section 16.21.9	N	N	N
Open House signs	2	See Section 16.21.9 and Sign Table note #21			
Dedication plaques	1	4 sq. ft.	N	N	N
Temporary political signs	no limit	Maximum 32 sq. ft. each. See Sign Table note #24	N	N	N
<b>COMMERCIAL</b>					
Address numbers	3	2 sq. ft. each	N	N	N
Temporary political signs	no limit	Maximum 32 sq. ft. each. See Sign Table note #24	N	N	N
Temporary Event Signs - off-premise	3	8 sq. ft. each. See section 16.21.11	N	N	ZA review
Temporary Event Signs - on-site	1	24 sq. ft. - see section 16.21.11			
Real Estate For Sale/ Rent/Lease signs	1	See Section 16.21.9	N	N	N
Open House signs	2	See Section 16.21.9 and Sign Table note #21			
Dedication plaques	1	4 sq. ft.	N	N	N
Incidental signs (not window)	no limit	1.5 sq. ft. each	N	N	N
Vehicle signs	1	2 sq. ft. See Sign Table note #15	N	N	N

Type of sign	Number allowed	Maximum sign sq. ft. size	VAC	Fee	App
Grand Opening signs/banners/displays (max 30 days)	1 per face	64 sq. ft. each	N	N	N
Temporary (detached)/sale promotion signs/banners	4	64 total sq. ft. allowed for up to 4 signs. Maximum size of 32 sq. ft. for any one sign. See Sign Table #13	N	N	N
Pennant strings (max. 2 wks.)	1	200 lineal feet	N	N	N
Portable Signs (includes A-frame)	Maximum of 3 signs	8 sq. ft. each. See Sign Table note #8	N	N	N

<b>Table 16.21.B</b>					
<b>PERMIT REQUIRED</b>					
Type of sign	Number allowed	Maximum sign sq. ft. size	Max sign area height	VAC	Fee
<b>RESIDENTIAL</b>					
Temporary Development and Model Home signs	2	32 sq. ft. each. See Section 16.21.8	6	Y	Y
Permanent development entrance signs	1 per entrance	32 sq. ft. each	6	Y	Y
Cottage industry	1	2 sq. ft.	4	Y	Y
<b>COMMERCIAL</b>					
Temporary Development and Model Home signs	2	32 sq. ft. each. See Section 16.21.8	8	Y	Y
Monument or ground sign	1	32 sq. ft.	8	Y	Y
Building-mounted sign (wall, projecting, banner or canopy)	1 per face	32 sq. ft. combined. See Sign Table #3	See Sign Table Note #3	Y	Y
Street pole banners	See Section 16.21.12	See Section 16.21.12	See Section 16.21.12	N	See Section 16.21.12
Menu board	1	16 sq. ft.	6	Y	Y
Gas price board	1	12 sq. ft.	6	Y	Y
Center (business, commercial or industrial)	1	64 total sq. ft./max 32 sq. ft per business. See Sign Table #5	15	Y	Y

1. There shall be no illuminated signs in the residential zones.
2. There shall be no inflated, electronic, exterior exposed neon, flashing, or animated signs allowed in any zone unless specifically allowed elsewhere in this code.

3. No wall, projecting, banner or canopy sign shall project above the parapet or roof line of the building to which it is attached. Minimum heights shall be eight (8) feet over walking surfaces and fourteen (14) feet over vehicle surfaces.
4. If illuminated, exterior signs must be illuminated from the front side. Backlit (or interior lit) signs are not allowed in any zone (backlit signs shall mean a sign with a cabinet that has a light source within and a plastic or similar face). Illuminated interior signs, including electronic illuminated signs necessary to a business, are permitted in the commercial zones. This includes typical "open", "closed", "vacancy" or other similarly intended signs including product related signs.
5. Centers (business, commercial or industrial) shall be allowed one (1) ground or monument sign. The sign may contain an area for the center name and individual plaques for the businesses within the center as allowed in the table above.
6. Back to back or double sided signs shall count as one sign and square footage shall be calculated for one side only.
7. No sign shall be placed in a manner as to interfere in any way with or confuse traffic or present a traffic hazard. Signs shall not be placed within any public right-of-way or within any clear view triangle at intersections.
8. One (1) portable sign, including A-frame type signs, shall be permitted for each one hundred (100) feet of primary frontage (or portion thereof) and one (1) per secondary adjoining street frontage. Properties with less than one hundred (100) feet of frontage shall be allowed one (1) portable sign. In no case are more than three (3) portable signs permitted per business. A maximum of two (2) portable signs may be posted on frontage greater than one hundred (100) feet and, if allowed because of secondary adjoining frontage, the third portable sign must be posted at the secondary adjoining frontage. Signs shall be allowed to stay in the City park strip (grass) but may not be placed on the sidewalk or to in any way impede pedestrian access on public right-of-way. The location of the portable A-frame signs is subject to the approval of the Zoning Administrator.
9. Government signs, public utility signs, and temporary political signs are allowed in any district with no permit required.
10. Decorative tops may exceed the maximum height of approved decorative signs by eighteen (18) inches.
11. No billboards shall be allowed in any zone.
12. Ladder-style business signs may be allowed in any zone when approved by the City Council.
13. No temporary detached sale promotion signs/banners shall be allowed except for temporary sales promotions not to exceed seven (7) calendar days in any month of the year. These are separate from portable A-frame signs.
14. Total height of the sign, including the frame, is measured from the curb to the highest point of the sign structure; if no curb exists, then the height shall be measured from the existing grade. This is different from the sign area.
15. Vehicle signs advertising off-premise events shall be prohibited.
16. Temporary holiday decorations shall be allowed in all zones.
17. No sign shall be erected that will violate the Clear View Triangle of Intersecting Streets.
18. Signs made from plexiglass or any material that resembles plastic shall not be permitted within the commercial and resort zones.
19. No signs of any type shall be attached to utility poles.

20. Any permanent sign that requires a permit from the City, as outlined in this Chapter, must be reviewed by the Vision Architectural Committee (VAC) and approved by the Zoning Administrator before being installed.
21. Off-premise signs shall not be permitted within Midway City. The exceptions to this are temporary event signs and open house real estate signs (which must be removed once the open house is over).
22. The sign area shall be measured as follows: The area of the sign shall be considered to be that of the smallest rectangle which encompasses all the letters or symbols. The permitted size of the entire sign structure shall be recommended by the Midway Vision Architectural Committee (VAC) and approved by the Zoning Administrator.
23. All permanent signs in commercial and resort zones must be decorative signs as described in the definition section of this chapter.
24. Political signs must be removed within seventy two (72) hours after the election.
25. Enforcement: Illegally placed signs on public property or public right-of-way are subject to immediate removal and are subject to fines and retrieval fees as approved by City Council. With reasonable notice to the owner, illegally placed signs on private property are subject to removal and are subject to fines and retrieval fees as approved by City Council. Any sign retrieved by the City will be held in the City Planning Offices for a period of thirty (30) days from the date of retrieval. If not retrieved within thirty (30) days, the City may and will discard the sign.
26. The Zoning Administrator may make a determination for reasonable minor exceptions to the size and timelines for signs contained within these regulations.

### **Section 16.21.8          Temporary Development Signs and Model Home Signs**

The following are requirements for temporary development signs:

1. Maximum sign area of thirty-two (32) square feet each.
2. Maximum height of six (6) feet.
3. Maximum number of two (2) signs.
4. Completed sign application to be filled out and submitted to Midway City.
5. Location outside the clear view triangle of roads and intersections. The final location must be approved by Midway City planning and/or engineering staff.
6. A time limit of two (2) years from the date of approval. If the development is still active, an extension beyond the two (2) years may be approved by the Zoning Administrator.
7. A recommendation for approval from the Midway Vision Architectural Committee and final approval by the Zoning Administrator before the sign can be installed.
8. No off-premise temporary development signs are permitted in any zone.
9. The area around the sign is to be maintained (i.e. no weeds).
10. Signs can only be erected after plat recordation.

### **Section 16.21.9          Real Estate For Sale, Rent, Lease, Open House Signs**

A. One (1) temporary real estate “For Sale”, “Rent” or “Lease” sign is permitted on-premise per property (the sign must be located on the actual property being advertised).

B. Lots and parcels under one (1) acre are allowed one (1) four (4) square foot real estate For Sale, Rent or Lease sign.

C. Lots and parcels between one (1) and (5) acres are allowed one (1) twelve (12) square foot real estate For Sale, Rent or Lease sign.

D. Lots and parcels over five (5) acres are allowed one twenty four (24) square foot real estate For Sale, Rent or Lease sign.

E. Two (2) eight (8) square foot temporary off-premise “Open House” signs shall be permitted only during the hours that the open house is being held and must be removed once the open house is over. They must be outside the clear view triangle at intersections, and may not in any way interfere with vehicular or pedestrian traffic.

### **Section 16.21.10      Design Guidelines**

In the commercial and resort zones, the desired look is for signs to have a Swiss-European, “old world” feel. Permanent signs that require permits must be decorative signs, as defined under the “decorative sign” definition in this Chapter.

### **Section 16.21.11      Temporary Event Signs**

A. Temporary event signs require approval through the Midway City Planning Department to verify that all requirements have been met. A graphic representation of the sign, including dimensions, must be submitted to the City for review.

B. Temporary event signs shall not exceed eight (8) square feet (recommended dimensions are two (2) feet in height and four (4) feet in width).

C. Signs shall be displayed for not more than three (3) weeks before the event and shall be removed within two (2) days after the event.

1. Signs posted more than three (3) weeks prior to the announced event or more than two (2) days after the event shall be deemed unlawful and are subject to removal.

2. No temporary event signs will be allowed on the Town Square designated site during Labor Day weekend and the week prior to Labor Day.

D. Temporary event signs shall be free of any other advertisement.

E. Temporary event signs shall not be illuminated.

F. Temporary event signs shall not be located in the public right-of-way.

G. A maximum of three (3) off-premise temporary event signs for any one (1) event or series of events will be allowed in the City limits. The signs may be posted on a combination of the designated sites set forth below or on private property.

H. Temporary event signs must be located on private property or in one of the three following designated locations on posts provided by the City:

1. Near the round-a-bout on River Road.
2. Hamlet Park.
3. City Square.

I. In addition to displaying the three (3) eight (8) square foot off-premise temporary event signs at a combination of private property and the three designated locations, one (1) additional on-site sign may be displayed using the following criteria:

1. A maximum sign size of twenty four (24) square feet;
2. Located on private property at the event site and not located in the public right-of-way;
3. Displayed no more than fourteen (14) days prior to the event and removed within twenty-four (24) hours after the event;
4. Reviewed and approved by the Midway City Planning Department;
5. Midway City reserves the right to deny any request;

J. Signs for events offered on Midway City property by not-for-profits are subject to the following criteria:

1. One sign with a maximum size of twenty four (24) square feet;
2. Displayed no more than fourteen (14) days prior to the event and removed within twenty-four hours after the event;
3. Installation must be completed by Midway City staff;
4. The City reserves the right to determine the specific location of the sign;
5. Review and approval by the Midway City Planning Department;
6. Midway City reserves the right to deny any request;

K. For-profit organizations that have rented the Midway City Town Hall or the Midway City Community Center for special events such as art shows may display one (1) on-site twenty four (24) square foot sign. See 16.21.11.I and 16.12.11.J for regulations. For-profits may not display off-premise signs.

L. Temporary event signs shall not advertise events other than those sponsored by a public agency, school, church, civic-fraternal organization, or similar non-commercial, not-for-profit organizations or be free to the public. Priority will be given first to the City of Midway and then to any Midway based not-for-profit in the event of a conflict. Other requests from not-for-profit organizations outside of the city limits may be considered. Conflicts will be resolved by the Planning Department.

M. In the event of re-use, all on-site or off-premise temporary event signs require the re-approval of the Zoning Administrator prior to placement to avoid the possibility of scheduling conflicts.

N. The Permanent Message Board located at the southwest corner of the Town Hall is reserved for community announcements at the discretion of the City and with the approval of the Zoning Administrator.

### **Section 16.21.12 Street Pole Banners**

A. Street pole banners, in conjunction with permitted special events, can be temporarily installed on select City light poles. The purpose of the banner program is to add life and color to the City's streetscape, while at the same time, promoting special events and other cultural or sporting activities of benefit to the City. The information provides eligibility requirements, application and approval procedures and applicant responsibilities.

B. Eligibility Requirements: Banners in association with a special event activity authorized by the City are eligible for placement, including but not limited to art shows, concerts, festivals, organized sports events, parades and runs. These events must be sponsored by a not-for-profit organization or be free to the public. Please note, the placement of banners for the purpose of commercial advertising is not allowed as part of this program.

C. Application and Approval Process: The application for a Special Event License authorizing the placement of banners must be submitted to the Midway City Planning Department at least fourteen (14) days prior to the proposed special event activity to verify that all requirements have been met.

D. Banner Packet: As part of the application, the applicant shall provide banner information on scheduling (installation and removal), size, street block location, sample graphic design artwork, and sponsor identification. Following a preliminary review of the application, the Midway City Planning Department will immediately notify the applicant if there are any problems, including scheduling or location conflicts. The banner request information is then distributed to relevant City departments for review and comment. If there are no conflicts from the City departments, a Street Pole Banner Permit approving the placement of banners will then be issued.

E. Installation, Maintenance and Removal: The applicant is responsible for the installation, maintenance and removal of the banners. It is recommended the applicant retain the services of a private contractor. To ensure banners remain safe and attractive, the applicant is responsible for monitoring and maintaining the banners at all times. If a problem unrelated to public safety exists, the applicant is required to remove, replace, repair, or otherwise correct the problem within forty eight (48) hours of notice. If a public safety-related problem is discovered, the applicant must act immediately to correct the problem. If it fails to do so, the City may act to correct the problem at the expense of the applicant. The applicant must coordinate the specific dates and times of banner installation and removal with the Midway City Planning Department to facilitate traffic and parking management. Any permanent pole hardware that is moved or removed during the installation shall be put back in place once banners are removed. Any damage to streetlight poles, pole arms or hardware shall be reported to the Office of Special Events.

F. Fees: A five hundred (500) dollar refundable deposit is required to cover costs in case of noncompliance (e.g. banners creating a safety hazard that is not repaired, banners that are not removed in a timely manner, damage to streetlight poles, pole arms or hardware) and must be provided separately from all other fees. The deposit will be refunded following the removal of banners, the determination that the applicant is in compliance with all requirements, and written notification from the applicant stating that banners have been removed. If noncompliance is not remediated, it will be deemed justifiable to deny future applications.

G. Policies and Procedures:

1. Banners must be no larger than thirty one (31) inches in width and eighty seven (87) inches in length.
2. Banners must be constructed of lightweight, pliable and durable fabrics especially designed for outdoor display; “U” wind slits are recommended.
3. Banners must be attached to pre-approved metal street light poles capable of withstanding wind loads generated by banner attachments (poles with traffic signals are not eligible).
4. Banners must be hung using a three (3) to four (4) inch sleeve that slips over the upper metal arm attached to the pole and the lower metal eye hook on each pole.
5. Banners may not be attached to the light poles with plastic attachments; the lower attachment must be accomplished using a metal flexible attachment which attaches to the banner metal grommet on one end and the eye hook of the light pole on the other.
6. Banners must not project more than three (3) feet from the pole onto which it is mounted.
7. Banners may be hung three (3) weeks prior to the event, during the event, and must be removed within two (2) days after the event.
8. Banners shall be free of any other advertisement.
9. The Midway City Planning Department will determine how many blocks are available to hang banners at the time of each request. Any conflicts in timing or location will be resolved by the Planning Department.
10. The City reserves the right to establish which individual street light poles may be designated for both flowers and banners.

H. Street Pole banners shall not advertise events other than those sponsored by a public agency, school, church, civic-fraternal organization, or similar non-commercial, not-for-profit organizations or be free to the public. Priority will be given first to the City of Midway and then to any Midway based not-for-profit in the event of a conflict. Other requests from not-for-profit organizations outside of the city limits may be considered. Conflicts will be resolved by the Planning Department.

(2010-31, Section Added, eff. 12/8/2010; 2013-04, Chapter Replaced, eff. 7/3/2013)

## **CHAPTER 16.22 WIRELESS TELECOMMUNICATIONS**

<b>Section 16.22.1</b>	<b>Purpose and Intent</b>
<b>Section 16.22.2</b>	<b>Definitions</b>
<b>Section 16.22.3</b>	<b>Applicability</b>
<b>Section 16.22.4</b>	<b>General Requirements</b>
<b>Section 16.22.5</b>	<b>Permitted Uses</b>
<b>Section 16.22.6</b>	<b>Special Use Permits</b>
<b>Section 16.22.7</b>	<b>Minimum Setbacks and Separation</b>
<b>Section 16.22.8</b>	<b>Buildings or Other Equipment Storage</b>
<b>Section 16.22.9</b>	<b>Co-Location</b>
<b>Section 16.22.10</b>	<b>Removal of Abandoned Antennas and Towers</b>
<b>Section 16.22.11</b>	<b>Non-Conforming Uses</b>

### **Section 16.22.1 Purpose and Intent**

The purpose of this Chapter is to establish general guidelines for the site locating of wireless communications towers and antennas. The goals of this Chapter are to:

- A. Protect residential areas and land uses from potential adverse impacts of towers and antennas.
- B. Encourage the location of towers in non-residential areas.
- C. Minimize the total number of towers throughout the community.
- D. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers.
- E. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal.
- F. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, locating, landscape screening, and innovative camouflaging techniques.
- G. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.
- H. Consider the public health and safety of communication towers.
- I. Avoid potential damage to adjacent properties from tower failure through engineering and careful site location of tower structures.

In furtherance of these goals, Midway City shall give due consideration to the Midway City General Plan, the Municipal Code, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

## **Section 16.22.2        Definitions**

As used in this Chapter, the following terms shall have the meanings set forth below:

A. **Alternative Tower Structure.** Man-made trees, clock towers, bell steeples, light poles and similar alternative design- mounting structures that camouflage or conceal the presence of antennas or towers.

B. **Antenna.** Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

C. **Backhaul Network.** The lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

D. **Co-Location.** The use by two or more wireless communications providers of the same support structure or the same site.

E. **Existing Structure.** Light poles, power poles, chimneys, billboards, and other similar structures which are placed within the City at the time of adoption of this Chapter, except existing buildings.

F. **FAA.** The Federal Aviation Administration.

G. **FCC.** The Federal Communications Commission.

H. **Height.** When referring to a tower or other structure, the vertical distance measured from the natural grade level to the highest point of the structure directly above the natural grade when such structure is not located in a platted development. If the structure is located in a platted development, the height shall be the vertical distance measured from the finished grade as shown on the development grading plans or finished grade as shown on the individual lot's grading plans (whichever is lower), to the highest point of the structure directly above the finished grade. In the event that terrain problems prevent an accurate determination of height, the Planning Director shall rule as to height, and appeal from that decision shall be to the City Council.

I. **Site.** The physical location upon which wireless telecommunications facilities are located. Unless otherwise stated in this Chapter, "site" shall be limited to the area occupied by a single tower and its accompanying ground or roof-mounted equipment.

J. Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term also includes the structure and any support thereto.

K. Wireless Communication. Any technology for transmitting communication through the air.

L. Wireless Communications Facility. Any combination of one or more antennae, towers and/or structures or equipment used for the transmission of wireless communication.

### **Section 16.22.3            Applicability**

A. New Towers and Antennas. All new towers, equipment or antennas in the City of Midway shall be subject to these regulations.

B. Exceptions.

1. Amateur Radio Station Operators and/or Receive-Only Operations. This Chapter shall not govern any tower, or the installation of any antenna, that is under the maximum building height of the zoning district in which such structure is located and which is solely used by a federally licensed amateur radio station operator or is used exclusively for receive-only operations, including devices necessary for individual subscriptions to commercial wireless services.

2. Pre-existing Towers or Antennas. Legally established pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this Chapter, other than the requirements of for non-conforming uses as outlined later in this Chapter.

3. AM Array. For purposes of implementing this Chapter, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

### **Section 16.22.4            General Requirements**

A. Principal or accessory use antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

B. Lot Size. For purposes of determining whether the installation of a tower or antenna complies with zoning district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

C. Inventory of Existing Sites. Each applicant for an antenna and/or tower shall provide to the City an inventory of its existing towers, antennas, or sites approved for towers or antennas, that

are either within the jurisdiction of the City of Midway or within one mile of the border thereof, including specific information about the location, height, and design of each tower. Each applicant shall also provide a one-year build-out plan for all other proposed wireless communications facilities within the City. The City may share such information with other applicants applying for administrative approvals or special use permits under this Chapter or with other organizations seeking to locate antennas within the jurisdiction of City of Midway, provided, however that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D. Aesthetics towers and antennas shall meet the following requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure, so as to make the antenna and related equipment as visually unobtrusive as possible.

E. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views; provided, however, that the City Council may waive such requirements, as it deems appropriate.

F. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, the owners of the towers and antennas governed by this Chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

G. Building Codes and Safety Standards. To insure the structural integrity of towers, the owner of a tower shall insure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association (EIA) and by the Telecommunications Industries Association (TIA), as amended from time to time. If, upon inspection, the City of Midway concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

H. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the City of Midway, irrespective of municipal and county jurisdictional boundaries.

I. Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this Chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

J. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the City of Midway have been obtained and shall file a copy of all required franchises with the City.

K. Public Notice. For purposes of this Chapter, any special use request shall be pursuant to notification requirements outlined in Title 16, except that the notice required shall include posting of the property and mailing to all property owners within 1,000 feet of the proposed use, and publication in a newspaper of general circulation, regardless of any expression to the contrary to said notification requirements.

L. Signs. No signs shall be allowed on an antenna, on a tower, or on any portion of the premises leased for wireless telecommunication use.

M. Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of this Chapter.

N. Co-Location and Multiple Antenna/Tower Plan. The City of Midway encourages tower and antenna users to submit a single application for approval of multiple towers and/or antenna sites and to submit applications which utilize co-location with an existing wireless telecommunications provider. Applications for approval of multiple sites or for co-location with an existing provider shall be given priority in the review process.

O. Security Fencing. Towers shall be enclosed by security fencing not less than six feet in height and no more than eight feet in height and shall be constructed of block or masonry, and shall be equipped with an appropriate anti-climbing device; provided, however, that the City Council may waive such requirements as it deems appropriate.

P. Landscaping. The following requirements shall govern the landscaping surrounding towers; provided, however, that the City Council may waive such requirements if the goals of this Chapter would be better served thereby.

1. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from residential property. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.

2. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

3. Existing mature plant growth and other natural features on the site shall be preserved to the maximum extent possible.

## **Section 16.22.5 Permitted Uses**

A. General. The uses listed in this Section are deemed to be permitted uses and shall not require a special use permit.

B. Permitted Uses. The following uses are specifically permitted:

1. Antennas or towers located on property owned, leased, or otherwise controlled by the City of Midway; provided, however, a license or lease authorizing such antenna or tower has been approved by the Midway City Council. No such license or lease shall be issued for a tower located within 300 feet of any residentially zoned property until an informational hearing has been held at a regular or special City Council meeting and notice of such hearing has been advertised, as outlined in Title 16, at least 7 days but not earlier than 14 days prior to such hearing. The maximum height of freestanding towers or antennas shall not exceed 40 feet in height without a special use permit, and that roof-mounted antennas shall not extend more than ten feet above the tallest point on such roof, and in no case shall the total combined height of the building and the roof-mounted antenna exceed 50 feet in height without a special use permit.
2. Antennas or towers located in any Industrial or Manufacturing Zoning District; provided, however, that freestanding towers or antennas shall not exceed 40 feet in height without a special use permit, and that roof-mounted antennas shall not extend more than 10 feet above the tallest point on such roof, and in no case shall the total combined height of the building and the roof-mounted antenna exceed 50 feet in height without a special use permit.

## **Section 16.22.6 Special Use Permits**

A. General. There is hereby created for this section only a special use permit for wireless towers and antennas which may be granted by the City Council as follows:

1. If the tower or antenna is not a permitted use, as outlined in the permitted uses section of this Chapter, a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts. The primary height of any tower within the City shall be 60 feet from natural grade. The City Council may approve a variance to increase this height if the applicant can show that a higher tower is unquestionably necessary for the operation of the equipment and that no other alternative is available. The maximum height of any such tower shall be 80 feet from natural grade.
2. Applications for special use permits under this Section shall require a public hearing before the City Council and be subject to the procedures and requirements regarding public participation and public hearing notification, as outlined in Title 16.
3. In granting a special use permit, the City Council may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
4. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a professional engineer, licensed to practice in the State of Utah.
5. An applicant for a special use permit shall submit the information described in this section and a non-refundable fee established pursuant to a Resolution of the City Council.

6. A special use permit issued under this Section shall be conditioned upon written verification by the City Engineer or designee that such tower structure is structurally sound. Such verification shall be received by the applicant prior to submission and shall be reviewed annually.

## B. Towers

### 1. Information required.

In addition to any information required for applications for special use permits pursuant to the Municipal Code, applicants for a special use permit for a tower shall submit the following information:

- a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), General Plan classification of the site and all properties within the applicable separation distances set forth in this Chapter, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, and other information deemed by the City to be necessary to assess compliance with this article.
- b. The setback distance between the proposed tower and the nearest residential unit and residentially zoned properties.
- c. The separation distance from other towers described in the inventory of existing sites submitted pursuant to this Chapter, shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
- d. Method of fencing and finished color and, if applicable, the method of camouflage and illumination.
- e. A description of compliance with the requirements outlined in this Title and all applicable federal, state or local laws.
- f. A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.
- g. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant within Midway City.
- h. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
- i. Description of the feasible alternative locations of future towers or antennas within the City of Midway based upon existing physical, engineering, technological, or geographical limitations in the event the proposed tower is erected.
- j. A statement of compliance with Federal Communications Commission (FCC) Radio Frequency (RF) exposure standards.

### 2. Noise.

No permit shall be issued for any facility which generates a noise level greater than fifty decibels (50 db), as measured at the edge of the property upon which such facility is sited.

### 3. Factors considered in granting special use permits for towers.

In addition to any standards for consideration of applications, the City Council shall consider the following factors in determining whether to issue a special use permit, although the City Council may waive or reduce the burden on the applicant of one or more of these criteria if the City Council concludes that the goals of this Chapter are better served thereby:

- a. Height of the proposed tower.

- b. Proximity of the tower to residential structures and residentially zoned district boundaries.
- c. Nature of uses on adjacent and nearby properties.
- d. Surrounding topography.
- e. Surrounding tree coverage and vegetation.
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- g. Proposed ingress and egress.
- h. Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in this Chapter.

4. Availability of suitable existing towers, other structures, or alternative technology.

No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City Council that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the City Council related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- a. No existing towers or structures are located within the geographic area, which meet the applicant's engineering requirements.
- b. Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
- c. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- g. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceeds new tower or antenna development shall not be presumed to render the technology unsuitable.

### **Section 16.22.7          Minimum Setbacks and Separation**

A. Setbacks: The following setback requirements shall apply to all towers and antennas; provided, however, that the City Council may reduce the standard setback requirements if the goals of this Chapter would be better served thereby.

- 1. Towers must be set back a distance equal to at least 100 percent of the height of the tower from any adjoining lot line; provided, however, that separation distances from residential uses shall be in accordance with Table 16.22.070-1, set forth below.
- 2. Accessory buildings must satisfy the minimum zoning district setback requirements.

B. Separation: The following separation requirements shall apply to all towers and antennas; provided, however, that the City Council may reduce the standard separation requirements if the goals of this Chapter would be better served thereby.

1. Separation from off-site uses/designated areas.

a. Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 16.22.070-1, except as otherwise provided in Table 16.22.070-1.

b. Separation requirements for towers shall comply with the minimum standards established in Table 16.22.070-1.

**Table 16.22.070-1.**

Separation Requirements from Off-Site Uses/Areas

<b>Off-site Use/Designated Area</b>	<b>Separation Distance</b>
Single-family or duplex of tower residential units (see footnote 1)	200 feet or 300% of tower height, whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary plat approval which has not expired	200 feet or 300% of tower height, whichever is greater (see footnote 2)
Vacant, unplatted residentially zoned lands	100 feet or 100% of tower height, whichever is greater
Existing multi-family residential units greater than duplexes	100 feet or 100% of tower height, whichever is greater
Non-residentially zoned lands or non-residential uses	None, only setbacks apply

1 Includes, manufactured, mobile, and modular homes used for living purposes.

2 Separation measured from base of tower to closest building setback line.

2. Separation distances between towers.

a. Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 16.22.070-2.

b. Exception. The minimum separation requirements of this Chapter shall not apply to towers which are allowed by the City Council to be co-located on a single site.

**Table 16.22.070-2**

Minimum Separation Distances between Towers Monopole

	<b>Monopole 65 ft. or greater in height</b>	<b>Monopole less than 65 ft. but greater than 40 ft. in height</b>	<b>Monopole less than 40 ft. in height</b>
65 ft. or greater	2,000 feet	1,500 feet	1,000 feet

Less than 65 ft. but greater than 40 ft.	1,500 feet	1,500 feet	1,000 feet
Less than 40 ft.	1,000 feet	1,000 feet	750 feet

**Section 16.22.8 Buildings or Other Equipment Storage**

A. The equipment cabinet or structure used in association with antennas shall comply with the following:

1. The cabinet or structure shall not contain more than 120 square feet of gross floor area or be more than eight feet in height and shall be located on the ground.
2. Equipment storage buildings or cabinets shall comply with all applicable building codes.

B. Antennas Mounted on Utility Poles, Light Poles, or Towers.

The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:

1. In residential zoning districts, the equipment cabinet or structure may be located:
  - a. In a required front yard or required street side yard, provided the cabinet structure is no greater than 3 ½ feet in height or 20 square feet of gross floor area and the cabinet/structure is located a minimum of three feet from all lot lines. The cabinet/structure shall be screened by sight-obscuring landscaping which obscures at least 95 percent of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height not to exceed 42 inches.
  - b. In a required rear yard, provided the cabinet or structure is no greater than five feet in height or 120 square feet in gross floor area. The cabinet/structure shall be screened by sight-obscuring landscaping which obscures at least 95 percent of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height of 6 feet.
  - c. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure.
2. In commercial or industrial districts the equipment cabinet or structure shall be no greater than 14 feet in height or 300 square feet in gross floor area. The structure or cabinet shall be screened by sight-obscuring landscaping with an ultimate height of 16 feet and a planted height of at least 6 feet. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure. Such access way shall not face residentially zoned property.

C. Modification of Building Size Refinements.

The requirements of this Section may be modified by the City Council in the case of uses permitted by special use to encourage co-location.

**Section 16.22.9 Co-Location**

A. Required. Any new tower constructed in connection with an application under this Chapter shall be suitable for co-location. The applicant shall accept for co-location an FCC-licensed wireless communication provider (hereinafter "additional user") using any compatible technology on commercially reasonable terms. Any additional user seeking co-location shall

submit specifications for its equipment and use to the applicant and the applicant shall, within 30 days from receipt, respond to the additional user, in writing, furnishing all technical requirements, which must be resolved before co-location.

B. Good Faith. Applicants, additional users and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same support structures or site. For the purposes of this Chapter only, a "site" may accommodate more than one tower and its accompanying equipment; provided, however, that no "site" shall exceed ten acres. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement support structure to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to the duty of good faith.

C. Third Party Technical Review. In the event a dispute arises as to whether an applicant or permittee has exercised good faith in accommodating other users, the City may require the applicant or additional user to obtain a third party technical study at the applicant's or additional user's expense. The City may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.

D. Exceptions. No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions. The City Council may, upon a determination that the City's citizens would be better served, waive any portion of the requirements of this subsection.

E. Violations; Penalty. Failure to comply with co-location requirements may result in denial of a permit request or revocation of an existing permit.

#### **Section 16.22.10      Removal of Abandoned Antennas and Towers**

Any antenna or tower that is not operated for a continuous period of 90 days shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the City of Midway notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said 90-day period shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower for the prescribed period.

#### **Section 16.22.11      Non-Conforming Uses**

A. Not Expansion of Nonconforming Use Towers that are constructed, and antennas that are installed in accordance with the provisions of this Chapter, shall not be deemed to constitute the expansion of a nonconforming use or structure.

B. Pre-existing towers. Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this chapter.

C. Rebuilding damaged or destroyed nonconforming towers or antennas. Notwithstanding other provisions of this Chapter, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain a special use permit and without having to meet the separation requirements specified in this Chapter. The type, height, and location of the tower on-site shall be of the same type and intensity as the original facility approval; provided, however, that any destroyed lattice or guyed tower shall be replaced with a monopole structure only. Building permits to rebuild the facility shall comply with the then-applicable building codes and shall be obtained within 90 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in this Chapter.

## **CHAPTER 16.23 WIND ENERGY CONVERSION SYSTEMS**

<b>Section 16.23.1</b>	<b>Purpose</b>
<b>Section 16.23.2</b>	<b>Scope</b>
<b>Section 16.23.3</b>	<b>Definitions</b>
<b>Section 16.23.4</b>	<b>Approval Process</b>
<b>Section 16.23.5</b>	<b>Use Provisions</b>
<b>Section 16.23.6</b>	<b>Standards</b>
<b>Section 16.23.7</b>	<b>Discontinuation and Decommissioning</b>

### **Section 16.23.1 Purpose**

The express purposes of this Chapter are the following:

- A. Permit residences to install wind energy conversion systems and meteorological towers in Midway City.
- B. Oversee the permitting of wind energy conversion systems and meteorological towers, and preserve and protect public health, safety, and welfare.
- C. Ensure that wind energy conversion systems and meteorological towers are consistent with the City's land use policies and goals.
- D. Ensure that wind energy conversion systems and meteorological towers are compatible with the rural setting and character of Midway City, including its aesthetics and visual features. In particular, Midway City wishes to preserve its many scenic views, its historic structures and areas, and its rural character.
- E. Establish standards for compliance with the requirements established in this section without significantly increasing the cost or decreasing the efficiency of wind energy conversion systems.

### **Section 16.23.2 Scope**

This Chapter shall apply to wind energy conversion systems and meteorological towers proposed to be located on property owned by an applicant, which are a conditional use only in the RA-1-43 zoning district of Midway City. They shall be prohibited in all other zones of Midway City.

### **Section 16.23.3 Definitions**

- A. Co-location. The use of a single ground-mount by more than one small wind energy system.

B. Cut-in Speed. The lowest wind speed at which a wind turbine begins producing usable power.

C. Equipment Shelter. An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which is housed equipment for a small wind energy system or a meteorological tower, such as batteries and electrical equipment.

D. Erosion. The process by which the ground surface is worn away by action of wind or water.

E. Fall Zone. The area defined as the furthest distance from the tower base in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

F. Feeder Line. Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electrical power grid. In the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

G. Guyed Monopole. A monopole that is secured to the ground or other surface by diagonal cables for lateral support.

H. Lattice Tower. A type of tower with multiple legs and structural cross-bracing between the legs.

I. Meteorological Tower (MetTower). Is to include the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

J. Monopole. Type of tower that is a single shaft of steel, concrete, or other material.

K. Nacelle. The cover for the gearbox, drive train, generator, and other components of a wind turbine.

L. Physically Removed. Shall include, but not be limited to removal from the subject property of the tower, tower guys and anchors, wind generator, equipment shelters, and all other structures and equipment placed on the site or constructed in relation to the operation or support of the WECS or MetTower. This shall include the proper disposal of the waste materials from the site in accordance with local, state, and federal regulations.

M. Rotor Diameter. The cross sectional dimension of the circle swept by the rotating blades.

N. Shadow Flicker. Shadows and the visible flicker effect on the ground and surrounding structures that may emanate from the rotating blades of a wind turbine in a repeating pattern of light and shadow.

O. Total Height. The vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point.

P. Tower. The monopole, freestanding, or guyed structure that supports a wind generator, rotor blades, or meteorological equipment.

Q. Wind Energy Conversion System (WECS). An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to power lines, transformers, substations, and meteorological towers, which operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

1. Large Wind Energy Conversion System (Large WECS). A WECS equal to or greater than 100kW in total nameplate generating capacity.

2. Small Wind Energy Conversion System (Small WECS). A WECS of less than 100 kW in total nameplate generating capacity.

R. Wind Generator. Blades and associated mechanical and electrical conversion components mounted on top of the tower.

S. Wind Turbine. Any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

#### **Section 16.23.4 Approval Process**

A. A conditional use permit from the Planning Commission is required for a WECS or Met Tower in Midway City. The submitted plans for the conditional use permit shall show the following:

1. A plot plan or perimeter boundary survey by a licensed land surveyor, certifying the location of the tower and that the setback requirements of this section are met.

2. Title of drawing, including name and address of the applicant as well as City tax map and lot number.

3. Appropriate signature block for the signature of the Chair of the Planning Commission.

4. Names and addresses of owners of record and names of abutting landowners.

5. A site location map (may be shown as an inset) which shows the location of the proposed WECS or MetTower in relation to major City roads.

6. North point, bar scale, date of preparation, and dates of any revisions.

7. Name, address, and seal, if applicable, of person or firm preparing the plan.

8. The shape, size, and location of existing and proposed structures and the proposed mount, guy wire anchorages, and associated equipment shelters for the WECS or MetTower.

9. Existing streams or wetlands, marshes, lakes, ponds, or rivers, whether natural or man made, and any abutting water rights.

10. Existing and proposed driveways and parking spaces.

11. Layout of existing and proposed sewage disposal systems, including septic tank(s), leach field and associated piping, or tie-in to any sewer system, if located within the fall zone of the proposed tower.

12. Proposed landscaping showing proposed buffering for mount.

13. Location of wells, water supply pipes, power and telephone poles and lines, including the location and size of all existing and proposed utility lines and easements, if located within the fall zone of the proposed tower.

14. Location, size and wording of proposed signs related to the installation of the proposed WECS.

15. Right-of-way of all fronting streets or roads.

16. The proposed date of removal of a proposed MetTower and its associated equipment from the site.

17. Location of all known WECS within two miles of the proposed WECS.

18. Location of all known communications towers within two miles of the proposed WECS.

B. A copy of the application documents to the Utah State Department of Transportation (UDOT) for driveway access permits where a new driveway connecting to a state highway is proposed.

C. A copy of the application or letter of approval from the Public Service Commission of Utah, Division of Public Utilities.

D. A copy of the application or letter of approval from the Utah Department of Natural Resources (DNR), Division of Wildlife Resources (DWR).

E. A copy of the FAA permit application.

F. A narrative describing how the proposal minimizes the visual impact of the WECS or MetTower on neighbors and the community through the choice of location of the mount, and the potential impacts on nearby WECS and wind resources on adjacent properties. The narrative shall also address the steps taken, through the design of the wind generator, to minimize its visual impact on neighbors and the community, and, through siting or buffering, to minimize the impact of shadow flicker on neighboring properties, buildings, residences, roads and streets.

G. Specifications for the WECS or MetTower, including manufacturer, model number, system height, tower height, and tower type (monopole or guyed monopole).

H. For a small WECS, a sound level analysis, prepared by a registered professional engineer or the wind generator manufacturer, demonstrating that the proposed WECS shall not cause sound levels to exceed the Midway City noise standards, as outlined in this Code, at any property line, except during severe wind storms.

I. A copy of the report showing that the sustained wind speed at the proposed location meets or exceeds the minimum cut-in speed of the system proposed. The report shall have data collected over a consecutive twelve-month period, minimum.

J. Each WECS shall have a decommissioning plan outlining the anticipated means and cost of removing the WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party, such as a professional engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities.

### **Section 16.23.5 Use Provisions**

A. The system height for a WECS shall not exceed FAA regulations for “Objects Affecting Navigable Air Space”.

B. The total height of a MetTower shall not exceed FAA regulations for “Objects Affecting Navigable Air Space”.

*(Note: The majority of WECS and MetTowers range in height from 30 meters [98 feet] to 60 meters [197 feet], with some as high as 80 meters [262 feet]. After researching several different municipal ordinances regarding the maximum height allowance, 175-200 feet is generally the limit.)*

C. Setback standards for WECS and MetTowers shall be as follows:

1. A small WECS shall be set back a distance, measured from the center of the tower, equal to 150 percent of the system height from all property lines, public roads and utility lines.
2. A large WECS shall be set back a distance, measured from the center of the tower, equal to 200 percent of the system height from all property lines, public roads and utility lines.
3. A MetTower shall be set back a distance, measured from the center of the tower, equal to 150 percent of the tower height from all property lines, public roads and utility lines.
4. Temporary installations: MetTowers shall be installed for periods not to exceed 18 months from the date of approval from the City Council.

### **Section 16.23.6 Standards**

A. Visibility.

1. Siting. The applicant’s narrative shall demonstrate to the Planning Commission and City Council that the visual impact to neighbors and the community of the proposed WECS or MetTower has been minimized through the siting of the mount, the design of the wind generator (if applicable), and buffering of the mount and equipment shelters.
2. Decorative Items. Flags, streamers, and other decorative items shall not be attached to a WECS or MetTower.
3. Color. A WECS or MetTower shall be in a single white, gray, or other non-obtrusive color. Finishes shall be matt or non-reflective. International blade markings are acceptable.

B. Approved Wind Generators. The manufacturer and model of the wind generator for a proposed WECS shall have been approved by the California Energy Commission, the New York State Energy Research and Development Authority, or approved by the State of Utah.

C. Equipment Shelters. Equipment shelters for a WECS or a MetTower shall be designed consistent with one of the following design standards:

1. Located in underground vaults; or
2. Screened behind an effective year-round landscape buffer and/or wooden fence, equal to the height of the proposed building. The style of fencing and/or landscape buffer shall be compatible with the neighborhood.

D. Access.

1. All ground-mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access.
2. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of twelve feet above ground.

E. Equipment. Ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

F. Lighting. Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the Federal Aviation Administration (FAA) permits and regulations. Red strobe lights are preferred for nighttime illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided.

G. Signage. All signs, other than the manufacturer's or installer's identification, which may be placed upon the nacelle, or owner factory-applied identification on a wind generator, tower, building, or other structure associated with a WECS visible from any public road, shall be limited to those needed to warn of any danger. Signs shall be limited to two square feet in area and shall be mounted six feet or less above ground level.

H. Towers. All towers shall be of a monopole or guyed-monopole type. Lattice towers are prohibited.

I. Power and Feeder Lines

1. All power lines serving a WECS or MetTower shall be buried.
2. All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS or MetTower, shall be buried where reasonably feasible. Feeder lines installed as part of a WECS shall not be considered an essential service.

J. Waste Disposal. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state, and federal regulations.

K. Permits, Codes, and Standards.

1. A building permit is required for the construction of any MetTower or WECS.
2. Any work on any part of a MetTower or WECS shall comply with the International Building Code, the National Electrical Code, and other applicable standards.

## **Section 16.23.7            Discontinuation and Decommissioning**

### **A. Notice of Abandonment.**

1. **By Owner.** No less than 30 days prior to abandonment or discontinuation of use of a WECS, the owner shall notify the Zoning Administrator of the date of the proposed abandonment or discontinuation of use.
2. **By City.** In the event that the owner fails to give such notice, the WECS shall be deemed abandoned upon the discontinuation of its use for a period of twelve months without energy production. The Zoning Administrator will issue a notice of abandonment to the owner that the WECS is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within 30 days from the Notice receipt date. The Notice of Abandonment shall be withdrawn if the owner provides the Zoning Administrator an acceptable developed plan outlining the steps and schedule for returning the WECS to service.

### **B. Removal.**

1. **MetTower.** The landowner shall physically remove the MetTower on or before the approved date of removal indicated in the zoning compliance certificate.
2. **WECS.** All WECS and accessory facilities shall be physically removed to four feet below ground level within 90 days of the issuance of the Notice of Abandonment.
3. **Failure to Remove.**
  - a. **WECS.** If the owner of a WECS does not remove the system within three months from the date of the Notice of Abandonment, the Zoning Administrator shall issue a notice of violation to the property owner where the WECS is installed.
  - b. **MetTower.** If the owner of the property where a MetTower is installed does not remove the tower within three months from the date of removal indicated in the zoning compliance certificate, the Zoning Administrator shall issue a notice of violation.

## **CHAPTER 16.24 ENFORCEMENT AND ZONING VIOLATIONS**

<b>Section 16.24.1</b>	<b>Building Permits Required</b>
<b>Section 16.24.2</b>	<b>Plans Required</b>
<b>Section 16.24.3</b>	<b>Permits to Comply with Ordinance</b>
<b>Section 16.24.4</b>	<b>License to Comply with Ordinance</b>
<b>Section 16.24.5</b>	<b>Permits Required</b>
<b>Section 16.24.6</b>	<b>Construction and Use to Comply with Application</b>
<b>Section 16.24.7</b>	<b>Certificate of Zoning Compliance Required</b>
<b>Section 16.24.8</b>	<b>Severability</b>
<b>Section 16.24.9</b>	<b>Responsibility for Violations</b>
<b>Section 16.24.10</b>	<b>Penalties</b>
<b>Section 16.24.11</b>	<b>Each Day of Violation a Separate Violation</b>

### **Section 16.24.1 Buildings Permits Required**

No person, firm, or corporation shall commence to construct, alter or move a building or structure, or to make a change in use of any land within the territory shown on the zone map which has been adopted as a part of this Title without first submitting an application and obtaining a permit therefore from the Zoning Administrator or other authorized officer; provided, however, that permits for the moving of structures shall be granted only after complying with the requirements as set forth in Title 16. A permit shall also be required for the moving or improvement of manufactured homes, and similar movable structures, except that no permit shall be required for the moving of an approved manufactured home into a manufactured home park, nor shall a permit be required to move a recreation vehicle into a recreation vehicle court.

### **Section 16.24.2 Plans Required**

All applications for building permits shall be accompanied by plans which have been drawn to scale showing the accurate dimensions of the lot to be built upon, the size and location of existing buildings, and, as required, the location and layout of off-street parking.

### **Section 16.24.3 Permits to Comply with Ordinance**

Permits shall not be granted for the construction or alteration of any building or structure or for the moving of a building or structure onto a lot or for the change in use of any land, building, or structure, if such construction, alteration, moving, or change in use would be a violation of any of the provisions of this Title, nor shall any sewer or water service line or electric utilities be installed to serve the premises until a permit to construct the building has been obtained.

#### **Section 16.24.4 License to Comply with Ordinance**

No license shall be issued by an official or employee vested with the duty and authority to issue licenses which would not be in conformance with the provisions of this Title. Any license so issued shall be null and void.

#### **Section 16.24.5 Permits Required**

No building or structure shall be constructed, reconstructed, altered, or moved to the extent of \$1,000.00 or more in replaceable value nor shall the use of any land be changed except after the issuance of a permit for the same by the Zoning Administrator or other authorized officer.

#### **Section 16.24.6 Construction and Use to Comply with Application**

Building Permit or Certificates of Zoning Compliance issued on the basis of plans and specifications recommended by the Planning Commission and approved by the City Council, authorize only the use, arrangement, and construction set forth in such approved plans and application, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed to be a violation of this Ordinance Title.

#### **Section 16.24.7 Certificate of Zoning Compliance Required**

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premise, or to change the occupancy of any building or premise until a Certificate of Zoning Compliance shall have been issued therefore by the Zoning Administrator, stating that the proposed use of the building or land conforms to the requirements of this Title. No nonconforming structure or use shall be changed or extended until a Certificate of Zoning Compliance shall have been issued stating specifically wherein the nonconforming use differs with the provisions of this Title. The Zoning Administrator may permit the occupancy of a building prior to the completion of all required work, provided a bond or other assurance has been posted with the City in an amount equal to the cost of completing said required work as determined by the governing body. The Zoning Administrator shall maintain a record of all Certificates of Zoning Compliance for a period of five years and a copy shall be furnished upon request to any applicant. At such time as any party shall have complied with the provisions relating to large scale developments as set forth in this Title, the City Council shall so certify and shall issue a Certificate of Compliance to the developer designating with particularity all lots or other tracts that are in compliance herewith and that are available for sale. It shall be unlawful for any developer or other person to sell or offer for sale or exchange either by deed, contract, or otherwise, any lot or tract of land within said large scale developments until such time as the developer shall have received a Certificate of Compliance with respect thereto.

**Section 16.24.8 Severability**

This Code and the various parts, Sections, and clauses are hereby declared to be severable. If any part, Section, paragraph, sentence, clause, or phrase is adjudged to be unconstitutional or invalid, it is hereby declared that the remainder of the Code shall not be affected thereby. The governing body of Midway City, Utah, hereby declares that it would have passed this Municipal Code on each part, Section, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more portions thereof be declared invalid.

**Section 16.24.9 Responsibility for Violations**

It shall be the duty of all design professionals, contractors, subcontractors, builders and other persons having to do with the establishment of any use of land or the erection, altering, changing, or remodeling of any building or structure to be sure that a proper permit has been granted before work is begun on any project for which a permit is required. Any builder, contractor or other person doing or performing any such work without a permit having been issued is in conflict with the requirements of this Code in the same manner and to the same extent that the owner of the premises or the persons for whom the use is established, or for whom such buildings are erected or altered, and shall be subject to the penalties herein prescribed for violation.

**Section 16.24.10 Penalties**

A. Declaration of Penalty. Violations of this Code shall be a classified as a class C misdemeanor.

B. In addition to the penal remedy stated in this Section, the City Attorney may bring action before any competent court having jurisdiction to enjoin the continuation of any prohibited condition of nuisance and impose a civil penalty of up to \$1,000.00 per day, plus costs and reasonable attorney's fees.

**Section 16.24.11 Each Day of Violation a Separate Violation**

Each person, persons, firm, or corporation found guilty of violation shall be deemed guilty of a separate offense for every day during which any violation of any provision of this Code is committed, continued, or permitted by such person, persons, firm, or corporation, and shall be punished as provided in this Code.

## **CHAPTER 16.25     CITIZEN PARTICIPATION**

<b>Section 16.25.1</b>	<b>Purpose</b>
<b>Section 16.25.2</b>	<b>Applicability</b>
<b>Section 16.25.3</b>	<b>Citizen Participation Plan</b>
<b>Section 16.25.4</b>	<b>Citizen Participation Report</b>
<b>Section 16.25.5</b>	<b>General Regulations</b>

### **Section 16.25.1         Purpose**

The citizen participation described in this Chapter is designed to:

- A. Insure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community.
- B. Insure that the citizens and property owners of within Midway City have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process.
- C. Facilitate ongoing communication between the applicant, interested citizens, and property owners, City staff, and elected officials throughout the application review process.

### **Section 16.25.2         Applicability**

- A. Every application for resort developments and multi-phased developments requires a Citizen Participation Plan that must be implemented prior to the first public hearing.
- B. All other applications that require a public hearing shall include a Citizen Participation Plan, unless determined unnecessary by staff. The plan must be implemented prior to the first public hearing.

(2011-03, Section Amended, eff. 4/6/2011)

### **Section 16.25.3         Citizen Participation Plan**

The Citizen Participation Plan shall be approved by the Planning Director, and shall be presented in a discussion meeting with him/her.

- A. The Citizen Participation Plan shall include, at a minimum, the following information:
  - 1. A list of all surrounding property owners, any political jurisdictions, public agencies and others that may be affected by the application.

2. How those interested and potentially affected parties will be informed of the substance of the change, amendment, or development proposed by the application (e.g. explanation letter, meeting between the applicant and the affected parties, etc).
3. How those affected or otherwise interested will be provided an opportunity to discuss the applicant's proposal with the applicant and express any concerns, issues, or problems they may have with the proposal in advance of the public hearing.
4. The applicant's schedule for completion of the Citizen Participation Plan.
5. How the applicant will keep the City Staff informed on the status of their citizen participation efforts.

B. The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site. The applicant will determine the target area for early notification, after consultation with City Staff. At a minimum, the target area shall include the following:

1. Property owners within the public hearing notice area required by State law, but no less than 600 feet surrounding the property or area.
2. The head of any homeowners' association or registered neighborhood within the public notice area required by other sections of this Land Use Title.
3. Other interested parties who have requested that the Planning Director place them on the interested parties' notification list.

#### **Section 16.25.4            Citizen Participation Report**

A. The applicant shall give a verbal report at the public hearing summarizing the results of their citizen participation effort.

B. The citizen participation report shall include at least the following information:

1. Dates and locations of all meetings where citizens were invited to discuss the applicant's proposal, including the number of citizens who attended.
2. Geographical area in which residents, property owners, and interested parties receiving notices, newsletters, or other written materials are located.
3. Copies of any response letters received by the applicant or City staff.
4. A summary of concerns, issues and problems expressed during the process, including:
  - a. The substance of the concerns, issues, and problems.
  - b. How the applicant has addressed or intends to address concerns, issues and problems expressed during the process.
  - c. Concerns, issues and problems the applicant is unwilling or unable to address and why.

#### **Section 16.25.5            General Regulations**

A. The Citizen Participation Plan is not intended to produce complete consensus on all applications, but rather to encourage applicants to be good neighbors and to allow informed decision-making by the Midway City staff, elected and appointed officials.

B. These requirements apply in addition to any notice provisions required elsewhere in this Code.

## **CHAPTER 16.26 LAND USE ADMINISTRATION**

<b>Section 16.26.1</b>	<b>Public Notice</b>
<b>Section 16.26.2</b>	<b>Proposed Planned Unit Developments and Subdivisions</b>
<b>Section 16.26.3</b>	<b>Notice to Surrounding Governmental Entities</b>
<b>Section 16.26.4</b>	<b>Notice Regarding Changes to Zoning Ordinance Requirements</b>
<b>Section 16.26.5</b>	<b>Findings</b>
<b>Section 16.26.6</b>	<b>Appeal Authority</b>
<b>Section 16.26.7</b>	<b>Amendments</b>
<b>Section 16.26.8</b>	<b>Non-Conforming Buildings and Uses</b>
<b>Section 16.26.9</b>	<b>Non-Conforming Lots of Record</b>
<b>Section 16.26.10</b>	<b>Annexations</b>
<b>Section 16.26.11</b>	<b>Amendments to Ordinance and Map</b>
<b>Section 16.26.12</b>	<b>Conditional Use Approvals and Regulations</b>
<b>Section 16.26.13</b>	<b>Vested Rights</b>

### **Section 16.26.1 Public Notice**

Notice of the date, time, and place of all public hearings concerning the adoption or modification of a land use ordinance or zoning map shall be posted in at least three public locations within Midway City or on the City's official website. In addition, at least ten calendar days before the hearing, the notice shall be mailed to each affected entity (as defined in Utah law) and published in a newspaper of general circulation in Midway City.

### **Section 16.26.2 Proposed Planned Unit Developments and Subdivisions**

Notice of the date, time, and place of all public hearings concerning a proposed Planned Unit Development or Subdivision, or plat amendment thereto, shall be mailed not less than three calendar days before the hearing to all record owners of property within the proposed Planned Unit Development or Subdivision and all record owners of property within 600 feet of the proposed Planned Unit Development or Subdivision. The applicant shall furnish a draft notice and stamped, addressed envelopes with the correct names and addresses of all record owners to the City no less than five calendar days before the hearing.

### **Section 16.26.3 Notice to Surrounding Governmental Entities**

In proceedings involving rezoning of land that abuts other municipalities, unincorporated areas of the County, or a combination thereof, copies of the notice of public hearing shall be transmitted to the Planning agency of such governmental unit abutting such land. In addition to notice by publication, the City may give notice of the hearing in such other manner as it may deem necessary or desirable.

#### **Section 16.26.4 Notice Regarding Changes to Zoning Ordinance Requirements**

A. For public hearings to hear proposed changes to General Plan provisions or Land Use requirements for any one or more of the following subjects, the City shall provide notice as required in this Chapter:

1. A ten percent or more increase or decrease in the number of square feet or units that may be developed.
2. A ten percent or more increase or reduction in the allowable height of a building.
3. An increase or reduction in the allowable number of stories.
4. A ten percent or more increase or decrease in the setback or open space requirements.
5. An increase or reduction in permitted uses.
6. Rezoning proceedings that may change the zoning classification of an individual real property owner's property.

B. The City shall provide notice to real property owners pursuant to notification procedures for proceedings governed by this Chapter. Notice shall be sent by first class mail to each real property owner, as shown on the latest County assessment records, whose real property is directly governed by the changes; or the City shall publish a summary of such changes in a newspaper of general circulation prior to the hearing. The summary shall be published in a "display ad" covering not less than one-eighth of a full page.

(2010-15, Subsection Amended, eff. 6/16/2010)

#### **Section 16.26.5 Findings**

Within 30 days after the close of a public hearing:

A. The Planning Commission shall render its recommendation in writing to the City Council, including the reasons for the recommendation in regard to a Conditional Use Permit or General Plan amendment, Land Use Title, or zone changes, or

B. The City Council shall advise the applicant, in writing, of its decision in regard to an appeal or variance, or

C. The City Council shall advise the applicant of its decision, in writing, concerning a Conditional Use Permit, Special Use Permit, General Plan amendment, Land Use Title, or zone changes.

#### **Section 16.26.6 Appeal Authority**

A. The Board of Adjustment shall be the appeal authority to hear and decide requests for variances from the terms of the Land Use Title. An adverse decision by the Board of Adjustment in variance matters may be appealed to district court pursuant to Utah law.

(2010-17, Subsection Amended, eff. 7/7/2010)

B. The City Council shall be the appeal authority for review of constitutional takings issues.

C. Appeal of an administrative order issued by a City administrative law judge shall be made directly to district court within 30 days of the issuance of the order.

D. Except as provided in this Section, the City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority. Appeal of such decisions shall be made to the City Council within 30 days of the decision being appealed. The standard of review by the City Council shall be *de novo*. An adverse decision by the City Council acting as appeal authority may be appealed to district court pursuant to Utah law.

E. Appeal shall be made directly to district court of all non-variance land use decisions in which the City Council has acted as the land use authority. In acting as the land use authority, the City Council shall keep a written record of its proceedings in the form of minutes or other records.

F. Each appeal authority shall keep a written record of its appeal proceedings.

#### **Section 16.26.7            Amendments**

This Midway City Land Use Title and accompanying zoning map may be amended as follows:

A. The Planning Commission shall, after providing the proper notice requirements, hold a public hearing on a proposed amendment to the Land Use Title or zoning map. After holding the public hearing and receiving any public comment on the proposed amendment, the Planning Commission shall make a recommendation to the City Council on the proposed amendment.

B. The City Council may amend any provision of the Land Use Title or the accompanying zoning map after the Planning Commission has held a public hearing and made a recommendation to the City Council on the proposed amendment; provided, however, that the City Council shall, after providing the proper notice requirements, also hold a public hearing on the proposed amendment before voting on the amendment.

#### **Section 16.26.8            Non-Conforming Buildings and Uses**

In view of the fact that no further development or change in use can be undertaken contrary to the provisions of this Code, it is the intent of this Chapter that non-conforming uses shall not be increased nor expanded except where a health or safety official, acting in his official capacity, requires such increase or expansion. Such expansion shall be no greater than that which is required to comply with the minimum requirements as set forth by the health or safety official. Nevertheless, a non-conforming building or structure or use of land may be continued to the same extent and character as that which legally existed on the effective day of the applicable regulations. Repairs may also be made to a non-conforming building or to a building housing a non-conforming use.

A. **Damaged Building may be Restored.** A non-conforming building or structure or a building or structure occupied by a non-conforming use which is damaged or destroyed by fire, flood, wind, earthquake, or other calamity or act of nature may be restored, and the occupancy or use of such buildings, structure, or part thereof which legally existed at the time of such restoration is started within a period of one year from the date of destruction and is diligently prosecuted to completion, and provided that such restoration does not increase the floor space devoted to the non-conforming use over that which existed at the time the building became non-conforming.

B. **Discontinuance or Abandonment.** A non-conforming building or structure or portion thereof or a lot occupied by a non-conforming use which is, or hereafter becomes abandoned or is discontinued for a continuous period of 365 days or more shall not thereafter be occupied, except by a use which conforms to the use regulations of the zone in which it is located.

C. **Change to a Conforming Use.** A non-conforming use or building may be changed to a conforming use or building. Any non-conforming use or building which has been changed to a conforming use or building shall not thereafter be changed back to a non-conforming use.

D. **Change to Another Non-Conforming Use Prohibited.** A non-conforming use of a building or lot shall not be changed to another non-conforming use whatsoever. Changes in use shall be made only to a conforming use.

E. **Reclassification of Territory.** The provision pertaining to non-conforming uses of land and buildings shall also apply to land and buildings, which hereafter become non-conforming due to an amendment in the Land Use Title.

F. **Permits Granted Prior to Passage of Amendments to this Chapter.** Notwithstanding the issuance of a permit therefore, no building which becomes non-conforming due to an amendment to this Chapter shall be built unless construction has taken place thereon to the extent of at least \$500.00, or an amount set by City Council from time to time, in replaceable value by the date on which said amendment becomes effective. Replaceable value shall be construed to mean the expenditure necessary to duplicate the materials and labor at market prices.

### **Section 16.26.9 Non-Conforming Lots of Record**

Notwithstanding any other provision of this Code, a one-family dwelling may be permitted on any lot of record in any zone in which dwellings are permitted, even though such lot fails to meet the area or width requirements for one-family dwellings within the zone, provided that where two or more contiguous lots of record having continuous frontage are owned by the same persons at the time of the passage of the controlling ordinance, the land included in the lots shall be considered to be an undivided parcel and no portion of said parcel shall be used as a dwelling site or sold which does not meet the area and width requirements of the zone in which the lot is located. Yard dimensions and other requirements not involving area or width shall conform to the regulations of the zone in which the lot is located except when granted a variance by the Board of Adjustment.

## **Section 16.26.10 Annexations**

All land annexed shall be classified as shown on the future zoning map and the General Plan.

## **Section 16.26.11 Amendments to Ordinance and Map**

(2015-08, Section Deleted, eff. 6/10/2015)

## **Section 16.26.12 Conditional Use Approvals and Regulations**

The consideration of an application for a conditional use shall be governed by the following standard of Utah Code: (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. (b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied. The following approval requirements and regulations shall apply to all conditional use applications. These requirements are in addition to any conditions specifically or requirements specifically listed for a given conditional use. In the case of conflicting requirements, the more restrictive shall apply.

A. General Standards for Conditional Use Approval. An applicant for a conditional use approval shall provide within the application information to clearly demonstrate to the City compliance with the following, in addition to any specific requirements of this Section attached to the conditional use applied for:

1. General Welfare Standard. The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood.
2. Nuisance Standard. Any use found to be objectionable or incompatible with the character of the City and its environs due to noise, light, traffic, dust, odors or other undesirable characteristics may be prohibited.
3. General Plan Consistency Standard. To obtain a use permit, the applicant must generally show that the contemplated use is compatible with the City's land use policies in terms of the general plan and zoning ordinances, and that such use would be essential or desirable to the public convenience or welfare, and will not impair the integrity and character of the zoned district or be detrimental to the public health, safety, morals or welfare.

B. After receiving the application at its next available regular meeting, the Planning Commission shall recommend the granting or denying of the conditional use permit based on the standards set forth in this Section. The Planning Commission may also recommend conditions to be imposed on the use if the permit is granted. After the Planning Commission makes its recommendation, the City Council shall advertise and hold a public hearing in the same manner specified above. After the public hearing, the City Council shall make a decision whether to grant or deny the proposed conditional use permit. The Council shall record its decision in writing and shall recite the findings upon which the decision is based. The City Council may

approve and/or modify a conditional use or special exception permit application in whole or in part, with conditions, only if all of the following findings are made:

1. The proposed use is conditionally permitted within the Land Use Title, and would not impair the integrity and character of the intended purpose of the subject zoning district and complies with all of the applicable provisions of this Code.
2. The proposed use is consistent with the General Plan.
3. The approval of the conditional use or special exception permit for the proposed use is in compliance with the requirements of state, federal and Midway City or other local regulations.
4. There will be no potential, significant negative effects upon environmental quality and natural resources that could not be properly mitigated and monitored.
5. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses with the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, convenience, or welfare to the City.
6. The subject site is physically suitable for the type and density/intensity of the use being proposed.
7. There are adequate provisions for public access, including internal and surrounding traffic flow, water, sanitation, and public utilities, and services to insure that the proposed use would not be detrimental to public health and safety.

C. The Planning Commission may recommend, and the City Council may impose, conditions on the requested use which are additional to any conditions which are specifically listed in conjunction with all conditional uses or special exceptions prescribed within this Title. All conditions imposed shall meet the following criteria:

1. The condition is within the police powers of Midway City.
2. The condition must substantially further a legitimate public purpose.
3. The condition must further the same public purpose for which it was imposed.
4. The property owner may not be required to carry a disproportionate load in furthering the public purpose.
5. Dedications of land and other contributions as conditions of approval must be "reasonably related" to the use of the property for which the conditional use or special exception permit is requested. There must also be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project. In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. The conditions which are imposed on a conditional use permit must be expressly attached to the permit and cannot be implied. For example, if a conditional use permit contains language that restricts a building's height to 25 feet and requires the developer to submit and obtain Planning Commission and City Council approval of a landscaping plan, among other things, the permit itself does not imply a height limitation on trees within the development.

D. Public Participation and Notification. The public participation requirements for conditional use permits and special exceptions, as outlined in Title 16, shall be required. Public notice shall be per Utah law and per Title 16 of the Midway City Municipal Code.

E. Appeal. The decision of the City Council on the granting or denying of the conditional use permit or special exception shall be the final decision of the City on the matter. Appeal shall be to a court of competent jurisdiction in the manner and within the time prescribed by Utah law.

F. Right to Conditional Use. The right to a conditional use shall benefit only the particular land applied for by the applicant and shall not be transferable to other land. A conditional use approval shall remain valid for only one year, i.e., if the approved use has not begun in one year from approval, the approval shall expire and must be applied for again, unless otherwise specified in the approval conditions.

G. In the event that complaints concerning a conditional use or special exception are filed with the City, the Zoning Administrator shall investigate problems identified in the complaint to determine if the conditional use is in violation of this Title. If the Zoning Administrator determines the conditional use is in violation of this Title, the Administrator shall pursue the elimination of the violating activity in accordance with pertinent sections of this Title.

### **Section 16.26.13      Vested Rights**

A. An applicant is entitled to approval of a land use application if the application conforms to the requirements of the City's zoning map and applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:

1. The City Council, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or
2. In the manner provided by local ordinance and before the application is submitted, the City has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

B. The City shall process an application without regard to proceedings initiated to amend the City Code if:

1. 180 days have passed since the proceedings were initiated; and
2. The proceedings have not resulted in an enactment that prohibits the approval of the application as submitted.

C. An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

D. The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

E. The City shall not impose on a holder of an issued land use permit a requirement that is not expressed:

1. In the land use permit or in documents on which the land use permit is based; or
2. In the City's ordinances.

F. The City will not withhold issuance of a certificate of occupancy because of an applicant's failure to comply with a requirement that is not expressed:

1. In the building permit or in documents on which the building permit is based; or
2. In the City's ordinances.

G. The City is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.