

Midway City Council
15 February 2022
Regular Meeting

Resolution 2022-09 /
Notice of Pending Ordinance -
Moderate Income Housing



Midway

RESOLUTION 2022-09

A RESOLUTION ADOPTING A NOTICE OF PENDING ORDINANCE ADOPTING TITLE 15 OF THE MIDWAY CITY LAND USE CODE ADDRESSING MODERATE INCOME HOUSING WITHIN THE CITY.

WHEREAS, Utah Code Section 10-9a-504 allows a municipality to enact an ordinance or resolution establishing a temporary land use regulation for any part or all of the area within a municipality; and

WHEREAS, the Midway City Council intends to adopt an ordinance adopting a new Title 15 of the Midway City Code regarding moderate income housing needs within the City; and

WHEREAS, the City Council finds that, unless the Pending Ordinance Doctrine is invoked, and a notice of pending ordinance is published, developments and subdivisions may be planned and developed in the City in violation of the terms of the pending ordinance; and

WHEREAS, the City Council finds that publishing a notice of pending ordinance, and requiring all new applications for developments and subdivisions be bound by the terms and conditions of the new ordinance, will prevent unfair impacts imposed by the new ordinance; and

WHEREAS, the City Council finds that the Midway City Staff and the Mayor and Council have been and continue to work diligently on the moderate income housing ordinance. This Notice of Pending Ordinance hereby adopted relates to the following pending ordinances:

1. A Code Text Addition of Title 15 of the Midway City Land Use Code that would address moderate income housing requirements and needs within the City.

WHEREAS, it is in the best interests of the City to complete the ordinance listed above, and to apply the terms and conditions of that ordinance to any new developments and subdivisions within the City; and

WHEREAS, the City Council has determined that it would be in the best interests of the health, safety and general welfare of the citizens of Midway City to invoke the pending ordinance

doctrine to require that all future developments and subdivisions be subject to the terms of the pending ordinance described herein.

NOW THEREFORE, the City Council has determined that there is an important, compelling and countervailing public interest in completing the new ordinance before allowing new developments and subdivisions to be developed. Therefore, pursuant to Utah Code Section 10-9a-504, *et seq.*, and for the reasons stated above, the City Council of Midway City, Wasatch County, Utah, hereby adopts, passes and publishes the following:

BE IT RESOLVED, by the City Council of Midway City, Wasatch County, State of Utah:

- 1. The Midway City Notice of Pending Ordinance, to be prepared by Midway City Staff, which is attached hereto and incorporated herein by this reference, is hereby approved and adopted by the City Council.*
- 2. No developments or subdivisions within the City shall be allowed prior to the adoption and effective date of the above listed proposed Ordinance amending the Midway City Code.*
- 3. In order to protect public health, safety and welfare of the citizens of Midway, the City Council has determined that this Resolution shall take effect immediately upon publication as required by law and shall continue until the above listed ordinance is completed, adopted and becomes effective, or until the City Council votes negatively on the pending ordinance.*

This resolution shall be effective immediately upon passage. A copy of this resolution shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
this ____ day of _____ 2022.

	AYE	NAY
Council Member Steve Dougherty	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Kevin Payne	_____	_____
Council Member JC Simonsen	_____	_____

APPROVED:

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM:

Corbin Gordon, City Attorney

(SEAL)



NOTICE OF PENDING ORDINANCE

Notice is hereby given by Midway City, Utah, that a proposed ordinance is currently pending and under consideration by the Midway City Council and/or the Midway City Planning Commission for the following:

Midway City is proposing an Ordinance that would adopt a new Title 15 within the Midway City Land Use Code relating to moderate income housing within the City.

A copy of the proposed Ordinance is available in the Midway City Offices during normal business hours. ALL FUTURE APPLICATIONS FOR DEVELOPMENT APPROVAL AND/OR CONSTRUCTION OF PLANNED UNIT DEVELOPMENTS OR STANDARD SUBDIVISIONS WITHIN THE BOUNDARIES OF MIDWAY CITY WILL BE SUBJECT TO THE TERMS OF ANY ADDITIONS OR AMENDMENTS TO THE CURRENT PROVISIONS OF THE MIDWAY CITY CODE.

All applicants are hereby notified that the acceptance for filing and processing of any applications for development approval by Midway City will not create any vested rights, equitable issues or legal claims against Midway City. The applicant further acknowledges receipt and review of a copy of this Notice of Pending Ordinance and further understands and agrees that the acceptance for filing and processing of any application for development approval will be subject to any amendments to the Midway City Code currently pending and under consideration by the Midway City Council and/or the Midway City Planning Commission.

ACKNOWLEDGED BY:

Applicant

Project Name

Date

**MIDWAY CITY
Municipal Code**

TITLE 15 ATTAINABLE HOUSING

Section 15.01.01	Findings
Section 15.01.02	Purpose
Section 15.01.03	Applicability
Section 15.01.04	Requirements
Section 15.01.05	Incentives
Section 15.01.06	Standards for Construction On Onsite Affordable Units
Section 15.01.07	Affordable Housing Development Agreement Fee-In-Lieu
Section 15.01.08	Fee-In-Lieu
Section 15.01.09	Severability
Section 15.01.10	Enforcement
Section 15.01.11	Definitions

15.01.01 Findings

- A. Midway City has adopted a Moderate Income Housing Element of the General Plan as required by Utah State Code, which looks at the estimated existing supply, the estimated five year need, a survey and evaluation of zoning's effect on affordable housing, and a description of Midway's programs to encourage an adequate supply of affordable housing;
- B. The Moderate Income Housing Element of the General Plan shows that there is a continuing shortage of affordable housing in the City, which is detrimental to the public health, safety and welfare, as it contributes to overcrowded and substandard conditions for lower-income families, and the inability of industry to find and retain a quality labor supply;
- C. A Nexus Study performed for the valley shows that new development which does not include or provide for affordable housing serves to aggravate the current affordable housing shortage, by reducing the supply of residential land available for affordable housing development, and creating larger numbers of service oriented, low-paying jobs, creating a greater demand for affordable housing by increasing the numbers of lower wage earners;
- D. A requirement for ten percent (15%) of all new residential units being created as affordable housing units is strongly recommended to implement the Goals and Policies of the Moderate Income Housing Element of the General Plan;
- E. A Needs Assessment performed for the valley shows that a Fee-in-Lieu may be assessed as an alternative to providing onsite affordable housing; and
- F. Costs for implementing the requirement to contribute to affordable housing can be offset by allowing reasonable development incentives.

15.01.02 Purpose

The purposes of this Ordinance are to:

- A. Ensure that development provides a range of housing opportunities for all identifiable economic segments of the population, including households of low and moderate income;
- B. Providing opportunity for low to moderate income families to obtain housing that meets their needs which can be accomplished in numerous ways, not just focusing on building low income units;
- C. Allow alternatives to onsite construction of affordable housing that will give the City additional tools to meet the ever increasing needs of affordable housing.

15.01.03 Applicability

- A. This ordinance applies to all residential and mixed used development and all development in the resort zone that contains 1 or more residential units. This ordinance shall not apply to existing lots of record.
- B. This ordinance may have limited application to any development that, after performing and paying for a professionally prepared and certified development impact study, can demonstrate there is either no rational nexus for the requirements of this ordinance or that the requirements of this ordinance are not roughly proportional to the impacts of the proposed development. If the development impact study does demonstrate the requirements are not roughly proportional, the City may still impose whatever requirements the study establishes are proportional to the impact of the development. The City has full discretion to accept and approve the development impact study, reject it, or have an impact study performed on its behalf at the expense of the developer. The development impact study shall be presented to the City prior to the application receiving preliminary approval. Failure to raise claims of rational nexus and rough proportionality prior to preliminary approval waives them for purposes of that development application.
- C. Depending on existing laws and regulations, this ordinance may not have application to Federal, State, or Local Governmental Agencies and Non-Profit Housing agencies constructing price restricted affordable housing. Those entities claiming exemption under this section shall demonstrate by law its inapplicability at the time of application.

15.01.04 Requirements

All developments that contain 4 or more residential units shall:

- A. Provide at least sixteen percent (15%) of the Equivalent Residential Units (ERUs) proposed for the development as affordable housing units as defined by this ordinance within the development; or
- B. Pay a Fee-in-Lieu as calculated per Section 15.20.8.

15.01.05 Incentives

A. Inclusionary Zoning Lots

- 1. 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 191 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.

2. 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.
3. The minimum lot sizes and setbacks for dwellings on an Inclusionary Zoning Lot are as follows:
 - Frontage: A minimum of 60 feet is allowed
 - Side setbacks: The minimum side setback shall be 10 feet
 - Front setback: The minimum front setback shall be as listed in the individual zone and as listed in the subdivision ordinance, whichever is greater
 - Rear Setback: The minimum rear setback shall be 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 6,600 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
4. All Inclusionary Zoning Lots created under this section shall be deed restricted as required by Section 15.20.6(F).

15.01.06 Standards for Construction On Onsite Affordable Units

- A. Affordable housing units should be built within the development project site to allow for a blending of such units with market rate units.
- B. The design of affordable units shall be reasonably consistent or compatible with the design of the development in terms of appearance, materials and finished quality.
- C. Each affordable dwelling shall be designed for a designed range of recognized need, including dwellings with one, two and three bedrooms, that can accommodate singles, couples with no children, and families. These needs may be updated and redefined for smaller or larger units as recommended by the Wasatch County Housing Authority.

- D. The affordable housing units should be built concurrently with market-rate units.
- E. Affordable housing units should provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demands identified by the Wasatch County Housing Authority.
- F. Affordable rental units and affordable owner occupied units shall be deed restricted and affordable to the designated income group in perpetuity. Actual rents and prices to be charged and later increases shall be determined in an Affordable Housing Agreement to be entered into prior to receiving final approval on any project.

15.01.07 Affordable Housing Development Agreement

An Affordable Housing Plan shall be required for all residential developments that are subject to this ordinance. This plan shall be incorporated into a Development Agreement. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development, and shall be submitted for approval of the City Council as part of the preliminary approval:

- A. A calculation of the number of units permitted by the underlying zone.
- B. The need and request for specific incentives offered by this Chapter.
- C. A written appraisal by an MAI Certified Appraiser, who is either 1) mutually agreed upon between the petitioner for development and Midway City, or 2) hired by the city and paid for by the petitioner for development, estimating the retail value of the developed residential component of the project. The city may require, in lieu of the appraisal, submittal of a copy of the development appraisal used for financing approval of the development.
- D. For construction of affordable housing units, include the following:
 - 1. The total number of units proposed in the project;
 - 2. The average selling price of a unit for each of the phases of the development;
 - 3. The number of affordable units proposed;
 - 4. The square footage, calculated ERU's and numbers of bedrooms,
 - 5. The proposed location of the units;
 - 6. The schedule for production of dwelling units, both affordable and market rate;
 - 7. Production cost associated with dwelling construction;
 - 8. Appraisals for units;
 - 9. Providing copies of plans for such units;
 - 10. Security posted or to be posted prior to recording of final plat, for building of units, if construction of such units will not take place at the same time as the market rate units in a proportionate manner.
- E. A calculation of the amount of the Fee-in-Lieu.
- F. Proposed payment method and timing of the Fee-in-Lieu. The fee shall be paid in cash prior to recording of the subdivision plat or prior to issuance of a building permit for mixed use or multi-family developments. All lot contributions shall occur simultaneously with the recording of the subdivision plat. A multi-phased development may pay the Fee-in-Lieu as each phase is developed.

A mixed use or multi-family development shall pay the Fee-in-Lieu at the time the building permit is issued.

- G. Prior to the recording of a subdivision plat, or prior to the issuance of a building permit for mixed use or multifamily residential developments, the applicant shall have entered into a Development Agreement with Midway City. The Development Agreement shall set forth the commitments and obligations of Midway City and the applicant, including, as necessary, Fee-in-Lieu payment plan, construction details, lot dedications if applicable, etc., and approved bonus density units and incentives.
- H. If a developer intends to build his required amount of affordable housing units at a time which is not concurrent with the building of the market rate units, and a later construction schedule is agreed upon as part of the development approval process (not to exceed one year), a bond or other financial assurance equal to 110% of the current Fee-in-Lieu, shall be placed with Midway City to ensure the building of the affordable housing units within the time agreed upon or one year from final approval, whichever is sooner.

15.01.08 Fee-In-Lieu

The Fee-in-Lieu amount is determined by the subsidy needed to make a market rate unit affordable to a low-income household. This subsidy shall be based upon a determination of the average subsidy that would be required to make a typical new starter home consisting of three Bedrooms/two baths affordable to a family earning 80% of the median gross income of Wasatch County for households of the same size. To ensure proportionality to each development, the Fee-in-Lieu is determined as follows:

- A. The median household income of Wasatch County shall be determined by the U.S. Census Bureau.
- B. Housing costs shall be calculated at 30% of a household's income.
- C. Affordable Housing shall be determined by calculating 80% of the median household income of Wasatch County.
- D. Once the above calculations have been done, it shall be determined what the maximum amount a person who qualifies under this section could mortgage over 30 years at prevailing interest rates based on an income of 80% of the median income and calculating 30% of that amount as available for housing.
- E. For example, if the median income per household of Wasatch County is \$95,000.00, eighty percent of this amount would be \$76,000.00. Thirty percent of this amount is available for housing (\$22,800) which means \$1,900 is available per month for a mortgage. This amount is sufficient to finance a home worth \$350,000.00 at 5% interest over a 30 year fixed term mortgage.
- F. The Fee-in-Lieu shall be the difference between the \$350,000.00 that a person qualifying for affordable housing could purchase and the proposed purchase price of the units in the development. For example, if the developer is selling the equivalent of a three bedroom/two bath home for \$500,000.00 it can either pay a Fee-in-Lieu of building affordable housing of \$150,000.00 per required unit of affordable housing (or portion thereof) or build the required units within its development and deed restrict the same.

- G. The Fee-in-Lieu shall be adjusted to current market conditions for developments that have not recorded or have not been constructed within 2 years of approval. It is the responsibility of the developer to submit an updated appraisal of the unit values to determine the updated Fee-in-Lieu.
- H. Midway City reserves the right to obtain and utilize a second opinion from an Appraiser or Qualified Real Estate Professional to determine the development value used to calculate the Fee-in-Lieu.
- I. All Fees-in-Lieu shall be deposited in a Housing Trust Fund. Said fund shall be administered by the Wasatch County Housing Authority and shall be used for the purpose of providing funding assistance for the provision of affordable housing of both for rent and for sale units, and reasonable costs of administration consistent with the policies and programs of the Wasatch County Housing Authority.
- J. Affordable Housing Alternatives shall be of a value not less the amount that would have been paid as the Fee-in-Lieu. Title to all dedicated lots shall be unencumbered, including being clear of all taxes and liens, all such being paid and cleared. All dedicated lots shall be buildable, being of sufficient size and shape to accommodate at least the minimum sized home permitted by the zoning ordinance, plus accommodate required parking spaces and setbacks.

15.01.09 Severability

If any of the provisions of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

15.01.10 Enforcement

- A. The provisions of this ordinance shall apply to all developers for which are required to provide affordable housing, and their agents, successors and assigns, unless an impact study performed has been performed and approved.
- B. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this ordinance, including but not limited to actions to revoke, deny or suspend a permit or development approval.
- C. It shall be a class "B" misdemeanor for any individual or entity to sell or rent a restricted affordable housing unit for a sum in excess of the affordable housing rate set forth in the affordable housing agreement governing that unit. Excess proceeds of an unlawful sale or unlawful rental shall be forfeited shall be paid to the Wasatch County Housing Authority Trust Fund.
- D. The city may withhold the issuance of permits or other permissible regulatory authority in the enforcement of this ordinance.

15.01.11 Definitions

The following words shall have the described meaning when used in this ordinance. If there is no definition contained in this section the ordinary meaning contained in the dictionary shall be the meaning intended unless a contrary meaning is apparent from the context of the word.

- A. "Affordable" means housing that costs no more than thirty percent (30%) of a household's income.
- B. "Affordable Housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the metropolitan statistical area for households of the same size. Such housing cannot cost more than 30% of a household's income.
- C. "Affordable Housing Agreement" means a legally binding agreement between a Developer and Midway City and the Wasatch County Housing Authority which ensures that the requirements of this ordinance are satisfied.
- D. "Allowable Housing Expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. These expenses include loan principal and interest, property and mortgage insurance, property taxes, homeowner's association dues, etc. unit only, this amount would include the cost of obtaining basic public utility services.
- E. "Affordable Housing Unit" means a dwelling unit that will be offered for rent or sale exclusively to, and which shall be affordable to, lower-income households as required by this ordinance.
- F. "Base Residential Units" means the number of lots or equivalent residential units associated with each development from which are calculated the number of affordable units to be provided or the amount of the fee-in-lieu to be paid.
- G. "Conversion" means the change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.
- H. "Equivalent Residential Unit (aka ERU)" means one residential ERU is equivalent to one dwelling unit.
- I. "Financial Assistance" means assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of Community Development Block Grant (CDBG) Funds, down payment assistance, interest buy-downs, or the provision of other direct financial aid or other monetary compensation, by Midway City or the Wasatch County Housing Authority.
- J. "Low Income" means eighty percent (80%) or less of median family income for Wasatch County.
- K. "Market Rate Unit" means a dwelling unit where the rental rate or sales price is not restricted by requirements imposed by local, state or federal affordable housing programs.
- L. "Moderate Income" means 81 % to 120% of median family income for Wasatch County.
- M. "Qualified Applicants" means applicants for Low-Income units must make 80% or less than median family income for Wasatch County. Applicants for Moderate-Income units must make between 81% and 120% of median family income for Wasatch County. If all other requirements are equal, first preference shall be given to public service employees employed within Wasatch County, including municipal, county, school district, state and federal employees. Second preference shall be given to applicants who have been residents of Wasatch County for at least one year prior to application. Third preference shall be given to applicants who reside elsewhere, but are employed full-time in Wasatch County. Fourth preference shall be given to applicants who neither work nor live in Wasatch County.