

Midway City Council  
9 May 2018  
Regular Meeting

Ordinance 2018-14 /  
Master Plan Water Rights



## **PLANNING COMMISSION MEETING STAFF REPORT**

**DATE OF MEETING:** March 21, 2018  
**NAME OF APPLICANT:** Midway City  
**AGENDA ITEM:** Code Text Amendment of Title 16

### **ITEM: 6**

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16.16.4: Concept/Master Plan. The City would like to review the current code and potentially amend the regulations to require that water rights for the master plan are tendered to the City when the master plan is approved.

### **BACKGROUND:**

Staff is proposing an amendment to the Land Use Code that would require that water rights for master planned developments (multi-phase) are tendered to the city at the time of approval of the master plan instead of the current code requirement that the water rights are given to the City per phase. The proposed amendment would require that the developer provide all the water rights for the entire development before the master plan agreement is recorded. Currently, the developer receives a calculation of the required quantity of water for the entire development before the master plan is approved but is not required to give the water to the City until the recording of each phase. The water that is given to the City for each phase is only the amount of water required for that particular phase. The current states the following in section 16.16.4(A)(20)(a):

*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.

Staff is proposing the following language:

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. Water rights required for all phases of the master plan shall be turned over to the City and held jointly by the City and the developer prior to the recording of the Master Plan Development Agreement. This is to ensure that the water rights are not sold off the property after the City has granted development entitlement. If the master plan agreement expires or the developer, in writing, abandons the entitlement and no phases of the development have been recorded, then the water rights will be returned to the current land owner when the expiration or abandonment of the master plan takes place. In the situation where an amendment to the master plan is approved and an unrecorded phase requires less water because of the amendment, the extra water rights will be returned to the current land owner. If there is an amendment to a recorded plat of a phased development which reduces the amount of required water, those water rights will not be returned to the developer. The developer's remaining joint interest in the water rights for each phase shall be deeded in its entirety to the City prior to the recording of the final plat of each phase.

Following such transfer of interest, the developer shall no long hold any right, title or interest in the water rights so transferred. In no event shall a final plat for any development, subdivision, or phase thereof, be recorded prior to the transfer of all the right, title and interest in the required water rights to the City.

*e.d.* 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.

The City is proposing this change because the have been situations in the City and Wasatch County that developers have sold the water rights that are required for a development before the development is finished. An example of this is Soldier Mountain PUD that was approved in the field next to the LDS church on south center street. That project received approval just before the recession began in 2008. The developer was going to the lose the property to the lender, so developer preceded to sell off some of the water rights before foreclosure took place. Another example is the Triple Crown subdivision located in Wasatch County. That development was approved and recorded but the water was never turned over to the County. The recession began, and the developer lost the development to a lender but before the lender gained control of the property the developer sold the water rights and left the subdivision dry. The proposed code text amendment will require the water rights to be turned over to the City at the initial stage of the approval process, so we can avoid the situations like those described above.

The Water Board has discussed this issue and recommends approval of the proposed amendment.

This item has been noticed in the local newspaper for two weeks, posted in three locations in town, on the City's website, and on the State's website for the Planning Commission meeting.

**POSSIBLE FINDINGS:**

- Water rights for the entire master plan will be tendered to the City earlier in the approval process to assure that the developer owns sufficient water rights for the entire project
- A developer will not be able to sell water off a property after the master plan agreement has been recorded

## ALTERNATIVE ACTIONS:

1. Recommendation for approval. This action can be taken if the Planning Commission feels that the proposed language is an acceptable amendment to the City's Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  
2. Continuance. This action can be taken if the Planning Commission would like to continue exploring potential options for the amendment.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
  
3. Recommendation of Denial. This action can be taken if the Planning Commission feels that the proposed amendment is not an acceptable revision to the City's Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial



## ORDINANCE 2018-14

**AN ORDINANCE AMENDING SECTION 16.16.4 OF THE MIDWAY CITY LAND USE CODE REGARDING WATER RIGHTS REQUIREMENTS FOR DEVELOPMENTS WITHIN THE BOUNDARIES OF MIDWAY CITY, INCLUDING MASTER PLANNED DEVELOPMENTS, AND RELATED MATTERS.**

**WHEREAS**, Midway City has adopted rules and regulations regarding the development of land in the boundaries of Midway City; and

**WHEREAS**, Midway City requires the developer of a proposed subdivision or other development to provide water rights sufficient to allow the City to deliver culinary and/or irrigation water to the proposed subdivision or other development; and

**WHEREAS**, where Master Plan approval is granted, and then the project is developed in phases, the City is concerned that there is a risk that some or all of the water rights for future phases may be transferred away prior to the actual development of the phase; and

**WHEREAS**, it is in the best interest of the City to ensure that adequate water rights are deeded to the City for all phases of a proposed subdivision or other development; and

**WHEREAS**, the proposed Code amendment contained herein was presented to the Midway City Planning Commission who voted to recommend the Code amendment to the City Council; and

**WHEREAS**, notice regarding this proposed ordinance has given as provided by law; and

**WHEREAS**, the City Council accepts the recommendation of the Midway City Planning Commission, and agrees that it is in the best interest of the citizens of Midway that the Midway City Code be amended as contained herein:

**NOW THEREFORE**, for the reasons stated above, the City Council of the City of Midway, Wasatch County, Utah, hereby adopts, passes and publishes the following:

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

**Section 16.16.4(A)(20)(a)- (h) of the Midway City Code is hereby amended, and shall hereafter read as follows:**

- 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 mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.*
- c. *No entitlement rights shall vest until a Master Plan Development Agreement is signed and recorded against the development property. The Master Plan Development Agreement shall not be recorded until water rights (including shares of stock) sufficient for all phases of the development are delivered to the City to be held in escrow for so long as the Master Plan Development Agreement is enforceable. This is to ensure that the water rights are not sold separately from the development property after the City has granted development entitlements through the Master Plan Development Agreement. The water rights shall remain in escrow until: 1) they are deeded to the City as part of a final approval for each phase; 2) the Master Plan Development Agreement lapses in accordance with its terms, thus terminating any entitlement on the development property; or 3) if, prior to any phase of the development receiving final approval, the Developer informs the City in writing of its intent to abandon the entitlements received in the Master Plan Development Agreement. If the Master Plan Development Agreement is abandoned, the water rights will be returned to the land owner.*
- d. *Under no circumstances will the water rights be released from escrow to the developer or lending institution once the first phase of the development receives final approval.*
- e. *In the situation where an amendment to the Master Plan Development Agreement is approved for an unrecorded phase, and the amendment reduces the amount of water rights necessary for that phase, the extra water rights for that phase only, will be returned to the land owner.*

- f. *The developer's, or any other parties, remaining joint interest in the water rights for each phase shall be deeded in its entirety to the City prior to the recording of the final plat of each phase. Following such transfer of interest, no other party, including the developer shall hold any right, title or interest in the water rights so transferred. In no event shall a final plat for any development, subdivision, or phase thereof, be recorded prior to the transfer of all the right, title and interest in the required water rights to the City.*
- g. *In the event that any portion of the water right required for Master Plan approval pursuant to the Midway City Code has been pledged to a lending institution as partial security for a loan on the property, the lending institution must agree, in writing (through an escrow agreement), to the escrow of the water rights with the City according to the terms and conditions set forth in Master Plan Development Agreement. The lending institution may be listed as a joint owner with the developer of the water right held in escrow. Should the lending institution need to foreclose the developer's interest in the water rights, Midway City will release the shares for the sole purpose of removing the developer's name and having the shares re-issued solely in the financial institution's name. Once done, the shares shall be submitted back to Midway City to remain in escrow. Failure to return the shares to the City for escrow shall constitute a breach of the Master Plan Development Agreement, and all entitlements associated with the Master Plan Development Agreement shall become null and void.*
- h. *Prior to the final approval and recording of any plat for any development, subdivision, or phase thereof, it shall be the developer's sole responsibility to secure a release of any lien or ownership interest in the water right owned by a lending institution or any other party, and to deed or transfer 100% ownership interest in that water right required for that development, subdivision, or phase thereof, to Midway City. Prior to recording a final plat, the water right associated therewith shall be unencumbered, and shall be transferred to the City free and clear of any title encumbrance.*
- i. *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, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases.*
- j. *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.*



- k. *Master Plan applications must be reviewed by the Planning Commission and approved by the City Council.*
- l. *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.*
- m. *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.*
- n. *After approval of the Master Plan by the City Council, a Master Plan 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 Agreement must be signed by the applicant within 45 days of Final Approval of the Master Plan by the City Council. If the Agreement is not fully executed within 45 days of Final Approval, then all Master Plan approvals shall become null and void.*

This item has been noticed in the local newspaper for two weeks, posted in three locations in town, on the City’s website, and on the State’s website for the Planning Commission meeting.

This ordinance shall be effective immediately upon passage. A copy of this ordinance 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            , 20            .

	AYE	NAY
Council Member Lisa Christen	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Bob Probst	_____	_____
Council Member JC Simonsen	_____	_____
Council Member Ken Van Wagoner	_____	_____

APPROVED:

\_\_\_\_\_  
Celeste Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Brad Wilson, City Recorder

\_\_\_\_\_  
Corbin Gordon, City Attorney

(SEAL)

DRAFT