



Memo

Date: 8 September 2022
To:
Cc:
From: Brad Wilson, City Recorder
RE: Minutes of the 6 September 2022 City Council Meeting

Please note that the following minutes are awaiting formal approval and are in draft or unapproved form.

**MINUTES OF THE
MIDWAY CITY COUNCIL
(Meeting)**

**Tuesday, 6 September 2022, 6:00 p.m.
Midway Community Center, Council Chambers
160 West Main Street, Midway, Utah**

Note: Notices/agendas were posted at 7-Eleven, Ridley's Express, the United States Post Office, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City's website. A copy of the public notice/agenda is contained in the supplemental file.

1. Call to Order; Pledge of Allegiance; Prayer and/or Inspirational Message

Mayor Johnson called the meeting to order at 6:02 p.m.

Members Present:

Celeste Johnson, Mayor
Steve Dougherty, Council Member
Jeff Drury, Council Member
Lisa Orme, Council Member
Kevin Payne, Council Member
JC Simonsen, Council Member

Staff Present:

Michael Henke, Planning Director
Wes Johnson, Engineer
Dan Matthews, City Attorney's Office
Brad Wilson, Recorder

Note: A copy of the meeting roll is contained in the supplemental file.

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. She gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 6 September 2022 City Council Meeting

Note: A copy of item 2a is contained in the supplemental file.

Mayor Johnson indicated that the Lundin property would not be considered that evening.

Motion: Council Member Dougherty moved to approve the consent calendar with the deletion

of the Lundin property.

Second: Council Member Payne seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

3. Public Comment – Comments were taken for items not on the agenda.

Mayor Johnson asked if there were any comments from the public for items not on the agenda.

Swiss Days

Josh Wright, Swiss Days Committee Chair, thanked the City and its staff for their help with Swiss Days.

No further comments were offered.

4. Lundin Property / Open Space (Wendy Fisher – Approximately 15 minutes) – Receive an update on using bond funds to preserve open space on property owned by the Lundin family at approximately 900 West Bigler Lane.

The item was not considered.

5. Heirloom Common / Conditional Use Permit / Local Consent / Proximity Variance (Heirloom Corner, LLC – Approximately 45 minutes) – Discuss and possibly deny, continue, or grant a conditional use permit, local consent, and a proximity variance for an alcohol dispensing establishment for Heirloom Common located at 195 West Main Street (Zoning is C-2). Recommended with conditions by the Midway City Planning Commission. **Public Hearing**

Michael Henke gave a presentation regarding the requests and reviewed the following items:

- Location of the restaurants
- Overview
- Conditional Use Permit
- Background
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The applicants owned two restaurants (Heirloom Common and Heirloom Market) in the building that use to be the Corner Restaurant.
- The applicants had a current business license.
- A proximity variance was needed because of how close the restaurants were to the Town Square.
- The General Plan recommended a vibrant commercial area around the Town Square.
- it was argued that the Town Square was not a park when a liquor license was sought for the Corner Restaurant.
- Received verbal but not written complaints about the noise, parking, and smoke from the applicants' restaurants.
- The City's building official looked at the pizza oven that was creating the smoke.
- Had met with the applicants and raised concerns. Those concerns had been resolved.
- A special event license was needed if a restaurant had more people or vehicles than approved with the business license.
- Was not aware of any planned events or day-to-day business different from the previous owners.
- The restaurants had the amount of parking required when the building was vested as a restaurant. The amount of parking might be slightly short of the current requirement.
- The applicants resolved the proposed condition regarding the sign.
- The previous owners did not build the garbage dumpster enclosure that was required. Received a lot of complaints about the dumpster not being enclosed. The enclosure had to be on the applicants' property.
- The Planning Commission recommended that the outdoor freezer be shielded.
- The Planning Commission also recommended that the restaurants not be allowed to have a beer garden during Swiss Days. The Council could make that a condition of approval.
- A beer garden required local consent that he or the Council could grant.
- Sent a letter to the applicants notifying them that they needed to update their license because they now owned the restaurant. Put them on the soonest possible planning commission meeting that would meet noticing requirements. The City did not delay the application.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff, and meeting attendees discussed the following items:

- Council members had received complaints about the applicants' restaurants.
- A complainant sent a video of a large event at the restaurant that included the Patriot Streetfighter.
- An automobile event had been held at the restaurant and was problematic because public parking was blocked off.
- Complaints, even if not in writing, should be brought up so that the record was complete.
- Business owners could not block off public parking.
- Main Street was a UDOT road, and the parking spaces were public.
- Should all beer gardens during Swiss Days be prohibited? This would treat all businesses the same. This was a constitutional discussion that should be done at

another time.

- The State had a seamless process for obtaining a liquor license.
- The applicants had blamed city staff for needing that evening's special meeting.
- The City was told after the fact that the Patriot Streetfighter was just supposed to be an event for 50 diners. The Patriot Streetfighter then came, and word spread which increased the crowd and vehicles. The business should have insured compliance or removed the violators off the property.
- Alcohol had been served at an event in the basement when the restaurants did not have a liquor license. If any of the employees had served the alcohol, then state law had been broken and the applicants were liable.
- An approval of the CUP should prohibit any self-serve private parties because they were an enforcement problem.

Tessa Santiago, applicant, made the following comments:

- Agreed to the Planning Commission's recommendation that the dumpster be enclosed by 31 October 2022.
- Could not enclose the outdoor freezer but would put paneling on it to match the building. This would also be done by 31 October 2022.
- Thanked the Council for the special meeting.
- The lapse in the liquor license was the applicants' fault and the result of a perfect storm.
- One business was running two restaurants in the same building.
- One of the restaurants was a family friendly environment.
- Had never reached occupancy in the building.
- The automobile event was held by Nissan, and they blocked off the public parking spaces despite being told not to.
- The Nissan event and the Patriot Streetfighter were booked prior to them owning the restaurant. There were no more holdover events from the previous owners.
- Tried hard to be compliant.
- Did not want to expand the liquor license.
- Had no intentions of having a beer garden.
- The building had a magical space.
- Was told that large events could be held on the property when the applicants purchased it.
- Inherited problems from the previous owners.
- Would fix the issues with the dumpster and freezer at a significant cost.
- Wanted a business that created a sense of family and community. It was a pleasant place.
- Would meet all the conditions of the permit.
- No one had ever been escorted off the premises because of alcohol.
- Co-managed the restaurant since April of 2021.
- Closed on the property in March of 2022.
- The previous owners renewed the liquor license in December of 2021.
- The applicants filed for a liquor license in June of 2022.
- Their manager thought that the previous owner's liquor license was valid until December of 2022.
- Went through multiple managers.
- The organizers of the event in the basement brought their own alcohol.
- Filed for a liquor license when she became aware of the situation.
- Their actions were negligent but not intentional or willful.

- Did have restaurant experience.
- Was sorry that it came across like the applicants were attacking city staff.
- She was now the manager of the restaurants.
- Prohibiting self-serve private parties was fair.

Todd Santiago, applicant, made the following comments regarding the Patriot Streetfighter:

- Was not at the event.
- In hindsight the police should have been called, but the manager felt that would have made the situation worse.
- The applicants did not make any money on the event.
- The manager tried to keep things calm.
- The organizer was told that they were not welcome anymore.
- Did the best that they could.

Todd Santiago made the following comments regarding the Nissan event:

- The manager tried to have the organizers leave the public parking open.
- Law enforcement also told the organizers to leave the parking open.
- The manager and staff were also trying to take care of other customers.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public.

Clair Provost

Mr. Provost made the following comments:

- Built and lived in a house next to where he grew up. It bordered on the southwest corner of the applicants' restaurants.
- Knew that he could not live in a bubble and there would be growth.
- Lived in a family neighborhood.
- Parking and noise were issues with the restaurants.
- Felt like he was not living in a family neighborhood anymore.
- Drivers drove too fast even though there were children in the neighborhood. That needed to be mitigated.
- He was considerate of his neighbors and wanted the same in return.
- Was the emergency medical services chief for Wasatch County and had seen the negative effects of alcohol.
- Was not aware that he needed to submit complaints in writing.
- Tried calling the restaurants to have them turn down their music but was unsuccessful.

Leigh Ann Dresden

Ms. Dresden made the following comments:

- Had a business and her house next door to the restaurants.
- Someone tried to get into her house, to have her move her car, during one of the events at the restaurants. Had to call her husband to come home from work because she was so worried.
- Some of the people at the Patriot Streetfighter event were armed and dangerous.
- How would issues be addressed if the restaurant managers did not know the event organizers or how to control them?
- The applicants needed to know who was organizing the events at their restaurants.
- Could not open the windows at her business or house because of the smoke from the restaurants. Could not put clothes outside of her business because of the smoke.

Lynette Wilson

Ms. Wilson made the following comments:

- Had eaten and had cocktails at the restaurant and it was a nice place.
- Spoke to the restaurant management multiple times about her concerns.
- Could feel the music from the restaurants even with her doors and windows closed.
- Wanted to discuss issues with people before bringing them before the Council. Didn't want to call law enforcement or file a formal complaint.
- Noise, parking, events, and movie nights were all problems.
- A restaurant needed a liquor license.
- There should not be restaurants with liquor licenses surrounding the Town Square.

Mayor Johnson closed the hearing when no further public comment was offered.

The Council, staff, and meeting attendees discussed the following items:

- Noise could be no higher than 70 decibels at the property line until 10 p.m. on any day. It lowered to 55 decibels at 10 p.m. Construction noise had different regulations.
- The noise had been over 75 decibels at the property line for the restaurants.
- Someone at the restaurant should have the ability to monitor the noise level.
- Restaurant managers had to have thick skin and be in charge.
- The applicants had shown that they did not pay attention to the rules.
- The business should be supported but the community deserved it having a strong manager.
- The Town Square was not a park because it did not have any playground equipment. It should not be a park because it could be surrounded with restaurants, some of which would have liquor licenses.
- The area around the Town Square had been zoned commercial for many years.
- Parking was a safety issue. There already was not enough parking. Every business had to meet the applicable parking requirements. The City's requirements were comparable to other municipalities. The City had increased its parking requirements and was still looking at the issue.
- A lot of the issues raised were broader than the liquor license.
- Transition areas between residential and commercial zones were problematic. There was no ideal solution.
- The business license administrator or the Council could revoke a business or liquor

license.

- There were serious concerns about the applicants not taking responsibility for the problems.
- Could a liquor license be revoked because of noise? A business license could be revoked which would then invalidate the liquor license.
- Complaints could be submitted to the Utah Department of Alcoholic Beverage Services (DABS) and they would investigate them.
- The City had regulations regarding smoke, but smoke was hard to measure.
- The Council had full discretion when approving or revoking approvals related to alcohol.
- The City could revoke a business license and then inform the DABS.
- A lot of what was being discussed was unrelated to the DABS.
- The business should be successful but also comply with the laws.
- The City had good communication with the applicants.
- The applicants had responded to questions.
- The applicants were incorrectly blaming problems on the previous owners.

Council Member Drury made the following comments:

- Had approved many licenses while on the Council.
- The applicants' property, before or after they closed on it, had repeated issues and bad behavior. Did not see the same issues with other businesses.
- Was not comfortable granting a blanket approval because of the history of issues and complaints.
- The neighbors were being treated well.
- Would only support a probationary approval that would be reviewed every six to twelve months to verify there had not been any issues or complaints.
- Not aware of any issues with other liquor licenses.

Council Member Dougherty made the following comments:

- Normally a proximity variance was not needed.
- Approval was premised on the implicit credibility of the applicants abiding by the law.
- The applicants did not hire good managers.
- Ultimately, any issues were the responsibility of the applicants.
- An owner could not use someone else's permits or licenses.
- Had not eaten at the applicants' restaurants for several years.
- Liked to drink alcohol.
- The Council needed to explore what probation would be like.
- Preferred granting the approvals with conditions.
- Other restaurants did not have problems with smoke.
- Smoke needed to be kept on the property.
- Was it easier to not grant approval for a period of time?
- The DABS would not enforce the City's restrictions. The City could tell them that it no longer consented to a liquor license.
- The City was not good at enforcement.

Todd Santiago, applicant, made the following comments:

- Had been cooperative.
- Was sold the business thinking that it could include big events.

- Had made mistakes.
- Was frustrated.
- Cared about children.
- Would install a pipe and filter for the smoke.
- Communities were built around food.
- Gave free rent to the Midway Bakery so that it would not close.
- The lapse in the liquor license had cost them a lot of money.
- Wanted to make the business work.
- Had made gigantic strides.
- The business could not stay open if it lacked a liquor license.
- Blamed the previous owner for not enclosing the dumpster, etc.

Motion: Council Member Drury moved to grant conditional approval to Heritage Corner for an alcohol establishment conditional use permit, local consent for a liquor license, and a proximity variance with the following findings and conditions:

- The proposed license would allow the sale of alcohol at Heirloom Common and Heirloom Market.
- The restaurant property was located within 200 feet of public property.
- The State required a proximity variance because of its closeness to the Town Square.
- There had been large events held on the property, without City approval, that had created noise and parking concerns for the community.
- The State regulated this type of alcohol license.
- No alcohol related signage would be visible on the exterior of the building or on the inside, visible from the outside including from 200 West.
- A dumpster enclosure, reviewed and approved by the Vision Architectural Committee, would be constructed within six months to mitigate the visual impact of the dumpster for neighbors and for passing motorists.
- The outdoor freezer would be enclosed or paneled within six months.
- The approvals were probationary for a period of 24 months with formal reviews every six months.
- The probation was entirely at the discretion of the City Council and the approvals could be revoked at anytime during the 24 months.
- Noise could be an item that caused the approval to be revoked at any time.
- At the end of the 24 months another probationary period or full approval would be considered.
- A plan was accepted by staff that mitigated smoke leaving the property.
- Self-service of alcohol at events was not allowed.

Discussion: Michael Henke indicated that any business that served alcohol in Midway had to have a CUP.

Council Member Dougherty stated that some of the conditions had nothing to do with alcohol, but the Council wanted to cede its enforcement to the DABS. He asked if enclosing the dumpster was a condition of the original CUP. Mr. Henke responded that it was not but was a requirement of the Municipal Code for the building. He added that the previous owners did not do it because they were in a hurry to open.

Council Member Dougherty recommended that conditions be added to the CUP which would be

enforced by the City and not the DABS. Mr. Henke responded that conditions could be added.

Council Member Dougherty asked if issues like smoke could be addressed with a permitted use. Mr. Henke responded that those issues could be addressed.

Mr. Henke indicated that the City retained the maximum discretion to grant or deny consent.

Mr. Henke also indicated that the City could revoke the business license for noncompliance.

Council Member Dougherty was concerned that the DABS would not revoke an already issued liquor license if the City withdrew local consent.

Council Member Dougherty thought that the Council could not put conditions on a business license that was already issued. He said that it would have to be revoked and then reissued with conditions.

Mr. Henke indicated that the City could revoke the business license and/or the liquor license at any time if the business violated the Municipal Code. He added that DABS would not be needed to enforce the revocation. He indicated that the City could use law enforcement if necessary. Council Member Payne agreed that the City could revoke a business license for not complying with the Code. Ms. Santiago indicated that the business would stop selling alcohol if the City withdrew local consent.

Council Member Simonsen indicated that the Council had the options of a conditional approval, tabling the item to answer questions, or deny the requests.

Council Member Drury said that he wanted a probationary period for the following reasons:

- Believed that the business was a great attraction.
- No one liked some of the behavior at the business.
- The applicants deserved a chance to prove that they knew the laws and would abide by them.
- The City would review and could enforce compliance every six months.
- Would support a special meeting to address compliance.

Council Member Simonsen noted that any local consent was temporary if it could be revoked at any time.

Council Member Simonsen was concerned that the applicants did not appreciate that they were responsible for the issues with the business.

Council Member Dougherty liked the continued review during probation. He thought that the restaurants would be empty if they did not have a liquor license. He noted the repeated problems and said that the applicants' contrition would not help them for more than six months.

Council Member Payne wanted the business to succeed and was willing to give them a second chance.

Second: Council Member Payne seconded the motion.

Discussion: Council Member Simonsen asked Dan Matthews if he was confident that the liquor

license could be revoked. Mr. Matthews made the following comments:

- There were two layers of regulations and enforcement.
- This was the only instance where the State looked to a local entity for approval.
- The Municipal Code included regulations and enforcement.
- A business license could be revoked for violating the nuisance code.
- The business could not keep its liquor license if its business license was revoked.
- The State would not continue to allow a liquor license if the local entity did not approve.

Council Member Drury emphasized that any problems could be addressed if they came up before the next six-month review.

Council Member Simonsen asked if the conditions would terminate in two years. Mayor Johnson emphasized that all the approvals would essentially always be probationary.

Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

6. Adjournment

Motion: Council Member Orme moved to adjourn the meeting. Council Member Payne seconded the motion. The motion passed unanimously.

The meeting was adjourned at 8:28 p.m.

Celeste Johnson, Mayor

Brad Wilson, Recorder