

Midway City Council
7 June 2022
Regular Meeting

Ordinance 2022-02 /
Setbacks in Residential Zones /
Reconsideration of Adoption
Motion



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MEMORANDUM

TO: Midway City Council

FROM: Corbin Gordon

DATE: May 31, 2022

RE: Recommendation regarding effective date of Ordinance 2022-02.

INTRODUCTION

On February 1, 2022, the Midway City Council adopted Ordinance 2022-02, which, among other things, amended the setback requirements for many of the zones within the City. The question has been raised as to whether the newly adopted setback standards can be applied to subdivisions that were approved prior to February 1, 2022, and whether it was the intent of the City Council to make the set-back requirements retroactive. This memorandum makes suggestions regarding the appropriate effective date of that Ordinance if the City Council's intent was not to have the set-backs apply retroactively.

QUESTION

Should the new setback Ordinance adopted by Midway City on February 1, 2022 be applied to subdivisions that were approved prior to adoption of the Ordinance?

SHORT ANSWER

No. Based on legal research and language in the development agreements associated with each subdivision, the set-backs cannot be applied retroactively. I suggest that Ordinance 2022-02 should be amended to reflect that it applies to all land use applications that are submitted after February 1, 2022.

ANALYSIS

I. Suggestion to Re-open and Amend Ordinance 2022-02 re setbacks.

On February 1, 2022, the City Council voted to approve Ordinance 2022-02 which, among other things, increased the setback requirements for multiple zones in the City. Analysis of the Utah Statutes and cases suggest that it is more appropriate for Ordinance 2022-02 to be applied proactively. I suggest that this item be placed on the next agenda, and that the Council consider modifying the Ordinance to specifically indicate that it only applies to Projects that were commenced after the date of the adoption of the Ordinance. If my recommendation is followed, that means the new setbacks contained in the Midway City Code sections 16.7, 16.8, 16.9, 16.10, 16.11 and 16.12 would be applied proactively from February 1, 2022. I suggest that the City Council vote to include the following language:

“Ordinance 2022-02 shall apply to all developments within the Midway City boundaries that:

- 1) are commenced after February 1, 2022;
- 2) that did not have a completed application for their project prior to February 1, 2022;
- 3) that did not have Preliminary Approval by February 1, 2022;
or
- 4) that were not subject to an executed Annexation Agreement or Development Agreement with the City prior to February 1, 2022.”

CONCLUSION

Midway City has the general right to adopt and amend its land use ordinances in order to best manage development within its boundaries. Setback requirements clearly fall within the land use ordinances of the City. Since the City has adopted new setbacks and other requirements in Ordinance 2022-02, it is my suggestion that those new standards should be applied proactively from the date of the Ordinance as described above.