

Midway City Council
2 March 2021
Regular Meeting

Ordinance 2021-03 /
Vested Rights



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: March 2, 2021

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Addition of Sections 16.26.13: Vested Rights

ITEM: 6

Midway City is proposing a code text amendment of Section 16.26.13: Vested Rights of the Midway City Municipal Code. The proposed amendment would clarify vesting rights for land use applications. The proposal would also clarify the requirements for the validity of a land use application if the application has ceased to progress through the approval process.

BACKGROUND:

The proposed amendment would clarify vesting rights for land use applications by amending Section 16.26.13: Vested Rights, of the Midway Municipal Code. There are two parts in the proposed amendment. The first, clarifies and defines when approval is not possible for a land use application because the City has formally initiated proceedings to amend its ordinance. If the City has begun the process to amend its ordinance, then a land use application may not be approved. The second part of the proposed amendment, clarifies and defines that an applicant of a land use application must, with reasonable diligence, pursue approval or the application will lapse.

ANALYSIS:

Regarding the first item of vested rights of a land use application, the proposed amendment adds language that defines “formally initiated proceedings”. Regarding the second item of an application proceeding with reasonable diligence for it to be considered valid, the proposed language will define reasonable diligence and will clearly describe when an application has lapsed. The current code states the following in Section 16.26.13:

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.

Staff feels it is important to clarify the wording in this section of code because the current language is ambiguous and subjective. Periodically, a land use application is submitted to the City and then the applicant fails to progress the application through the approval process. There are several reasons why this might happen with the most common reasons being the following:

- The applicant submits a land use application because the applicant believes the City will amend its code and wants to vest the application before the code is amended.
- Issues arise with the application and progress is completely halted and no progress is made to resolve the issues.
- The applicant does not have the funds to complete the proposal and does not pursue progress or approval of the application.

The most common of the aforementioned situations is the first. In recent years, the City has received a couple of large mixed use land applications that were submitted because the applicants believed a moratorium may be enacted or the City would amend its code. Both applications were idle for about two years and both were eventually pulled by the applicants. Several provisions of the land use code have been amended since the applications were submitted. If a complete application is submitted (an application must be determined to be complete for the application to be vested per state law which includes all required documents are submitted and all fees paid among other requirements listed in the code) then the application is vested under the current code and is not subject to any revisions the City may have enacted. Currently, there is not an expiration on applications that fail to progress, and staff feels that it is important to create a system of expiring inactive applications that are vested, in some cases, under older code provisions.

The proposed amendment will amend the language to Section 16.26.13 as the following:

Section 16.26.13 Vested Rights

A. Completed Application. To become vested, an applicant must submit a completed land use application that conforms to the requirements of the City's zoning map and applicable land use ordinances. Application forms are available at the City Planning Office, and no application will be accepted that does not comply with the application form. Upon review of the application, the City Planner will issue a notice to the applicant indicating the application is complete, or what information is still required to make it complete. An application does not vest until the City Planner accepts it as complete.

B. Approval. An applicant is entitled to approval of a land use application when a Completed Application has been accepted by the City Planner, 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 adopted a Notice of Pending Ordinance as set forth in Utah Code Ann. §10-9a-504.

C. Notice of Pending Ordinance. No Completed Applications will be processed that are affected by a Notice of Pending Ordinance to amend the City Code, until either a new ordinance is passed, or during the 180 days following the adoption of the Notice of Pending Ordinance, the City does not adopt code that prohibits the approval of the Completed Application as submitted. A Notice of Pending Ordinance is “formally initiated” for purposes of vesting when a specific proposed code text amendment first appears as an item on a publicly released agenda for a planning commission or legislative body or is announced in a public notice.

D. Requirement to Pursue Approval with “Reasonable Diligence”. It is not in the City’s best interest to allow applications to languish for years with little activity, while zoning, safety and other standards are being updated and changed. As such, once an application is accepted as complete by the City Planner, the applicant shall pursue approval of the application with “Reasonable Diligence”, which shall require appearing on the agenda and at the meetings of either the Planning Commission or the City Council with required plans, studies, and requested information necessary to obtain preliminary and final approval. Failure to appear before the Planning Commission or the City Council seeking either preliminary or final approval for a consecutive period of 6 months shall be construed as evidence of failure to exercise “Reasonable Diligence” in seeking approval, and the City Planner, at its sole discretion, may refer the application to the City Council for a determination that due to a failure to pursue approval with Reasonable Diligence the application is denied, vesting is lost, and requiring the applicant to start over in the application and approval process. The City Council may consider evidence provided by both the City Planner and the Applicant in determining if approval is being pursued with Reasonable Diligence, with a focus on denying applications that appear to have been filed for the sole purpose of vesting under a less restrictive statute as a sort of place holder, where it can be demonstrated that insufficient effort has been made to move the approval forward.

E. The City shall not impose on a holder of an issued land use permit a requirement that is not expressed in the land use permit or in documents on which the land use permit is based, or 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 in the land use permit or in documents on which the land use permit is based, or 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.

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Bouwhuis: I make a motion that we recommend approval of the code text amendment of Section 16.26.13: Vested Rights of the Midway City Municipal Code. The proposed amendment would clarify vesting rights for land use applications. The proposal would also clarify the requirements for the validity of a land use application if the application has ceased to progress through the approval process. We accept the possible findings and with the small minor changes discussed in this meeting.

Seconded: Commissioner Simons

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners: Bouwhuis, Ream, Simons, McKeon, Whitney, Crawford, Clifton

Nays: None

Motion: Passed

POSSIBLE FINDINGS:

- The proposed amendment will assure that applications that fail to progress will lapse
- The City does not want applications to sit idle for months or years and vested on outdated codes
- The proposal will help assure that developments are developed under the most current codes and requirements

ALTERNATIVE ACTIONS:

1. Approval. This action can be taken if the City Council finds 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 City Council 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. Denial. This action can be taken if the City Council finds 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 2021-03

AN ORDINANCE AMENDING SECTION 16.26.13 OF THE MIDWAY CITY MUNICIPAL CODE REGARDING THE VESTED RIGHTS

WHEREAS, the City Council of Midway City finds that certain amendments to Section 16.26.13 of the Midway City Municipal Code pertaining to vested rights are necessary and will serve the public interest; and

WHEREAS, the City Council now desires to amend Section 16.26.13 of the Midway City Municipal Code as set forth herein.

NOW THEREFORE, be it ordained by the City Council of Midway City, Utah, as follows:

Section 16.26.13 (Vested Rights) of the Midway City Municipal Code is deleted in its entirety and is replaced as attached in Exhibit "A":

This ordinance shall take effect upon publication as required by law.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
this day of 2021.

	AYE	NAY
Council Member Steve Dougherty	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
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)

Exhibit A

DRAFT

Section 16.26.13 Vested Rights

A. Completed Application. To become vested, an applicant must submit a completed land use application that conforms to the requirements of the City's zoning map and applicable land use ordinances. Application forms are available at the City Planning Office, and no application will be accepted that does not comply with the application form. Upon review of the application, the City Planner will issue a notice to the applicant indicating the application is complete, or what information is still required to make it complete. An application does not vest until the City Planner accepts it as complete.

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