



PLANNING COMMISSION STAFF REPORT

DATE OF MEETING: January 13, 2026

NAME OF APPLICANT: City of Midway

AGENDA ITEM: Amendment of Midway City Code Chapter 16.13.060 to add a new subsection H to clarify that no construction of living space in accessory structures is permitted until after construction is completed and a certificate of occupancy is granted for the main dwelling.

ITEM: 3

Proposed code text amendment to Midway City Code Section 16.13.060 Accessory Buildings Prohibited as Living Quarters.

BACKGROUND:

Midway Municipal Code Section 16.13.060 Accessory Buildings Prohibited as Living Quarters, provides as follows:

16.13.60 Accessory Buildings Prohibited As Living Quarters

- A. It shall be a violation of the Midway City Code to use, or to allow the use of, an accessory building as living quarters. Violations of this section of the Code shall be enforced as set forth in the Midway City Code for other violations.
- B. Living quarters in any building other than the main residential building are prohibited except as allowed for detached two family dwellings in the R-1-7 and R-1-9 zones.

- C. It shall be a violation of this Code to rent, lease or otherwise allow for any person to use an accessory building for living quarters except as allowed for detached two family dwellings in the R-1-7 and R-1-9 zones.
- D. An accessory building shall be considered living quarters if it includes all of the following: sleeping area (including bedrooms), kitchen, and bathroom facilities (three-quarter or full bathroom).
- E. Accessory buildings may include rooms such as offices, hobby rooms, game rooms, music rooms, sleeping areas (including bedrooms), and craft rooms.
- F. An accessory building may include either:
 - a. A full kitchen and a half-bath (sink and toilet only); or
 - b. A bathroom (three-quarter or full bathroom) and a wetbar (sink, refrigerator, dishwasher, and microwave but does not include a stove or oven).
- G. Accessory buildings are to be used exclusively by the owners or occupants of the main residential building and their temporary guests or invitees.

While owners traditionally build main dwellings before or contemporaneously with accessory structure(s), we have seen a growing number of instances where a homeowner builds a non-primary structure well before the primary residence or simply does not build a primary residence. A non-primary structure may be used as a residence if it complies with requisite setbacks for main dwellings. However, more often we see owners build a garage or other structure, taking advantage of the reduced setbacks for accessory structures, and then seek to use it as living space pending completion of a main dwelling, the timeframe for which is indefinite. While this practice is not consistent with existing code, staff believe the code language could be strengthened and clarified to prevent ambiguity and potential future problems.

Toward this end, staff proposes amending Section 16.13.060 to add the following language:

- H. No building permit shall be issued for construction of living space (defined as areas which could be used for living, sleeping, eating, and/or cooking, but excluding utility rooms, bathrooms, halls, and storage) in any accessory structure until after completion of construction and issuance of a certificate of occupancy for the main dwelling.

POSSIBLE FINDINGS:

- The Proposed amendment to Section 16.13.060 will clarify that no building permit shall be issued for construction of living space in any accessory structure until after completion of construction and issuance of a certificate of occupancy for the main dwelling.
- The Proposed amendment addresses issues/potential issues of owners seeking to live in accessory structures, irrespective of compliance with main dwelling setbacks, pending construction of a main dwelling, which may or may not occur, and for which there may be no timeframe.
- The Proposed amendment is consistent with the intent, language, and construction of the existing Midway City Code, including Section 16.13.060.

ALTERNATIVE ACTIONS:

1. Recommendation of Approval. This action can be taken if the Planning Commission finds that the proposed language is an acceptable amendment to the City's Municipal Code.
 - a. Accept the 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 the 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 finds that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept the staff report
 - b. List accepted findings
 - c. Reasons for denial