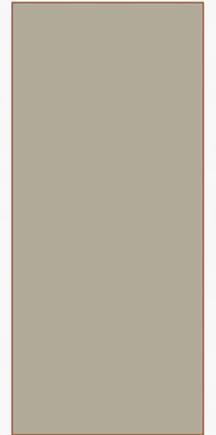


LIVING SPACE IN ACCESSORY STRUCTURES

CODE TEXT AMENDMENT



CODE TEXT AMENDMENT

- Proposed Amendment to 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.

BACKGROUND

- 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.

BACKGROUND CONT.

- This creates a situation where an “accessory structure” exists in name only since there is no main dwelling to which it is “accessory”, and if no main dwelling is built, the “accessory building” is a de facto main dwelling which does not meet applicable setbacks.
- 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.

16.13.060 ACCESSORY STRUCTURES AS LIVING QUARTERS (EXISTING CODE)

- 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).

16.13.060 CONTINUED

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.

PROPOSED AMENDMENT

- Add a new subsection H to Section 16.13.060:

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.

DISCUSSION

- A building with living space can still be built and lived in provided it complies with setbacks for a main dwelling. If the main dwelling is constructed at a later date, the first building may become part of the main dwelling if attached, or an accessory structure if detached, but in either event will meet setbacks. If a traditional main dwelling is not built, this building becomes de facto the main building and meets setbacks.
- The proposed amendment simply removes the situation where a garage or barn or other traditional “accessory structure” is built before there is any building to which it is “accessory” and does not meet the setbacks for a stand-alone residence, which may or may not be built.
- Allowing occupancy in such structures also raises other issues such as when water is connected, whether occupancy is permitted if the site becomes a construction site for a main dwelling, etc.

PLANNING COMMISSION RECOMMENDATION: APPROVAL

At its regularly scheduled meeting held January 13, 2026, the Planning Commission held extensive discussion on this issue and made the following recommendation:

- **Motion by Commissioner Osbourne:** “I’ll make a motion that we recommend for approval to City Council, Item 3, the proposed code text amendment to Midway City section 16.13.060, accessory buildings prohibited as living quarters and include the proposed amendment as written, and the possible findings as well.”
- **Second: Commissioner Knight**
- **Ayes:** Commissioners: Lineback, Nokes, Facer, Winegar, Osbourne, Knight. **Nays:** None. **Motion:** Passed

POSSIBLE FINDINGS (FOR APPROVAL)

1. 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.
2. 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.
3. The Proposed amendment is consistent with the intent, language, and construction of the existing Midway City Code, including Section 16.13.060.

POSSIBLE FINDINGS (FOR APPROVAL)

4. A building with living space can still be built and lived in provided that it complies with setbacks for a main dwelling. If the main dwelling is constructed at a later date, the first building may become part of the main dwelling if attached or an accessory structure if detached, but in either event will meet setbacks. If a traditional main dwelling is not built, this building becomes de facto the main building and meets setbacks.

5. The proposed amendment simply removes the situation where a garage or barn or other traditional “accessory structure” is built before there is any building to which it is “accessory” and does not meet the setbacks for a stand-alone residence, which may or may not be built.

POSSIBLE FINDINGS (AGAINST APPROVAL)

a. The proposed amendment is not consistent with the intent of Section 16.13.60.