



## ORDINANCE 2022-06

### **AN ORDINANCE TO AMEND SECTION 16.13 OF THE MIDWAY CITY LAND USE CODE TO REGULATE INTERNAL ACCESSORY DWELLING UNITS.**

**WHEREAS**, pursuant to Utah Code Section 10-9a-509 the Midway City Council may formally initiate proceedings to amend city ordinances; and

**WHEREAS**, in the 2021 Utah Legislative Session, the Utah Legislature adopted House Bill 82, which modifies state code requiring counties and municipalities to allow Internal Accessory Dwelling Units (“IADU”) in their communities; and

**WHEREAS**, the IADU units are intended to be full living units located within a property owner’s primary dwelling; and

**WHEREAS**, the Utah code provides some IADU requirements that must be imposed by local governments, but also provides some options that local governments can choose whether to impose; and

**WHEREAS**, the Midway City Council desires to amend Section 16.13 of the Midway City Land Use Code to incorporate the Utah code requirements regarding IADUs, and to specify the optional requirements it has chosen to impose on IADUs.

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

The following sections shall be amended to read as follows:

#### **Section 16.13.38 Internal Accessory Dwelling Units.**

1. As used in this section:
  - a. “Internal Accessory Dwelling Unit” means an accessory dwelling unit created:
    - i. Within a primary dwelling;

- ii. Within the existing footprint of the primary dwelling at the time the internal accessory dwelling unit is created; and
- iii. For the purpose of offering a long-term rental of 30 consecutive days or longer or habitation without fee.
- b. "Primary dwelling" means a single-family dwelling that:
  - i. Is detached; and
  - ii. Is occupied as the primary residence of the owner of record.

2. Permitted Use.

- a. The use of one internal accessory dwelling unit within a primary dwelling is a permitted use in any area zoned primarily for residential use.
- b. An internal accessory dwelling unit shall comply with all applicable building, health, and fire codes, except that:
  - i. A structure whose egress window in an existing bedroom complied with the construction code in effect at the time that the bedroom was finished is not required to undergo a physical change to conform to the current construction code if the change would compromise the structural integrity of the structure;
  - ii. The discharge of return air from an accessory dwelling unit into another dwelling unit, or into an accessory dwelling unit from another dwelling unit, is not prohibited; and
  - iii. An occupant of an accessory dwelling unit is not required to have access to the disconnect serving the dwelling unit in which they reside.

3. Restrictions and Requirements:

- a. The following are prohibited in all internal accessory dwelling units located in the City:
  - i. Installing a separate utility meter;
  - ii. Creating an internal accessory dwelling unit within a mobile home;
  - iii. Creating an internal accessory dwelling unit within a primary dwelling served by a failing septic tank;
  - iv. Renting an internal accessory dwelling unit located within a dwelling that is not the owner's primary residence;
  - v. Renting or offering to rent an internal accessory dwelling unit for a period of less than 30 consecutive days;
- b. The following are required of all internal accessory dwelling units located in the City:
  - i. One additional on-site parking space, regardless of whether the primary dwelling is existing or new construction;
  - ii. Any required parking spaces contained within a garage or carport removed for the creation of an internal accessory dwelling unit must be replaced, which could require the creation of new onsite parking spaces. Parking shall comply with the following standards:
    - 1. Parking associated with an internal accessory dwelling unit may not be in tandem with required parking of the main dwelling, or on the existing primary dwelling access driveway unless all the following criteria are met:
      - a. All parking spaces shall comply with the general size requirements for parking stalls (9' x 20').

- b. Parking shall not be on a sidewalk or trail.
- c. Parking shall be located on the lot or parcel where the IADU is located.
- d. Parking shall not limit access to another parking area.
  - i. To limit access means that a hypothetical 20' long vehicle could be reasonably expected to have access to any space at any time. In particular, spaces that are aligned in tandem:
    - 1. Require an unblocked lane of travel for each lane that is to be counted as parking (min 9' width per lane).
    - 2. Where parallel parking access is not possible, there must be an extra 20' of spacing between counted spaces to allow pull-in access to each counted space.
    - 3. Where parallel parking is possible, each space accessed in this manner requires 2' of extra length (24' total) front-to-back.
  - iii. The owner of a primary dwelling desiring to rent out an internal accessory dwelling unit must obtain a City license and any applicable permits to do so;
  - iv. Lot containing the primary dwelling shall be a minimum of 6,000 square feet in size;
    - 1. No common or limited common area may count towards the 6,000 square foot minimum.
  - v. An internal accessory dwelling unit should be designed in a manner that does not change the appearance of the primary dwelling as a single-family dwelling. Specifically, it must comply with the following:
    - 1. New exterior entrances that benefit an internal accessory dwelling unit are prohibited along the front façade of the structure. This does not prevent the internal accessory dwelling unit from using an existing front entrance but prevents the creation of a new entrance for the internal accessory dwelling unit along the front façade of the structure. An additional entrance may be added along the side or rear façades of the structure.
    - 2. No parking spaces may be located within the front setback or the secondary frontage setback adjacent to a street, except for within an approved driveway as described in 3(b)(ii). A required IADU parking stall shall not be in front of the dwelling except as described in 3(b)(ii). A driveway associated with an IADU or parking stall associated with an IADU may not be located in the secondary frontage setback.



3. The minimum dimension of the parking stall is 9' x 20' and shall have a surface consisting of either asphalt, concrete, pavers, gravel, or road base.
- c. The City has discretion to pursue the following concerning internal accessory dwelling units:
    - i. The City may hold a lien against a property containing an internal accessory dwelling unit in accordance with Subsection 4; and
    - ii. The City may record a notice for an internal accessory dwelling unit in accordance with Subsection 5.
4. Liens.
    - a. In addition to any other legal or equitable remedies available to the City, the City may hold a lien against a property containing an internal accessory dwelling unit if:
      - i. The owner of the property violates any of the provisions of Subsections 3 or 4;
      - ii. The City provides a written notice of violation in accordance with Subsection (4)(b);
      - iii. The City holds a hearing and determines that the violation has occurred in accordance with Subsection (4)(d), if the owner files a written objection in accordance with Subsection (4)(b)(iv);
      - iv. The owner fails to cure the violation within the time period prescribed in the written notice of violation under Subsection (4)(b);
      - v. The City provides a written notice of lien in accordance with Subsection (4)(c); and
      - vi. The City records a copy of the written notice of lien described in Subsection (4)(a)(iv) with the Wasatch County recorder.
    - b. The written notice of violation shall:
      - i. Describe the specific violation;
      - ii. Provide the owner of the internal accessory dwelling unit a reasonable opportunity to cure the violation that is:

1. No less than 14 days after the day on which the City sends the written notice of violation, if the violation results from the owner renting or offering to rent the internal accessory dwelling unit for a period of less than 30 consecutive days; or
  2. No less than 30 days after the day on which the City sends the written notice of violation, for any other violation;
- iii. State that if the owner of the property fails to cure the violation within the time period described in Subsection (4)(b)(ii), the City may hold a lien against the property in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires;
  - iv. Notify the owner of the property:
    1. That the owner may file a written objection to the violation within 14 days after the day on which the written notice of violation is post-marked or posted on the property; and
    2. Of the name and address of the City office where the owner may file the written objection;
  - v. Be mailed to:
    1. The property's owner of record; and
    2. Any other individual designated to receive notice in the owner's license or permit records; and
  - vi. Be posted on the property.
- c. The written notice of lien shall:
    - i. State that the property is subject to a lien;
    - ii. Specify the lien amount, in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires;
    - iii. Be mailed to:
      1. The property's owner of record; and
      2. Any other individual designated to receive notice in the owner's license or permit records; and
    - iv. Be posted on the property.
  - d. If an owner of property files a written objection in accordance with Subsection (4)(b)(iv), the City shall:
    - i. Hold a public hearing to conduct a review and determine whether the specific violation described in the written notice of violation under Subsection (4)(b) has occurred; and
    - ii. Notify the owner in writing of the date, time, and location of the hearing described in Subsection (4)(d)(i) no less than 14 days before the day on which the hearing is held.
    - iii. If an owner of property files a written objection under Subsection (4)(b)(iv); the City may not record a lien under this Subsection 4 until the City holds a hearing and determines that the specific violation has occurred.
    - iv. If the City determines at the hearing that the specific violation has occurred, the City may impose a lien in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires, regardless of whether the hearing is held after the day on which the opportunity to cure the violation has expired.

- e. If an owner cures a violation within the time period prescribed in the written notice of violation under Subsection (4)(b), the City may not hold a lien against the property, or impose any penalty or fee on the owner, in relation to the specific violation described in the written notice of violation under Subsection (4)(b).

5. Recording Notices.

- a. If the City issues a license and any applicable permits to an owner of a primary dwelling to rent an internal accessory dwelling unit, or a building permit to an owner of a primary dwelling to create an internal accessory dwelling unit, the City may record a notice in the office of the Wasatch County recorder.
- b. The notice described in Subsection (5)(a) shall include:
  - i. A description of the primary dwelling;
  - ii. A statement that the primary dwelling contains an internal accessory dwelling unit; and
  - iii. A statement that the internal accessory dwelling unit may only be used in accordance with the City’s land use regulations.
- c. The City shall, upon recording the notice described in Subsection (5)(a), deliver a copy of the notice to the owner of the internal accessory dwelling unit.

6. Home Owner Associations.

- a. A home owner association may not restrict or prohibit the rental of an internal accessory dwelling unit constructed within a lot owner’s residential lot, if the internal accessory dwelling unit complies with all applicable:
  - i. Land use ordinances;
  - ii. Building codes;
  - iii. Health codes; and
  - iv. Fire codes.

**16.5.2 Permitted and Conditional Uses (C-2 and C-3)**

USES	C-2	C-3
Internal Accessory Dwelling Unit	P	P

**16.7.2 Permitted Uses (R-1-7)**

**J. Internal Accessory Dwelling Unit**

**16.8.2 Permitted Uses (R-1-9)**

**J. Internal Accessory Dwelling Unit**

**16.9.2 Permitted Uses (R-1-11)**

**G. Internal Accessory Dwelling Unit**

16.10.2 Permitted Uses (R-1-15)

G. Internal Accessory Dwelling Unit

16.11.2 Permitted Uses (R-1-22)

G. Internal Accessory Dwelling Unit

16.12.2 Permitted Uses (RA-1-43)

J. Internal Accessory Dwelling Unit

16.15.4.A.F.3 Permitted and Conditional Uses in Resort Zone (RZ)

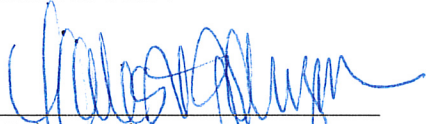
USES	RZ
Internal Accessory Dwelling Unit	P

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 15<sup>th</sup> day of February 2022.

Council Member Steve Dougherty	<u>          Aye          </u>
Council Member Jeff Drury	<u>          Aye          </u>
Council Member Lisa Orme	<u>          Aye          </u>
Council Member Kevin Payne	<u>          Aye          </u>
Council Member JC Simonsen	<u>          Aye          </u>

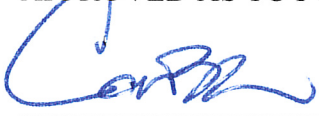
APPROVED:

  
 \_\_\_\_\_  
 Celeste Johnson, Mayor

ATTEST:

  
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 Brad Wilson, City Recorder

APPROVED AS TO FORM:

  
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 Corbin Gordon, City Attorney



(SEAL)



## Certificate of Passage, Posting and Publication

I certify that on 15 February 2022 the Midway City Council adopted Ordinance 2022-06 (IADUs).

I certify that a copy of the ordinance was deposited in the office of the municipal recorder.

I certify that a full, true, and correct copy of the ordinance was posted on 21 April 2022 at the following locations:

Midway City Office Building  
Midway Community Center  
United States Post Office (Midway)  
7-Eleven (Midway)

I certify that a summary of the ordinance was published on the Utah Public Notice Website on 21 April 2022.

I further certify that a summary of the ordinance was published in The Wasatch Wave on 27 April 2022.

Brad Wilson, Midway City Recorder

Dated 18 May 2022

