



Midvale City
7505 South Holden Street
Midvale, UT 84047
801-567-7200
www.midvalecity.org

**MIDVALE CITY COUNCIL MEETING
AGENDA
October 20, 2015**

PUBLIC NOTICE IS HEREBY GIVEN that the **Midvale City Council** will hold a regular meeting on the **20th Day of October, 2015** at Midvale City Hall, 7505 South Holden Street, Midvale, Utah as follows:

**6:30 PM
INFORMATIONAL ITEMS**

- I. DEPARTMENT REPORTS**
- II. CITY MANAGER BUSINESS**

**7:00 PM
REGULAR MEETING**

- III. GENERAL BUSINESS**
 - A. WELCOME AND PLEDGE OF ALLEGIANCE
 - B. ROLL CALL
 - C. Proclamation encouraging all students graduating to apply to at least one college of their choice

- IV. PUBLIC COMMENTS**

Any person wishing to comment on any item not otherwise on the Agenda may address the City Council at this point by stepping to the microphone and giving his or her name for the record. Comments should be limited to not more than three (3) minutes, unless additional time is authorized by the Governing Body. Citizen groups will be asked to appoint a spokesperson. This is the time and place for any person who wishes to comment on non-hearing, non-Agenda items. Items brought forward to the attention of the City Council will be turned over to staff to provide a response outside of the City Council meeting.

- V. COUNCIL REPORTS**
 - A. Councilmember Quinn Sperry
 - B. Councilmember Wayne Sharp
 - C. Councilmember Stephen Brown
 - D. Councilmember Paul Glover
 - E. Councilmember Paul Hunt

- VI. MAYOR REPORT**
 - A. Mayor JoAnn B. Seghini

- VII. CONSENT AGENDA**
 - A. Approve Minutes of October 6 and 13, 2015 [*Rori Andreason, H.R. Director/City Recorder*]

VIII. ACTION ITEMS

- A. Approve Ordinance No. 2015-O-10 Amending the Midvale Municipal Code Chapter 5.02 Business Licenses Generally [*Chad Woolley, City Attorney*]
- B. Approve Ordinance No. 2015-O-11 Amending the Midvale Municipal Code Chapter 5.26 Massage Establishments [*Chad Woolley, City Attorney*]
- C. Approve Resolution No. 2015-R-52 appointing Don Slick to serve on the Planning Commission as an alternate member [*Lesley Burns, City Planner*]
- D. Approve Ordinance No. 2015-O-12 Amending the Midvale Municipal Code Creating a New Definition and Development Standards for Electrified Security Fences for Non-Residential Outdoor Storage Areas in the Clean Industrial Zone Districts [*Matt Hilderman, Associate Planner*]
- E. Approve Resolution No. 2015-R-53 Authorizing the Mayor to enter into a Development Agreement and Easement Agreement for the CHG Office Building and Campus located at 7250 South Bingham Junction Boulevard, within the Junction at Midvale Master Plan [*Matt Hilderman, Associate Planner*]

IX. DISCUSSION ITEMS

- A. Harvest Days Debriefing [*Kane Loader, City Manager*]

X. ADJOURN

In accordance with the Americans with Disabilities Act, Midvale City will make reasonable accommodations for participation in the meeting. Request assistance by contacting the City Recorder at 801-567-7207, providing at least three working days advance notice of the meeting. TTY 711

A copy of the foregoing agenda was provided to the news media by email and/or fax; the agenda was posted in the City Hall Lobby, the 2nd Floor City Hall Lobby, on the City's website at www.midvalecity.org and the State Public Notice Website at <http://pnm.utah.gov>. Council Members may participate in the meeting via electronic communications. Council Members' participation via electronic communication will be broadcast and amplified so other Council Members and all other persons present in the Council Chambers will be able to hear or see the communication.

PLEASE MAKE SURE ALL CELL PHONES ARE TURNED OFF DURING THE MEETING

DATE POSTED: OCTOBER 16, 2015

**RORI L. ANDREASON, MMC
H.R. DIRECTOR/CITY RECORDER**



Midvale City
CITY COUNCIL MEETING
Minutes

Tuesday, October 6, 2015
Council Chambers
7505 South Holden Street
Midvale, Utah 84047

MAYOR: Mayor JoAnn B. Seghini

COUNCIL MEMBERS: Council Member Paul Glover
Council Member Paul Hunt
Council Member Quinn Sperry
Council Member Wayne Sharp
Council Member Stephen Brown

STAFF: Kane Loader, City Manager; Laurie Harvey, Assistant City Manager/Admin. Services Director; Rori Andreason, H.R. Director/City Recorder; Bob Davis, Public Works Director; Chad Woolley, City Attorney; Chief Tony Mason, UPD Midvale Precinct; Battalion Chief Scott McBride, UFA; Michelle Henderson, Court Administrator; Annaliese Eichelberger, RDA Coordinator; Danny Walz, RDA Director; and Jarin Blackham, IT Manager.

Mayor Seghini called the meeting to order at 6:30 p.m.

I. INFORMATIONAL ITEMS

A. DEPARTMENT REPORTS

Chief Mason said he had nothing to report. Councilmember Wayne Sharp asked about the trucks parking on Millennial Way. Chief Mason said he was following up on the trucks that are parking there but not staying at the hotel. He suggested moving forward with adding signs prohibiting the parking except by permit only.

Chief McBride had nothing to report.

Laurie Harvey discussed the change in how the main phone lines are being answered.

Phillip Hill updated the Council on the legislative policy committee meetings regarding planning and zoning. Councilmember Wayne Sharp asked about the warranty of the new park. Phillip Hill said the warranty is almost up. The trees Councilmember Sharp asked about had been ordered and should be here soon. The Council and staff discussed the condition of the park and the sod that is not looking good. Phillip Hill said he would find out what A to Z Landscaping is using for fertilizer and will follow-up on this issue.

Bob Davis reported on the bulk waste program and city projects.

Rori Andreason reported on the phone system and upcoming emergency training.

II. CITY MANAGER'S REPORT

Kane Loader discussed the Raccoon program. The program will begin January 1, 2016. He asked the Council if they were okay with the Mayor to sign the extension of the SL County contract to include the Raccoon program. The Council agreed.

Michelle Henderson discussed the Community Service Program that has been implemented with Public Works and the Court.

Mayor Seghini called the meeting to order at 7:00 p.m.

III. GENERAL BUSINESS

A. Welcome and Pledge of Allegiance

B. Roll Call – Council Members Stephen Brown, Paul Hunt and Wayne Sharp, Quinn Sperry and Paul Glover were present at roll call.

IV. PUBLIC COMMENTS

Paolo Lamponi said he would love to get connected to Utopia. He has been trying for about 8 years. The answers he receives are never the same. He lives south of East Midvale Elementary school on 300 East. His employer allows him to work from home a few days a week. Clearlink has been bought by Sprint so they are terminating his connection. He said there are still people out there that would like to be connected.

Councilmember Paul Glover said if he could get as many people as he can in that area to sign a petition in that area if they want it and bring it back to the Council.

Spencer Mears said he had the same concern about Utopia. Councilmember Glover said if there is a large number of homes in one area that want the fiber, Utopia will build there. He asked about the cost.

Councilmember Glover said it would be really good to come up with the costs for residents to connect. There needs to be some specifics for these residents to talk with their neighbors. He asked staff to pull something together to advertise the costs and specifics of getting connected.

V. COUNCIL REPORTS

A. Councilmember Quinn Sperry – had nothing to report.

B. Councilmember Wayne Sharp – had nothing to report.

C. Councilmember Stephen Brown – said the citizens' academy is going well and very educational.

- D. **Councilmember Paul Glover** – had nothing to report.
- E. **Councilmember Paul Hunt** – had nothing to report.

VI. MAYOR REPORT

Mayor JoAnn B. Seghini – reported that she will be meeting Friday with the TRCC Board for one time funds for fine arts funding. The City has an application in for developing the park on the Jordan River. She felt there is a good chance of getting that funding.

VII. CONSENT AGENDA

- A. **APPROVE MINUTES OF SEPTEMBER 15 AND SEPTEMBER 22, 2015**
- B. **APPROVE RESOLUTION NO. 2015-R-49 RECERTIFYING THE MIDVALE JUSTICE COURT**

MOTION: Councilmember Quinn Sperry **MOVED** to approve the consent agenda. The motion was **SECONDED** by Councilmember Stephen Brown. Mayor Seghini called for discussion on the motion. There being none she called for a roll call vote. The voting was as follows:

Council member Stephen Brown	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Councilmember Wayne Sharp	Aye
Council member Quinn Sperry	Aye

The motion passed unanimously.

VIII. ACTION ITEM

- A. **APPROVE RESOLUTION NO. 2015-R-50 GENERAL MUNICIPAL ELECTION AND POLL WORKER**

Rori Andreason stated that in accordance with Section 20A-5-602, Utah State Code, a resolution has been prepared designating and appointing poll workers to serve in the 2015 Municipal General election on November 3, 2015. A list of poll workers has been prepared by the Salt Lake County Clerk's Office for Council approval.

MOTION: Councilmember Stephen Brown **MOVED** to approve Resolution No. 2015-R-50 Appointing General Municipal Election and Poll Workers. The motion was **SECONDED** by Councilmember Quinn Sperry. Mayor Seghini called for discussion on the motion. There being none the Mayor called for a roll call vote. The voting was as follows:

Council member Stephen Brown	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Councilmember Wayne Sharp	Aye
Council member Quinn Sperry	Aye

The motion passed unanimously.

B. APPROVE RESOLUTION NO. 2015-R-51 APPOINTING RON SPERRY TO REPRESENT MIDVALE CITY ON THE JORDAN VALLEY WATER CONSERVANCY DISTRICT

Mayor Seghini introduced Ron Sperry.

Kane Loader said Ron Sperry has been serving on the Board of Trustees of the Jordan Valley Water Conservancy District representing Division No. 6, which includes the Cities of Midvale and Draper. He was first appointed to the board in March of 2009 and has done an excellent job representing our city as well as the District as a whole. He is currently serving as the Finance Committee Chairman and has been a valuable asset to the District because of his background and experience in finance.

Mr. Sperry's term will expire on February 1, 2016 and must be appointed by the Governor pursuant to Utah Code Ann. 17B-2a-1005. It is required that both cities that are represented in Division No. 6 submit a letter of recommendation, signed by their respective Mayors, to the Governor before December 1, 2015. Each city is allowed to recommend two candidates for the position. After talking with Richard Bay, the General Manager of the Jordan Valley Water Conservancy District, and also with the Mayor and City Manager of Draper City, it is clear that the best qualified individual for this position is Ron Sperry and he has indicated his willingness to serve again in this capacity.

MOTION: Councilmember Quinn Sperry MOVED to approve Resolution No. 2015-R-51 a resolution supporting the Mayor's recommendations to the Governor that Ronald E. Sperry be reappointed and continue to serve on the Jordan Valley Water Conservancy District's Board of Trustees. The motion was SECONDED by Councilmember Paul Glover. Mayor Seghini called for discussion on the motion. There being none the Mayor called for a roll call vote. The voting was as follows:

Council member Stephen Brown	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Councilmember Wayne Sharp	Aye
Council member Quinn Sperry	Aye

The motion passed unanimously.

IX. DISCUSSION ITEMS

A. ARTS COUNCIL FY2015 REPORT

Kane Loader said the Arts Council has asked to move this item to October 13, 2015

MOTION: Councilmember Wayne Sharp MOVED to table this item and move it to October 13, 2015. Councilmember Stephen Brown SECONDED the motion. Mayor Seghini called for discussion on the motion. There being none, she called for a vote. The motion passed unanimously.

X. ADJOURN

MOTION: Councilmember Wayne Sharp MOVED to adjourn the meeting. Councilmember Stephen Brown SECONDED the motion. Mayor Seghini called for discussion on the motion. There being none, she called for a vote. The motion passed unanimously.

The meeting adjourned at 7:30 pm.

**Rori L. Andreason, MMC
CITY RECORDER**

Approved this 20th day of October, 2015.

PENDING



MIDVALE CITY
CITY COUNCIL WORKSHOP MEETING
Minutes

Tuesday, October 13, 2015
Council Chambers
7505 S. Holden Street
Midvale, Utah 84047

MAYOR: JoAnn Seghini

COUNCIL MEMBERS: Council Member Wayne Sharp
Council Member Stephen Brown - Excused
Council Member Paul Glover
Council Member Paul Hunt
Council Member Quinn Sperry

STAFF: Phillip Hill, Asst. City Manager/CD Director; Rori Andreason, H.R. Director/City Recorder; Bob Davis Public Works Director; Danny Walz, Redevelopment Agency Director; Annaliese Eichelberger, RDA Coordinator; and Jarin Blackham, IT Manager.

Mayor Seghini called the meeting to order at 6:31 p.m.

I. DISCUSSION ITEM

A. ARTS COUNCIL FY2015 REPORT

Suzanne Walker reported on the activities of the Arts Council for Fiscal Year 2015. She reviewed the productions and concerts offered throughout the year. They have partnered with Quik Wits who is a comedy group. They develop comedy that helps kids build confidence and communications skills. So they will be reaching out to the schools. The Board is changing their fiscal year to calendar year so this is a short year. She discussed the available grants and their capital campaign to upgrade the theatre in the park. She said they feel confident they will be able to acquire the funds for the upgrade and hope the City will continue to support them.

She said they have struggled with tracking their in-kind contributions accurately. In calculating volunteer time at \$20 per hour, she feels they have received approximately \$252,000 in volunteer labor. So they have a huge support group. She said they have very passionate people who work with the Arts Council and work tirelessly. She expressed appreciation for the Board members and for all they do.

Mrs. Walker discussed the Levitt Amp Concert grant which would consist of 10 concerts in the park during the summer. The Boys and Girls Club is willing to help with the concerts to provide a safe place for people to come to the concerts. This is a matching grant of \$25,000 so they will be searching for other grants. She felt this could lead up to Harvest Days.

She said they have repainted the Performing Arts Center and thanked Public Works for their help. They are working to make it a great asset for the City. She said they are working on growing the Arts Council and involving the businesses more.

Councilmember Paul Glover suggested talking with the big businesses in the City for donations.

Mayor Seghini informed Mrs. Walker that the Senior Center has rooms available for free rental and the City will pay to have a person there during the productions.

II. ADJOURN

Mayor Seghini adjourned the meeting at approximately 6:57 p.m.

Rori L. Andreason, MMC
CITY RECORDER

Approved this 20th day of October, 2015.



MIDVALE CITY COUNCIL SUMMARY REPORT

Meeting Date: October 20, 2015

SUBJECT: Midvale Municipal Code 5.02 Business Licenses Generally

SUBMITTED BY: Chad Woolley, City Attorney

SUMMARY:

This amendment of Midvale Municipal Code 5.02 Business Licenses Generally brings the ordinance up-to-date and solves two problems facing Community Development Department.

First, the current ordinance requires that all businesses, regardless of type, are required to renew their license on or before January 15 of each year. Due to the significant number of businesses in Midvale, this annual demand creates significant delays in processing each of the renewals. In order to alleviate this problem, this amendment distinguishes between rental and non-rental business licenses. Non-rental businesses will remain on the current January 15th renewal schedule. Rental businesses licenses (licenses for individuals or businesses renting residential units) will be switched to a September 15th renewal schedule. By placing rental and non-rental business licenses on different renewal schedules, the Community Development Department will better be able to process business license renewals in a timely manner.

Second, after the adoption of the most recent fee schedule, the Community Development Department has not been able to recover the costs for incomplete, withdrawn, or denied business license applications. As a result, business license applications that have gone through the costly review or inspection processes are still able to recover 100% refund. This amendment helps the City recover some of the costs of its employees' valuable time. Business license applications that are withdrawn or denied before the inspection process are entitled to recover 75% of the business license application fees. If a business license application is withdrawn or denied after the inspection process, only 25% of the business license application fees may be refunded. These amounts are based on other local municipalities, including Sandy City.

FISCAL IMPACT: Some income from recovering a portion of the costs from incomplete, withdrawn, or incomplete business license applications.

STAFF'S RECOMMENDATION AND MOTION: I move that we approve Ordinance No. 2015-O-10 amending Midvale Municipal Code 5.02 Business Licenses Generally.

**Attachments: Proposed Resolution
Amended Ordinance**

MIDVALE CITY

ORDINANCE NO. 2015-O-10

**AN ORDINANCE AMENDING MIDVALE CITY CODE
CHAPTER 5.02 BUSINESS LICENSES GENERALLY.**

WHEREAS, the City Council desires to amend Midvale Municipal Code Chapter 5.02 Business Licenses Generally; and

WHEREAS, the City Council finds it in the City’s best interest to better balance the annual renewal of city business licenses; and

WHEREAS, the City Council finds it in the City’s best interest to amend Midvale Municipal Code Chapter 5.02 Business Licenses Generally to reflect current city practices; and

WHEREAS, the City Council finds it in the City’s best interest to capture some of the expenses for applying for a business license;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

Section 1. The City Council desires to amend Midvale Municipal Code Chapter 5.02 Business Licenses Generally as set forth in Exhibit A.

Section 2. This Ordinance shall be effective upon date of first publication.

PASSED AND APPROVED this 20th day of October, 2015.

By: _____
Mayor JoAnn B. Seghini

VOTING:

Stephen Brown	Yea	___	Nay	___
Paul Glover	Yea	___	Nay	___
Quinn Sperry	Yea	___	Nay	___
Paul Hunt	Yea	___	Nay	___
Wayne Sharp	Yea	___	Nay	___

ATTEST:

Rori L. Andreason, MMC
City Recorder

Published this ____ day of _____, 2015.

Chapter 5.02

BUSINESS LICENSES GENERALLY*

Sections:

- 5.02.010 **Definitions.**
- 5.02.020 Business license required.
- 5.02.030 Business license division—Duties and responsibilities.
- 5.02.040 Business license application.
- 5.02.050 Issuance of a business license.
- 5.02.060 Renewals of business licenses.
- 5.02.070 Inspections and audits.
- 5.02.080 **License application fees.**
- 5.02.090 **Business license due dates and waiver.**
- 5.02.100 **Term of business licenses.**
- 5.02.110 Exemptions to business license fees requirements.
- 5.02.120 Transfer of license restricted.
- 5.02.130 Display of licenses.
- 5.02.140 Reciprocal recognition of business licenses.
- 5.02.150 Penalty.
- 5.02.160 Constructive notice of time periods.

* Prior history: Prior code §§ 9-111 through 9-130 as amended by Ords. 10-21-80A, 06-2-81, 3-15-83A, 3-20-84A, 2-3-87A and 6-28-88C.

5.02.010 Definitions.

The following definitions shall be applicable throughout this title unless a different meaning is clearly intended:

- A. “Alcoholic beverage licenses” means retail, wholesale, warehousing, and manufacturing liquor licenses as defined in Chapter 5.10 of this title.
- B. “Amusement device” means any machine, whether mechanically or electronically operated, that upon the insertion of a coin, trade-token, slug or similar object, operates or may be operated as a game or contest of skill or amusement, of any kind or description, and that contains no automatic payoff for the return of money or trade-tokens, or that makes no provision whatever for the return of money to the player. An amusement device is further defined as any machine, apparatus or contrivance that is used or that may be used as a game of skill and amusement wherein or whereby the player initiates, employs or directs any force generated by the machine, but specifically excludes a musical mechanical amusement device.
- C. “Applicant” means any person applying for any license provided for in this title. If the person is a partnership or corporation, then each partner, officer or director is considered an applicant and must qualify accordingly.
- D. “Application” means a formal written request for the issuance of any license permitted under this title.
- E. “Authorized officers” means those persons authorized by the city or other entities to inspect businesses and enforce the provisions of this title or other applicable regulations, including peace officers, ordinance enforcement officers, and employees of the health department, fire department, planning and zoning division, building inspection division, city attorney’s office or the city administrator~~manager~~.
- F. “Building division” means the building division of the Midvale City community ~~and economic~~ development department.
- G. “Business” means and includes all trades, occupations, professions or activities engaged within Midvale City, carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term “business” unless otherwise specifically provided.

- H. “Business license division” means the business license division of the Midvale City community ~~and economic~~ development department.
- I. “Business license fee and bonding schedules” means the schedule of fees adopted by the Midvale City council setting forth the various fees charged by the city.
- J. “City” means Midvale City.
- K. “City ~~administrator~~manager” means the chief administrative officer of Midvale City.
- L. “City attorney’s office” means the Midvale City attorney’s office.
- M. “City recorder” means the Midvale City recorder.
- N. “Employee” means all individuals who work for an employer for salary or commission or wages and who are subject to the direction and control of such employer.
- O. “Engaging in business” includes, but is not limited to, the sale of real or personal property at retail or wholesale, the bartering or trading of property or services, the manufacturing of goods or property and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment.
- P. “Fire department” means the ~~Midvale City fire department~~Unified Fire Authority.
- Q. “Garage sale or yard sale” means the periodic sale of personal belongings at an occupied residence. Any sale held regularly or at a location other than an individual’s occupied dwelling is considered a business and is governed by the provisions of this title.
- R. “Health department” means the Salt Lake Valley health department.
- S. “Hearing board” means each and every member of the license hearing board of Midvale City.
- T. “Home occupation” is as defined in Title 17.
- U. “License administrator” means the individual or his/her designee who is the head of the business license division of the community ~~and economic~~ development department.
- V. “Licensee” means the person who has obtained any type of license provided for in this title. The term shall also include any employee or agent of the licensee.
- W. “Ordinance enforcement office” means the ordinance enforcement division of the Midvale City community ~~and economic~~ development department.
- X. “Person” means an individual, partnership, corporation, association or other legal entity.
- Y. “Place of business” means each separate location maintained or operated by the licensee, whether or not under the same name, within the city from which business is engaged in.
- Z. “Planning and zoning division” means the planning and zoning division in the Midvale City community ~~and economic~~ development department.
- AA. “Police department” means the ~~Midvale City police department~~Unified Police Department.
- BB. “Rental” means any residential dwelling, including, but not limited to, an apartment, a condominium, or a house, that is rented to an occupant other than the owner.
- BBCC. “Temporary business” means any business authorized to conduct business at any single place for a limited time as defined by the type of business. Temporary businesses include: seasonal produce, special event, temporary

retail, Christmas tree or fireworks. May not include home occupations, any business, whether or not it is temporary, which is specifically regulated or licensed under any chapter or section of this title, or any business, whether or not it is temporary, which requires a conditional use permit or administrative conditional use permit in accordance with Title 17.

CEEDD. “Violated” or “violating” means that there exists reasonable cause to believe that any ordinance, code, statute or law has been or is being violated and is not limited to pleas of guilty or convictions for violating such ordinances, codes, statutes or laws. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.020 Business license required.

A. Unless otherwise provided, it shall be unlawful for any person to engage in any business within the city without first having obtained a business license pursuant to this title. A separate license shall be required for each type of business defined in this chapter and for each place of business. Each day of noncompliance shall constitute a separate violation.

B. In addition to any criminal prosecution or civil proceedings, if any person found violating this section later applies for a license and if a license is granted, the penalty fees shall be as follows:

1. Effective December 9, 1997, the penalty fee shall be one hundred percent of the license fees for the first year, and the business shall pay an additional penalty for each year or portion of a year in which the business operated without a license. The penalty fee for each year or portion of a year without a license shall be an amount equal to one hundred twenty-five percent of the current business license fees.

2. The city ~~administrator~~ manager may authorize an amnesty period in which the penalty fees to be paid by a business operating without a license may be waived one time per calendar year for a period not to exceed one month, for the purpose of encouraging unlicensed businesses to properly license. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.030 Business license division—Duties and responsibilities.

It shall be the duty and responsibility of the business license division to:

A. Enforce the provisions of this title;

B. Collect all business license fees and all alcoholic beverage license fees;

C. Process all applications and renewals of all licenses provided for in this title;

D. Obtain the necessary approvals from the various agencies, city departments and divisions before issuing any business licenses or alcoholic beverage licenses;

E. Deny, suspend or revoke licenses as provided in this title; and

F. Generate a list of all licenses issued during the month. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.040 Business license application.

The Midvale City business license application shall be in such format and require such information as the license administrator deems necessary to enforce this title, including but not limited to:

A. The name, date of birth and home address of the person applying for the license;

B. The registered name of the business, if applicable;

C. The federal tax number of the corporation, if applicable;

D. The type of business to be engaged in;

E. The class of license desired, if the type of license is divided into classes;

- F. The location of the place of business;
- G. A state tax number, if applicable;
- H. A state contractor's number, if applicable;
- I. Proof that the business is state licensed or registered, if applicable; and
- J. A space for the applicant or applicant's authorized agent to sign under penalty of law that all the information contained therein is true. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.050 Issuance of a business license.

- A. An applicant for a business license shall fill out the application in full and sign it as verification under penalty of law that all information contained therein is true.
- B. The application shall be returned to the business license division along with full payment of all business license fees, fines and penalties, if applicable.
- C. The business license division shall submit copies to the planning and zoning division, building inspection division, code enforcement division, fire department and health department, sewer district and, for certain businesses where specifically provided for in this chapter, to the police department, for their review, unless a specific provision of this title requires submission to fewer or additional departments, divisions or agencies than those named.
- D. Only after receiving signed, written approval from each of the entities named in this section, the business license division shall be authorized to prepare a certificate of license for issuance.
- E. The certificate of license shall be signed by the license administrator and the city recorder and shall contain the following information:
 - 1. The person's name to whom the certificate is issued;
 - 2. The business name;
 - 3. The type of business licensed;
 - 4. The date the license was issued;
 - 5. The expiration date of the license;
 - 6. The address of the place of business licensed; and
 - 7. The business license number.

F. If the business is licensed to conduct more than one type of business as defined herein, the certificate of license shall state each type of business licensed; or a separate license for each type shall be issued at the discretion of the license administrator. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.060 Renewals of business licenses.

- A. Each year, licensees shall renew their business licenses by completing an application for a license renewal signed under penalty of law that all information contained therein is true and returning it, along with the proper fees and fines and penalties, if applicable, to the business license division within the time period set forth in this title. Renewal applications for businesses which require police checks of the licensees shall be submitted to the police department for their approval to ascertain whether the licensee still meets the necessary qualifications.
- B. Upon receipt of the application fees, fines, and police department approval, if applicable, the business license division shall be authorized to prepare a certificate of license as provided in this chapter. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.070 Inspections and audits.

A. Authorized officers shall be permitted to make an inspection to enforce any of the provisions of this title or any other applicable statute or ordinance, and may enter any building or may enter upon any premises during regular business hours. The officers or their authorized representatives shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

B. Any business or establishment which displays or sells products and items as described in the definition of “principal purpose” in Section 5.12.010 shall be subject to an annual audit of gross receipts to ensure compliance with the declaration that the business is not a sexually oriented business.

C. No owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to properly permit entry therein by the authorized officer or his representative(s) for the purpose of inspection and examination to ensure compliance with this title. (Ord. 8/11/2009O-12 § 2, 2009: Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.080 License application fees.

All business license fees shall be those set forth in Chapter 5.08, Business License Fees and Bonding Schedules. The total fee required each year for each type of business consists of the base fee, plus the variable fees and regulatory fees.

A. Applications for new business licenses must be accompanied by an application fee as set forth in Chapter 5.08, Business License Fees and Bonding Schedules, in addition to the required base, variable and/or regulatory fees.

B. The base fees are categorized in the business license fee and bonding schedules by type of business. The definition of each type of business and the specific regulations governing them are found in this title. If a particular type of business is not listed in the business license fee and bonding schedules, then its base fee shall be the general business license base fee as set forth in the business license fee and bonding schedules.

C. The variable and regulatory fees for each business, regardless of whether it is defined in this chapter, are set forth in the business license fee and bonding schedules.

D. If, for any reason, the license application is not granted or withdrawn, the applicant may request a refund. If the application is withdrawn or denied before any inspection is conducted, the license administrator will refund 75% of the fees paid. If the application is withdrawn or denied after an inspection is conducted, the license administrator will refund 25% of the fees paid.(Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.090 Business license due dates and waiver.

A. Business license fees for new businesses shall be due and payable upon making application to the business license division. The application shall not be processed until the fees, fines and penalties, if applicable, are paid.

B. Non-rental business ~~Business~~ license fees for renewal businesses shall be due and payable on or before January 15th of each calendar year. The penalty for nonpayment of the renewal fee shall be:

1. Fifty percent of the fee due if paid by February 15th;
2. Seventy-five percent of the fee due if paid by March 15th; and
3. If the fee plus penalty is not paid by March 15th, the business shall be considered to be operating without a business license in violation of this chapter, subject to criminal prosecution for every day of operation after two months from the due date and the license fee, if a license is granted thereafter, shall be doubled.

C. All initial non-rental business licenses issued after the commencement of the current license year shall be prorated semi-annually, and the fee paid for each semi-annual period or fraction thereof during which the business has been or will be conducted, according to the following schedules; provided, however, that no annual license fee of thirty-five dollars or less shall be prorated:

1. On or after January 15th, but prior to July 1st, the fee shall be one-half of the annual fee;

2. On or after July 1st, but prior to January 15th, the fee shall be one-half of the annual fee;
3. Each application for a license under this title shall be accompanied by the license fee required to be paid for the issuance of the license desired. In addition to the license fee regularly assessed, any applicant which shall have commenced doing business prior to obtaining a valid license shall be assessed a penalty fee. The penalty fee shall be equal to twenty-five percent of the regular license fee if the applicant has operated without a license for less than thirty days, and shall be equal to one hundred percent of the regular license fee if the applicant has operated without a license for more than thirty days during the calendar year in question. Any license which has been issued pursuant to payment by means of check or bond shall be void and of no force or effect if such check or bond is not honored.

D. Rental business license fees for renewal businesses shall be due and payable on or before September 15th of each calendar year. The penalty for nonpayment of the renewal fee shall be:

1. Fifty percent of the fee due if paid by October 15th;
2. Seventy-five percent of the fee due if paid by November 15th; and
3. If the fee plus penalty is not paid by November 15th, the rental business shall be considered to be operating without a business license in violation of this chapter, subject to criminal prosecution for every day of operation after two months from the due date and the license fee, if a license is granted thereafter, shall be doubled.

DE. Notwithstanding the provisions of this section, the license administrator may waive the imposition of license penalty fees for:

1. New businesses which have located in the city and have not obtained a Midvale City business license.
2. Existing businesses which have been licensed by the city and have been purchased, but the new owner has not reapplied for a city business license.
3. The license administrator may waive such penalty fees only upon the following conditions:
 - a. The business makes application for a city business license within five working days after being notified by the city that such a license is required; or the business voluntarily makes application for a business license prior to notification by the city; and
 - b. The business has either been located in the city for less than two years or the purchase of the business occurred less than two years prior to the business application.
4. The license administrator may not, under any circumstances, waive the business license fee due the city for the current year or for prior years in which the business operated.

EF. Notwithstanding the provisions of this section, the city ~~administrator~~manager may waive the imposition of license penalty fees for:

1. Late renewal fees under the following circumstances:
 - a. Nondelivery or delayed delivery of mail;
 - b. Miscommunication between the business owner and city representative; or
 - c. Other circumstances deemed to be in the best interest of the city.
2. The city ~~administrator~~manager may not, under any circumstances, waive the business license fee due the city for the current year or for prior years in which the business operated. (Ord. 11/20/2007O-16 § 1 (part), 2007: Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.100 Term of business licenses.

A. All non-rental business licenses, except temporary business licenses, shall expire each year on December 31st.

B. All rental business licenses shall expire each year on August 31st.

BC. Temporary business licenses shall expire as indicated by the type of temporary business as defined herein. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.110 Exemptions to business license fees requirements.

A. A business license fee shall not be imposed on any person engaged in business solely for religious, charitable, eleemosynary or other types of strictly nonprofit purpose which is tax exempt under the provision of Section 501(c) of the United States Tax Code.

B. A business license fee shall not be imposed on any person engaged in a business type specifically exempted from paying business licensing fees by the laws of the state of Utah.

C. Any business exempt from paying the license fee as provided in this section shall still comply with all other requirements of this title. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.120 Transfer of license restricted.

A. Business licenses are not transferable. In the event that a business is sold to a new owner while maintaining the same business type and location, a "change of owner" application shall be accepted by the license administrator in lieu of a new business application.

B. A business is not eligible to transfer ownership under a "change of owner" application unless all business license fees were paid in full at the last applicable renewal period and/or its initial fees were paid in full.

C. The business class is properly identified and maintained.

D. A "change of owner" application shall not be accepted for any business requiring a background check of the owner or principals. In the case of businesses requiring a background check, a new business application shall be submitted. (Ord. 10/28/2003O-12 (part), 2003)

5.02.130 Display of licenses.

A. Every certificate of license for a business shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When the certificate of license has expired, it shall be removed and no certificate of license which is not in force and effect shall be permitted to remain posted within the place of business. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his person ready to be shown on request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

B. In the event the license is for a coin-operated machine or device, the certificate shall be attached or displayed in the immediate vicinity of the machine for which it has been issued. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97 (part), 1997)

5.02.140 Reciprocal recognition of business licenses.

No license fee or tax shall be imposed by the city on any business whose only activity is the delivery of property sold at a regular place of business licensed and maintained outside the city where:

A. The business is at the time of such delivery licensed by a Utah municipality or county; and

B. The authority licensing such business grants to licensees of the city making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this section. However, before said business shall commence within the city a police background investigation may be required where appropriate; and

C. Neither the property delivered nor its manufacturing, producing or processing facilities are subject to inspection pursuant to any health or sanitary standards prescribed by the city; and

D. The delivery motor vehicle prominently displays a license plate or symbol issued by a Utah municipality or county evidencing compliance with its business license regulations;

E. Reciprocity shall not be granted to solicitors, mobile food units or any business requiring police checks or police I.D. cards. (Ord. 10/28/2003O-12 (part), 2003)

5.02.150 Penalty.

A. The provisions of this title may, at the sole discretion of Midvale City, be enforced through the provisions of Title 7, Midvale City Administrative Code Enforcement Program;

B. Any violations of this title shall be a class B misdemeanor;

C. Where applicable, each day of noncompliance shall constitute a separate violation. (Ord. 10/28/2003O-12 (part), 2003; Ord. 12-09-97 (part), 1997)

5.02.160 Constructive notice of time periods.

A. All businesses, owners, licensees or applicants are obligated to be aware of and are deemed to have constructive notice of all time periods and/or deadlines and the effect of noncompliance with such time periods and/or deadlines as set forth in this title relating to the application, issuance, renewal, expiration, appeal or other action relating to business licenses, alcohol licenses, or any other licensing matters set forth in this title.

B. Nothing in this title shall be construed as requiring the city to take any affirmative action to notify businesses, owners, licensees or applicants of any time periods and/or deadlines or the effect of noncompliance with such time periods and/or deadlines set forth in this title relating to the application, issuance, renewal, expiration, appeal or other action relating to business licenses, alcohol licenses or any other licensing matters as set forth in this title. (Ord. 10/28/2003O-12 (part), 2003; Ord. 12-09-97 (part), 1997)



MIDVALE CITY COUNCIL SUMMARY REPORT

Meeting Date: October 20, 2015

SUBJECT: Midvale Municipal Code 5.26 Massage Establishments

SUBMITTED BY: Chad Woolley, City Attorney

SUMMARY:

Across Utah, numerous municipalities, including Midvale, are facing problems with their massage establishments. Individuals have found loopholes in local ordinances that allow them to run unsavory businesses while being shielded from the law.

Midvale's current ordinance allows an individual to apply for a massage establishment license by simply being 21 years old and passing a simple background check. Under the current requirements, the City struggles to distinguish between unsavory "massage establishments" and reputable massage businesses.

The amended ordinance requires massage establishment license applicants to submit copies of and keep current with the City each of their therapists' current Utah massage licenses. In addition, the owner and each employee must complete and pass a background check. And lastly, each applicant must also meet with the Midvale Precinct Police Chief and review applicable laws and regulations.

With these new requirements, the City will better be able to distinguish between legitimate massage establishments and unsavory massage businesses, and take appropriate action.

FISCAL IMPACT: None.

STAFF'S RECOMMENDATION AND MOTION: I move that we approve Ordinance No. 2015-O-11 amending Midvale Municipal Code 5.26 Massage Establishments.

**Attachments: Proposed Resolution
Amended Ordinance**

MIDVALE CITY

ORDINANCE NO. 2015-O-11

**AN ORDINANCE AMENDING MIDVALE CITY CODE
CHAPTER 5.26 MASSAGE ESTABLISHMENTS.**

WHEREAS, the City Council desires to amend Midvale Municipal Code Chapter 5.26 Massage Establishments; and

WHEREAS, there a statewide problem with unlicensed massage therapists using loopholes to obtain business licenses,

WHEREAS, the City Council finds it in the City’s best interest to prevent unlicensed massage therapists from obtaining City business licenses,

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

Section 1. The City Council desires to amend Midvale Municipal Code Chapter 5.26 Massage Establishments as set forth in Exhibit A.

Section 2. This Ordinance shall be effective upon date of first publication.

PASSED AND APPROVED this 20th day of October, 2015.

By: _____
Mayor JoAnn B. Seghini

VOTING:

Stephen Brown	Yea	___	Nay	___
Paul Glover	Yea	___	Nay	___
Quinn Sperry	Yea	___	Nay	___
Paul Hunt	Yea	___	Nay	___
Wayne Sharp	Yea	___	Nay	___

ATTEST:

Rori L. Andreason, MMC
City Recorder

Published this ____ day of _____, 2015.

Chapter 5.26 MESSAGE ESTABLISHMENTS*

Sections:

- 5.26.010 Definitions.
- 5.26.020 Business license required.
- 5.26.030 Qualifications of the licensee.
- 5.26.040 Prohibited acts.
- 5.26.050 Sanitation of premises.
- 5.26.060 Display of licenses.
- 5.26.070 Violation.

* Prior ordinance history: Ords. 6-2-88A and 6-28-94B.

5.26.010 Definitions.

A. "Massage" means the practice whereby a person, either by the hands or with a mechanical or electrical apparatus, administers to another person effleurage (stroking), friction (rubbing), petrissage (kneading), tapotement (percussion) and vibration (shaking or trembling), or variations of these, and the use of rehabilitative procedures involving the muscles by nonintrusive means and with spinal manipulation. The practice of massage may include the use of oil rubs, heat lamps, salt glows, hot and cold packs or tub, shower, steam or cabinet baths.

B. "Massage apprentice" means a person who is licensed as a massage apprentice by the state of Utah.

C. "Massage establishment" means any place where massages are given for hire.

D. "Massage technician" or "therapist" means a person who is licensed as a massage technician or therapist by the state of Utah. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)

5.26.020 Business license required.

It is unlawful for any person or entity to operate a massage establishment without meeting the requirements of this chapter and obtaining a business license as required by this title. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)

5.26.030 Qualifications of the licensee.

Each individual desiring a massage establishment license shall:

A. Be an individual at least twenty-one years of age;

B. Have no convictions of crimes involving moral turpitude within the past five years.

C. Submit copies of current Utah massage licenses for each massage technician, therapist, or apprentice employed at the massage establishment.

D. Meet with the Midvale Precinct Police Chief or his/her designee and sign a statement of understanding of the applicable laws and regulations.

E. Complete background checks for licensee and all employees. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)

5.26.040 Prohibited acts.

The following acts are prohibited:

A. It is unlawful for any person to practice or engage in or attempt to practice or engage in massage, without first being licensed by the state of Utah as a massage technician or massage apprentice.

B. It is unlawful for any massage establishment to employ, for the purpose of performing massage, any individual who is not licensed by the state of Utah as a massage technician or massage apprentice.

C. It is unlawful to serve, store, allow to be served, or allow to be consumed any alcoholic beverage on the licensed premises of a massage establishment.

D. It is unlawful for a massage technician, massage therapist, massage apprentice, or any employee of a massage establishment to touch or offer to touch or massage the genitalia of customers.

E. It is unlawful for the massage technician, massage therapist, massage apprentice, or any customer or employee of the massage establishment to display to any other person any specified anatomical area or to engage in any specified sexual activity, as defined in Section 5.12.010, while on the premises of the massage establishment. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)

5.26.050 Sanitation of premises.

All applications for a massage establishment license shall be referred to the Salt Lake Valley board of health for investigation, and a license shall be granted only after findings by the valley board of health that the proposed premises are sanitary enough to conduct business therein without jeopardizing the public health.

Each establishment shall provide to all patrons clean, sanitary and opaque coverage capable of covering the patron's specified anatomical areas. No common use of such covering shall be permitted, and reuse is prohibited unless having been adequately cleaned. In addition, no owner, operator, managing employee, manager, employee or masseur should administer a massage unless the patron is covered by the covering provided by the establishment. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)

5.26.060 ~~Display of licenses.~~ Licenses.

A. Every massage establishment licensed under this chapter shall display its massage establishment license in a conspicuous place on the premises.

B. Every massage technician or massage apprentice, while on the premises of a licensed massage establishment, shall maintain in his or her possession or immediate presence his or her state massage technician, therapist, or apprentice license.

C. The massage establishment license holder is required to provide the City with current licenses for each massage technician, therapist, or apprentice employed at the massage establishment. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)

5.26.070 Violation.

Any violation will constitute a class B misdemeanor. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97O (part), 1997)



MIDVALE CITY COUNCIL SUMMARY REPORT

Meeting Date: October 20, 2015

SUBJECT: Appointment of Don Slick to serve on the Planning Commission as an alternate member (Resolution No. 2015-R-52)

SUBMITTED BY: Lesley Burns, City Planner

SUMMARY:

The Midvale Planning Commission is comprised of five full time members and two alternate members. Currently, there are vacancies for the alternate positions. Don Slick has expressed an interest in serving on the Planning Commission in this capacity. Mr. Slick has lived in Midvale City for five years. He is currently a Building Inspector for Sandy City and would like to get involved in his community.

It is the Mayor's desire to appoint Mr. Slick to the Planning Commission as an alternate member. The Mayor is requesting the Council's consent for this appointment, which would be for a four year term beginning immediately.

FISCAL IMPACT: N/A

STAFF RECOMMENDATION:

Staff recommends that the City Council adopts Resolution No. 2015-R-52, appointing Don Slick as an alternate member on the Planning Commission for a four year term.

RECOMMENDED MOTIONS:

"I move that we adopt Resolution No. 2015-R-52, appointing Don Slick to serve on the Planning Commission as an alternate member with his term expiring November 2019."

Attachments:

- Resolution No. 2015-R-52
- Planning Commissioner Application – Don Slick

**MIDVALE CITY, UTAH
RESOLUTION NO. 2015-R-52**

**A RESOLUTION CONFIRMING THE APPOINTMENT OF DON SLICK TO SERVE
ON THE PLANNING COMMISSION AS AN ALTERNATE MEMBER**

WHEREAS, in accordance with Section 17-4-1 of the Midvale City Municipal Code, the Planning Commission is comprised of five members and two alternates to serve four year terms; and

WHEREAS, the Planning Commission currently has an alternate member vacancy; and

WHEREAS, members of the Planning Commission are appointed by the Mayor with the advice and consent of the City Council per Section 17-4-2 of the Midvale Municipal Code; and

WHEREAS, the Mayor desires to appoint Don Slick to serve on the Planning Commission as an alternate member with a term expiring in November 2019; and

WHEREAS, Don Slick has expressed a desire to serve on the Planning Commission as an alternate member; and

WHEREAS, the City Council consents to this appointment;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Midvale City, Utah:

SECTION 1. The City Council hereby confirms the Mayor’s appointment of Don Slick as an alternate member of the Planning Commission with a term expiring in November 2019.

SECTION 3. This Resolution shall take effect immediately.

PASSED AND APPROVED this ____ day of _____, 2015.

JoAnn B. Seghini, Mayor

ATTEST:

Rori Andreason, MMC
City Recorder

Voting by City Council	“Aye”	“Nay”
Stephen Brown	_____	_____
Paul Glover	_____	_____
Paul Hunt	_____	_____
Wayne Sharp	_____	_____
Quinn Sperry	_____	_____



MIDVALE CITY

Department of Community Development
7505 South Holden Street, Midvale City, Utah 84047
Phone: 801.567.7229 * www.midvalecity.org

PLANNING COMMISSIONER APPLICATION

Applicant name: Don Slick

Home address: 7390 S Layne Dr

Mailing address: " City: Midvale State: UT Zip: 84047

Contact information (phone, email): 801-652-2092 / Strokecace21@Hotmail

Current occupation: Building Inspector

Years lived in Midvale: 5

Previous public service: fire inspector, code enforcement
Building Inspector

Briefly state why you are interested in this position: I would like to do
my part in keeping our city moving in
The Right direction, and Help keep midvale
a great place to live and do business.

Please disclose any possible conflicts of interest with this appointment, i.e. real estate holdings within Midvale City; employment or business interests subject to Midvale City regulations; felony or treason convictions; other situations, past or present, that may conflict with Midvale City's best interests: _____

none

Signature: Don Slick Date: 9/10/15



MIDVALE CITY COUNCIL SUMMARY REPORT

Meeting Date: October 20, 2015

SUBJECT:

Text amendment request for the allowance of electrified security fencing for non-residential outdoor storage areas

Ordinance No. 2015-O-12

SUBMITTED BY:

Matt Hilderman, Associate Planner

SUMMARY:

The Electric Guard Dog Company, based out of Columbia, South Carolina, submitted a proposed text amendment that would allow the installation of electrified fencing for security purposes within non-residential outdoor storage areas. This text amendment proposal is being requested for the purpose of a business located within Midvale City that has had several thefts from their outdoor storage area in the recent months. The property owner and applicant have determined additional security features should be installed to help deter further criminal activity.

The Planning Commission reviewed the text amendment request and conducted a public hearing on May 13, 2015 and June 10, 2015. The Planning Commission reviewed the submitted information and discussed the aesthetics of this use, the locations of where this use is proposed, and the surrounding neighborhoods and overall city character associated with this proposed use. It was the Planning Commission's decision to forward a positive recommendation to the City Council concerning this proposed use.

Some concerns were raised by the City Attorney and City Building Official regarding this request. The Building Official has a concern that the Building Codes adopted by the State and the City does not address this type of electrical fencing, leaving the Building Department unable to regulate and inspect the electrical component of these fences. The City Attorney has liability concerns for the City if someone or something were to be caused harm or damage.

On July 14, 2015, the City Council discussed this item and requested some additional information as to whether or not the City can adopt Building Codes to address this specific type of use. In researching the legality of the City adopting building codes beyond those adopted by the State, the City Attorney's office has indicated that there is not a definitive answer. It could be argued either way, with a final decision resting with a judicial determination if the City were challenged.

On August 11, 2015, the City Council reviewed this item through the Public Hearing process and requested additional information as to any case law from other jurisdictions concerning the use of razor wire and also receiving final comments from the Unified Police Department and Unified Fire Authority. The City Attorney's office has stated there were no specific cases that addressed liability issues, for a City, to adopt security measures, such as the one proposed. Further discussion with Unified Police and Unified Fire determined they approve of the literature and concept of the proposed use.

Staff has prepared a revised ordinance from the June 10th Planning Commission meeting after receiving the requested information and further discussion. Staff determined the ordinance may have been viewed as being specific to the applicant's use and removed language to generalize the standards for other fence providers to utilize.

FISCAL IMPACT: N/A

STAFF RECOMMENDATION:

Staff recommends that the City Council reviews and discusses the information provided. If the Council is comfortable with the proposal, Staff has prepared a revised ordinance, identified as Attachment A, from the information provided and direction from the City Council.

RECOMMENDED MOTIONS:

Option 1 – Recommended Ordinance with revisions

“In order to accommodate uses originally not contemplated and to further provide safety and security of individual properties and their uses, I move that we adopt Ordinance No. 2015-O-12 to add language in the Clean Industrial Zone District under the fencing provision to include electrified security fencing for an outdoor storage use, as specifically described in Attachment A.”

Option 2 – Not Recommend

“I find that the proposed text amendment's to add language for electrified security fencing is not appropriate for the City of Midvale for the following reasons:

- 1....*
- 2....*

and, therefore, move to deny this proposed text amendment.”

Attachments:

- Proposed Ordinance 2015-O-12
- Attachment A
- Applicant Statement of Need
- Clean Industrial Zone Districts

ORDINANCE NO. 2015-O-12

AN ORDINANCE CREATING A NEW DEFINITION AND DEVELOPMENT STANDARDS FOR ELECTRIFIED SECURITY FENCING FOR NON-RESIDENTIAL OUTDOOR STORAGE AREAS IN THE CLEAN INDUSTRIAL ZONE DISTRICTS (SECTIONS 17-2-5, 17-2-6, 17-7-13.2, AND 17-7-13.9 B.1.f OF THE MIDVALE MUNICIPAL CODE); ALSO PROVIDING A SAVING CLAUSE AND AN EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, pursuant to Sections 10-9-401 through 10-9-405 Utah Code Annotated 1953 as amended, the City has the authority to make and amend a zoning plan which divides the City into zoning districts and within those districts to regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land to promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the municipality; and

WHEREAS, pursuant to Section 10-6-12 Utah Code Annotated 1953 as amended, the City has the authority to adopt and amend the Midvale City Municipal Code;

WHEREAS, Midvale City was made aware of additional uses not contemplated when the Zoning Ordinance was originally adopted with regard to fencing types; and

WHEREAS, Midvale City recognized these additional fencing types could further provide safety and security of individual properties and their uses; and

WHEREAS, the Planning Commission held a public hearing on May 13, 2015 and June 10, 2015, to review proposed amendments regarding fencing types and standards and has forwarded a recommendation on such to the City Council; and

WHEREAS, the City Council of Midvale City, Utah held a public hearing on August 11, 2015, which meeting was preceded by notice through publication in the Salt Lake Tribune and Deseret News on July 28, 2015; and

WHEREAS, the City Council of Midvale City, Utah followed the public hearing with another meeting to obtain additional information with regard to issues raised during the public hearing; and

WHEREAS, the City Council has taken into consideration testimony citizen testimony, planning and building analysis, and the Planning Commission's recommendation, and has determined that this text amendment is appropriate and within the best interests of the City as a whole in protecting and promoting the health, safety, welfare and aesthetic quality of Midvale City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

Section 1. The following chapter and section of the Midvale Municipal Code are hereby amended as included in the attachment to this document.

Section 2. If any part of this ordinance or the applications thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined to its operation to this section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the

controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.

Section 3. This ordinance shall be effective upon publication of a summary thereof.

PASSED AND APPROVED this ____ day of _____, 2015.

JoAnn B. Seghini, Mayor

ATTEST:

Rori Andreason, MMC
City Recorder

Date of first publication: _____

Voting by City Council	“Nay”	“Aye”
Quinn Sperry	_____	_____
Stephen Brown	_____	_____
Paul Glover	_____	_____
Paul Hunt	_____	_____
Wayne Sharp	_____	_____

ATTACHMENT A Electrified Security Fencing

Text Additions
Text Deletions

17-2-5 “E” definitions.

“Elderly person” means a person who is sixty years old or older, who desires or needs to live with other elderly persons in a group setting, who may or may not be capable of living independently.

“Electrified security fence” means a fence designed to protect a property or properties from intrusion by means of conducting an electric current along one or more wires thereof so that a person or animal contacting any such wire or wires will receive an electric shock.

“Elevation” means the outer surface of a building.

17-2-6 “F” definitions.

“Fence” means a structure made of various materials that separates, encloses, screens or divides outdoor areas, including property perimeters. The term “fence” includes, but is not limited to, net screening for recreational activities, masonry walls, hedges, bollards with chains, posts with rails, and barriers.

“Fence, electrified security. See “Electrified security fence”.

“Filtered light fixture” means any outdoor light fixture that has a refractive light source.

Revise Use Table CI (17-7-13.2)

Uses

Type	Allowed	Administrative	Conditional	Business License
Fences				
≤ 6'	X			
> 6'		X		
W/barbed or razor wire			X	
Electrified security			X	

Add new section and language as follows: CI (17-7-13.9 B.1.f)

B. Specific Review Criteria for Certain Conditional Uses. In addition to the foregoing, the community and economic development department and planning commission must review each of the following criteria when considering approving or denying an application for each of the following conditional uses:

f. Electrified Security Fence. Each application for an electrified security fence must comply with the following:

i. Evidence must be presented showing that a higher degree of security is required that cannot be provided by a standard fence.

ii. Electric fences shall be constructed and installed in conformance with the specifications set forth in International Electro Technical Commission (IEC) Standard No. 60335-2-76.

iii. The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery may be charged by a solar panel, augmented by a commercial trickle charger.

v. No electric fence shall be installed or used unless it is completely surrounded by a non-electrical fence or wall that is not less than six feet (6') in height. The electric fence shall be located a maximum distance of twelve-inches (12") inside the perimeter fence or wall. It shall be the responsibility of the property owner to ensure weeds and debris do not accumulate between the non-electrical fence or wall and electrical fence. Where the perimeter fence is constructed of concrete or a masonry product, the electric fence may be attached to the top of the fence or wall with brackets, provided the overall height of the fence does not exceed ten-feet (10'), the electrical fence does not extend beyond the outside perimeter fence or wall, and no portion of the electric fence is greater than twelve-inches (12") from the non-electrical fence or wall.

vi. Electric fences shall have a maximum height of ten-feet (10') and shall not be located within a front yard setback. Any fence greater than six-feet (6') in height shall require a building permit for the fence structure.

vii. Electric fences shall be clearly identified with warning signs not to exceed 0.075 sq. ft. (12"x9") in size stating: "Warning – Electric Fence". Signs shall be located on each side of the electrical fenced area at intervals of sixty-feet (60') on each side. The business name and/or advertising copy shall not be allowed on these warning signs.

viii. If the applicant's proposal has the capability, electric fences shall be governed and regulated under burglar alarm regulations and shall receive approval, beforehand, from the applicable regulatory agency-(ices); i.e. jurisdictional police and fire.



The #1 Theft Deterrent Service in the U.S.

121 Executive Center Drive • Suite 230

Columbia, SC 29210

Phone: (803) 404-6189 | Fax: (803) 404-5378

Statement of Need – Text Amendment

We are requesting a text amendment for the installation 10-foot high electric fence security system (Electric Guard Dog aka EGD) approximately 4"-12" inside an existing perimeter fence.

The EGD Security system is a 10' high, electrically charged fence powered by 12 Volt marine battery which is charged by a solar panel. An energizer retains the voltage for 1.3 seconds and thus when released it is boosted to 7,000 volts of a totally safe, pulsed electrical charge. Signage posted a minimum of every 60' warns of the electric fence. However, the safety of the 'shock' is not advertised and therefore, due to our inherent fear of electricity, most criminals will not take a chance in breaching the perimeter. With this, the EGD proactively deters crime unlike cameras, beams and alarms that react to a crime in commission.

The amendment would help provide secure locations for businesses to operate and store equipment and merchandise outdoors. Businesses containing highly desirable, easily 'fenceable' inventory are most susceptible to an even higher increase in would-be criminal activity.

Many businesses in various industries (industrial, commercial, manufacturing, trucking) use 'electric fence' security systems to effectively protect their property where other systems have failed. In addition, Homeland Security has recommended Electric Guard Dog, LLC to many businesses of this nature to protect their business and employees.

Essential safety facts regarding Electric Guard Dog fence

- Totally independent of city electrical grid – does not plug in to the county's grid.
- Powered by 12v marine battery and solar panel
- Totally enclosed inside perimeter solid fence of 6' minimum height
- Pulsed current, shock delivered every 1.3 seconds for one-ten thousandth of a second
- Shortness of duration makes it very safe.
- Fully tested and approved by:
 - MetLabs, a Nationally Recognized Testing Lab with equal authority as UL
 - Dr. Webster, University of Wisconsin, the leading expert in pulsed electricity
- Adheres to International Standard IEC 60336.2.76 of which the United States is a supporting member.



The #1 Theft Deterrent Service in the U.S.

121 Executive Center Drive • Suite 230

Columbia, SC 29210

Phone: (803) 404-6189 | Fax: (803) 404-5378

Summary of Electric Guard Dog Security System

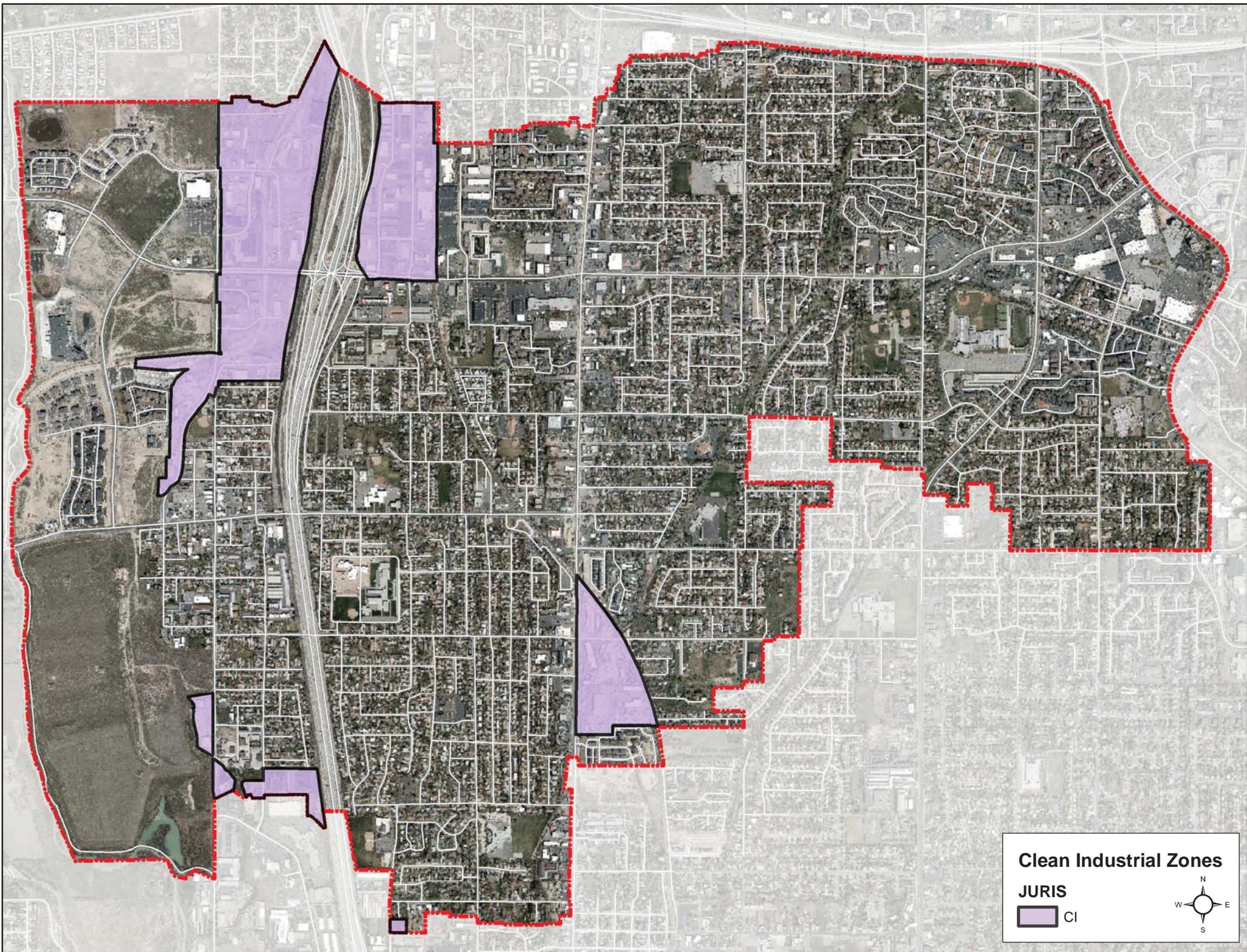
Our Electric Guard Dog security system is a primary low voltage (12V), battery powered (DC), independent of the electrical grid, self-contained system that has a variety of functions to it which make for a 100% medically safe and extremely effective crime deterrent. This system is 10' high and is placed approximately 4"-12" inside of the existing perimeter fence. It is comprised of 20, 12.5 gauge, galvanized steel wires which are run horizontally to the height of 10'. In our system the first layer of protection (visual deterrent) is our signage (located every 50') which advertises that it is an electric fence. This deters most would-be criminals.

The second layer of protection (audible deterrent) of our system is sirens. These sirens sound when an illegal criminal trespasser cuts the wires or places objects on them to insulate them so as to bypass the system. The sirens will automatically shut off after a set amount of time. This audible deterrent usually drives away most of the would-be criminals that are bold enough to proceed in spite of the aforementioned visual deterrent (signage). Included in this second layer of protection is that we monitor our systems. In the event of an alarm, a signal will be sent to our monitoring station, who in turn, contacts our clients to let them know they had an alarm event. Our system does not directly connect to emergency services.

The final layer of protection is our voltage. We have a burst of voltage (from the 12V battery) that has a duration of four-ten-thousandths of one second (.00004). If a criminal was bold enough to actually grab or touch our system, they will receive this temporary pulse of voltage which is akin to a slap on the hand from a ruler. This final layer of protection stops the remaining number of criminals that are not deterred by the other layers of protection.

Safety of these devices is unparalleled as no deaths or serious injuries have occurred since the inception of UL69 in 1939 with installations consistent with the UL69 Standard. This can be confirmed through Joel Hawk, Principal Engineer of UL69, Underwriters Laboratories. Bill Fulcher of OSHA, Leader of Enforcement Programs, maintains a data base of accidental death from all causes and no incidents have occurred directly related to the proper installation and operation of an electric fence consistent with the UL69 standards. With the inclusion of a perimeter buffer fence, for all electric security fences as specified in IEC 60335-2-76, the risk of accidental contact is substantially lowered.

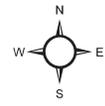
Please also take a moment to look at our website, www.electricguarddog.com, you will find it helpful as well.



Clean Industrial Zones

JURIS

 CI





MIDVALE CITY COUNCIL SUMMARY REPORT

October 20, 2015

SUBJECT:

Development Agreement and Easement Agreement for the CHG Office Building and Campus located at 7250 South Bingham Junction Boulevard - Resolution No. 2015-R-53

SUBMITTED BY:

Matt Hilderman, Associate Planner

SUMMARY:

The Gardner Company has proposed a general office use development at the southeast corner of 7200 South and Bingham Junction Boulevard. This project, the CHG Office Building and Campus, is part of the Bingham Junction zone district and includes The Junction at Midvale Overlay. The total project area for CHG is approximately 12.97 acres in size. On June 24, 2015 the Planning Commission approved a Small Scale Master Plan for the office use and public open space parcels within the Large Scale Master Plan area with a number of conditions. The CHG Project includes two phases and together, these phases consist of approximately 339,000 square feet of building space comprised of office and ancillary, incidental and related use, within two buildings, surface and structured parking, landscaping, and improved public open spaces. The overall project includes perpetual open space public use easement areas which will be improved by the Developer with landscaping, irrigation, pedestrian pathways and pedestrian amenities. Phase I of the CHG Project consists of 277,000 square feet of intensive office space, certain interior landscaping and related irrigation equipment and installations, surface and structured parking. Phase II of the CHG Project is proposed to utilize a portion of the surface parking included in Phase I for additional office space and structured parking. The developer is currently working on a final site plan for the office development.

Sections 17-7-9.2 and 17-3-5 of the Zoning Ordinance requires a Development Agreement between Midvale City and the property owner/developer of this type of project. A condition of the CHG Large and Small Scale Master Plan approval required the property owner/developer to work with the City on a Development Agreement to be reviewed and approved by the City Council. The intent of the Development Agreement is to ensure compliance with the approved development plan, provide a timeline for completion of the public and private improvements, as well as layout expectations for both parties.

A development agreement has been written with the help of outside legal counsel for the City. This agreement has been through a number of iterations after review and comments by CHG, the Developer, Community Development Staff, and the Fire Marshal. The attached Development

Agreement has been agreed upon by all involved and is now before the City Council for its consideration. The agreement includes the following:

- Agreement to comply with the approved final site plan.
- Expectations for project landscaping and long term maintenance.
- Expectations for perimeter open space improvements. This includes the public walkways along the project perimeter, and the timing for completion.
- Timing of completion of other site improvements.
- Agreement to comply with the Institutional Controls for the Bingham Junction area.

In addition to the Development Agreement, an Easement Agreement has also been drafted to ensure the long term maintenance of the perimeter perpetual public open space areas that are located within the CHG property. This agreement helps ensure these public areas, which were required as part of the overall open space for Bingham Junction, remain viable public use areas and are appropriately maintained by the property owner over the long term. A copy of this agreement is also attached.

If the City Council is comfortable with these agreements, Staff has prepared a resolution that would authorize the Mayor to sign the Development Agreement and the Easement Agreement on behalf of the City.

FISCAL IMPACT:

N/A

STAFF RECOMMENDATION:

Staff recommends that the City Council approves Resolution No. 2015-R-53, authorizing the Mayor to enter into the Development Agreement and Easement Agreement for the CHG Office Building and Campus Project as presented.

RECOMMENDED MOTION:

“I move that we adopt Resolution 2015-R-53, authorizing the Mayor to enter into the Development Agreement and Easement Agreement for the CHG Office Building and Campus Project, as presented.”

Attachments:

- Vicinity Map
- Resolution
- Development Agreement
- Easement Agreement



Jordan River Pkwy Trl

FL Smith Drive

Bingham Junction Blvd

Jordan River Blvd

700 W

7200 S

Main St

Whimpy Way

Ninth Ave

Eighth Ave

Commerce Park Dr

VICINITY MAP

 Proposed Location



When recorded, return to:

Parcel ID: 21-26-276-006

Midvale City
7505 South Holden Street
Midvale, UT 84047
Attn: Midvale City Recorder

**DEVELOPMENT AGREEMENT
(CHG PROJECT)
Midvale City, Utah**

THIS DEVELOPMENT AGREEMENT (this “Development Agreement”) is entered into as of this _____ day of _____, 2015 by and between Arbor Gardner Bingham Junction Office 3, L.C., a Utah limited liability company and Arbor Gardner Bingham Junction Office 4, L.C., a Utah limited liability company (individually and collectively, as the context may require, the “Developer”), and Midvale City Corporation, a Utah municipal corporation (“Midvale City” or “City”). Developer and City are sometimes referred to herein, individually, as a “Party,” and collectively, as the “Parties.”

A. Property. Developer is the owner of certain real property within Midvale City (as more particularly defined below, the “Property”).

B. CHG Project. Developer intends to construct on the Property Class A office buildings with parking (as more particularly defined below, the “CHG Project”).

C. Master Development Agreement and Junction Agreement. The Property is subject to that certain Master Development Agreement for the Bingham Junction Project between Littleton, Inc. and Midvale City, dated April 6, 2005 and recorded on March 10, 2006 in Book 9265 at Page 4838 as Entry No. 9659803 (the “MDA”), and to that certain Development Agreement for The Junction at Midvale Project between Arbor Gardner Bingham Junction Holdings, L.C. and Midvale City dated November 14, 2007 and recorded on March 16, 2012 in Book 9999 at Page 8618 as Entry No. 11351482 (the “Junction Agreement”).

D. Large Scale Master Plan. The Midvale City Planning Commission (the “Planning Commission”) approved a Large Scale Master Plan for the overall CHG Project on May 27, 2015 (the “Large Scale Master Plan”). The conditions of approval of the Large Scale Master Plan are set forth in a letter dated May 28, 2015 from the City to Developer, a copy of which is attached as **Exhibit B** (the “Large Scale Master Plan Conditions”).

E. Small Scale Master Plan. The Planning Commission approved a Small Scale Master Plan for Phase I of the CHG Project on June 24, 2015 (the “Small Scale

Master Plan”). The conditions of approval of the Small Scale Master Plan are set forth in a letter dated June 29, 2015 from the City to Developer, a copy of which is attached as **Exhibit C** (the “Small Scale Master Plan Conditions”).

F. Conditional Use Permit. The Planning Commission approved a Conditional Use Permit to allow an intensive office use component within Phase I of the CHG Project on June 24, 2015 (the “Conditional Use Permit”). The conditions of approval of the Conditional Use Permit are set for in the letter from the City to Developer attached as **Exhibit C**.

G. Amended Plat. The Property is subject to the restrictions set forth on that certain subdivision plat entitled “View 72 Retail Subdivision 3rd Amended, Amending Lot 10 Parcel A of View 72 Retail Subdivision 2nd Amended” recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 (the “Amended Plat”).

H. Final Site Plan. The City approved the Final Site Plan for Phase I of the CHG Project on October 20, 2015, subject to the Developer’s execution of this Agreement, and a copy of the Final Site Plan stamped as “approved” by the City is attached as **Exhibit D** (the “Final Site Plan”).

I. Easement Agreement. In connection with the execution and recordation of this Development Agreement, the City and the Developer have executed and caused to be recorded an Easement Agreement (the “Easement Agreement”) with respect to the Perimeter Open Space Areas (as defined below).

J. State Authority. Pursuant to Section 10-9a-102 of the Utah Code, Midvale City is authorized to enter into development agreements as provided therein and, as a legislative act, desires to enter into this Development Agreement in order to obtain the benefits for the City provided herein.

NOW, THEREFORE, in consideration of the above recitals, terms of this Development Agreement, and the mutual benefits to be derived herefrom, the Parties agree as follows:

Article 1 **The CHG Project**

1.1 Legal Description of Property. The Property owned by Developer that is covered by this Agreement consists of approximately 12.97 acres of land located at 7250 South Bingham Junction Boulevard, north of Coliseum Way (7295 South), east of Bingham Junction Boulevard (900 West), south of 7200 South, and west of Grandeur View Drive (760 West), and is more fully described in **Exhibit A** (the “Property”).

1.2 Description of Project. The CHG Project located on the Property includes two phases (“Phase I” and “Phase II”, respectively). Together, these phases consist of approximately 339,000 square feet of building space comprised of office and ancillary,

incidental and related use, within two buildings, surface and structured parking, landscaping, and improved public open spaces as shown on **Exhibit B**. The overall project includes certain Perpetual Open Space Public Use Easement areas as shown on the Amended Plat (the “Perimeter Open Space Areas”), which will be improved by Developer with landscaping, irrigation, pedestrian pathways and pedestrian amenities as shown and described on the Final Site Plan (the “Perimeter Open Space Improvements”). Phase I of the CHG Project consists of 277,000 square feet of intensive office space, certain interior landscaping and related irrigation equipment and installations, as shown and described on the Final Site Plan (the “Landscaping Work”), certain other improvements, including without limitation, surface and structured parking, all shown and described on the Final Site Plan (the “Other Site Improvements”), and Perimeter Open Space Areas. Phase II of the CHG Project will, if Developer elects to develop Phase II, utilize a portion of the surface parking included in Phase I for additional office space and structured parking.

1.3 MDA and Junction Agreement. Developer acknowledges and agrees that each of the MDA and the Junction Agreement is in full force and effect and is binding upon and inures to the benefit of the Parties in the ownership and development of the Property, however, Developer agrees that it has no rights to construct any residential housing on the Property pursuant to Section 9 of the MDA or otherwise.

1.4 Large Scale Master Plan and the Small Scale Master Plan. The Large Scale Master Plan for the overall project and the Small Scale Master Plan for Phase I shall be deemed to qualify, as to the Property and the CHG Project, as the Developer’s submittal of a Large Scale Master Plan and a Small Scale Master Plan under the MDA.

1.5 The CHG Project Approval

1.5.1 Approval. Pursuant to the provisions of the Amended BJ Zone (Chapter 17-7-9 of the Midvale City Municipal Code) (the “Amended BJ Zone Ordinance”) and the Junction at Midvale City Zone (Chapter 17-7-9.12.2 of the Midvale City Municipal Code) (the “Junction at Midvale City Zone Ordinance”) in effect as of the date of this Agreement (together, the “Zoning Ordinances”), the CHG Project has been approved by the City, subject to the provisions of the Zoning Ordinance in effect on the date hereof, the MDA, the Junction Agreement, the Large Scale Master Plan Conditions, the Small Scale Master Plan Conditions, the Amended Plat, the Conditional Use Permit, the Final Site Plan, and this Agreement.

1.5.2 Vested Rights. The City acknowledges and agrees that Developer has the vested rights to develop and construct the CHG Project in accordance with the provisions of the Zoning Ordinances in effect on the date hereof, the MDA, the Junction Agreement, the Large Scale Master Plan Conditions, the Small Scale Master Plan Conditions, the Amended Plat, the Conditional Use Permit, the Final Site Plan, and this Agreement; provided, however, that Developer acknowledges and agrees to the following: (a) that the construction and operation of the CHG Project is subject to all Applicable Laws (as defined in Section 3.3); and (b) a Small Scale Master Plan and Final Site Plan must be

reviewed and approved for the Phase II area of the CHG Project prior to any development occurring in this area beyond any infrastructure and improvements required for Phase I. These plans shall be consistent with the Large Scale Master Plan approval included in **Exhibit B**, comply with Article 2, and shall follow the review process outlined in Section 17-3-6 of the Zoning Ordinance.

1.5.3 Reserved Legislative Powers and Zoning Authority of the City.

Notwithstanding the provisions of Section 1.5.2, Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the City all of its police power that cannot, as a matter of law, be limited by contract. The City further agrees that notwithstanding the retained power of the City to enact legislation under its police powers, such legislation shall only be applied to modify the vested rights of Developer under the terms of this Agreement if such legislation is based upon policies, facts, and circumstances that are sufficient to satisfy the compelling countervailing public interest exception to the vested rights doctrine of the State of Utah. The City further agrees that any proposed legislative changes that may affect the vested rights of the Project shall be of general application to all development activity within the City. The City further agrees that unless in good faith the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed legislative change that may modify vested rights under this Agreement under the compelling, countervailing public interest exception to the vested rights doctrine.

1.5.4 Amendments to Final Site Plan. In the event that Developer desires in the future to amend the Final Site Plan in any material respect, and if the City approves of such amendment in accordance with all Applicable Laws, including without limitation, the zoning ordinances in effect as of the date of such amendment, the Parties may enter into an agreement that approves the substitution of the new approved Final Site Plan to replace the original Final Site Plan. Notwithstanding anything contained herein, Developer shall have no vested right to such amendment as provided above, but rather the approval by the City of any such amendment to the Final Site Plan shall be subject to Developer's compliance with the then Applicable Laws, including without limitation the then existing zoning ordinances.

Article 2
Conditions of Master Planned Development

2.1 Final Site Plan. Developer agrees that it will construct Phase I of the CHG Project as shown on the Final Site Plan and in accordance with the Large Scale Master Plan Conditions and the Small Scale Master Plan Conditions. If Developer elects to construct Phase II of the CHG Project, Developer agrees that it will construct Phase II of the CHG Project in accordance with the Large Scale Master Plan Conditions and future Small Scale Master Plan and Final Site Plan.

2.2 Agreement to Comply with Specific Conditions of Approval.

2.2.1 Access. Developer agrees that:

2.2.1.1 Prior to the commencement of any vertical construction of the CHG Project, the following must be installed, all as reviewed and approved in writing by the Fire Marshall of the Unified Fire Authority: (a) a 20-foot wide compacted slag and gravel base road leading to the construction site from an existing public street, (b) an entrance off such existing public street for such road, (c) a 20-foot wide compacted slag and gravel base temporary road around the office building footprint to allow for ambulance access, and (d) each of the fire hydrants supporting the building as shown on the Final Site Plan must be live.

2.2.1.2 Prior to the issuance of the first Certificate of Occupancy issued with respect to the CHG Project, all fire hydrants supporting the building as shown on the Final Site Plan must be live.

2.2.1.3 Prior to the issuance of the first Certificate of Occupancy issued with respect to the CHG Project, Coliseum Way between Grandeur View Drive and Bingham Junction Boulevard must be completed and accepted by the City.

2.2.2 Landscaping Work. Developer agrees that:

2.2.2.1 All of the Landscaping Work must be installed and in working order in accordance with the Final Site Plan prior to the issuance of the first Certificate of Occupancy with respect to the CHG Project.

2.2.2.2 If seasonal conditions or site construction issues make such installation unfeasible at the time Developer requests such Certificate of Occupancy, Developer shall guarantee the same through an irrevocable commitment of funds in the form of a check to be provided by Developer and deposited by the City in a reserve account established for such purpose. This amount shall be released to Developer upon Developer's completion of the Landscaping Work, provided the City finds such improvements comply with the approved plan.

2.2.2.3 In the event Developer shall so guarantee the same, then the Landscaping Work shall be completed within six months of the first Certificate of Occupancy being issued with respect to the CHG Project. The irrevocable commitment of funds shall be made available to the City to complete the Landscaping Work, if Developer fails to complete this requirement within the allotted

time frame, which shall be the City's sole remedy in the event of any such failure. The fund amount shall be in the amount that the City estimates what it will cost to purchase the materials and to complete the Landscaping Work.

2.2.3 Perimeter Open Space Improvements. Developer agrees that:

2.2.3.1 All of the Perimeter Open Space Improvements shall be completed and accepted by the City, as required by the Junction at Midvale Project Open Space and Thematic Elements and in accordance with the Final Site Plan, prior to issuance of the first Certificate of Occupancy with respect to the CHG Project. Developer shall warrant the Perimeter Open Space Improvements for one year after City acceptance.

2.2.3.2 In the event that seasonal or site construction issues make such installation unfeasible at the time that Developer requests such Certificate of Occupancy, Developer shall guarantee the same through an irrevocable commitment of funds in the form of a check to be provided by the Developer and deposited by the City in a reserve account established for such purpose, which shall be released to Developer upon Developer's completion of the Perimeter Open Space Improvements and City's acceptance of the same.

2.2.3.3 In the event Developer shall so guarantee the same, then the Perimeter Open Space Improvements shall be completed within six months of the first Certificate of Occupancy being issued with respect to the CHG Project. The irrevocable commitment of funds shall be made available to the City to complete the Perimeter Open Space Improvements, if Developer fails to complete this requirement within the allotted time frame, which shall be the City's sole remedy in the event of any such failure. The fund amount shall be in the amount that the City estimates what it will cost to purchase the materials and do the work to complete the Perimeter Open Space Improvements.

2.2.4 Other Site Improvements. All Other Site Improvements must be completed before the first Certificate of Occupancy may be issued with respect to the CHG Project.

2.3 Institutional Controls. Developer agrees that the Property shall be maintained, at a minimum, in accordance with the "Institutional Controls" set forth in Chapter 8.10 of the Midvale City Municipal Code (the "Institutional Controls").

Article 3
General Terms and Conditions

- 3.1 Rights of Access. For the purpose of assuring compliance with this Development Agreement, upon reasonable advanced notice to Developer, representatives of the City shall have the right of access to the Property and all buildings and structures thereon without charges or fees, during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in connection within the completion of the Perimeter Open Space Improvements, the Landscape Work, and the Other Site Improvements. Such representatives shall comply with all safety rules of Developer and its general contractor, including signing a standard construction area release and, if requested by Developer, shall be accompanied by a representative of Developer. In addition, upon reasonable advanced notice to Developer, the City shall have the right to enter the Property or any buildings or improvements thereon at all reasonable times for the purpose of exercising the City's remedies under this Agreement.
- 3.2 Construction of Agreement. This Development Agreement shall be constructed and interpreted to ensure that the Developer complies with the requirements and conditions of the Large Scale Master Plan, the Small Scale Master Plan, the Conditional Use Permit and the Zoning Ordinances.
- 3.3 Applicable Laws. Where this Development Agreement refers to laws of general applicability to the CHG Project, then, that language shall be deemed to refer to ordinances which apply to other similarly situated, subdivided properties within Midvale City and any other applicable laws, rules or regulations, which apply to Developer's ownership, development and use of the Property, whether or not in existence on the date hereof, including without limitation any such ordinances, rules or regulations in existence on the date hereof that are subsequently amended or deleted (individually and collectively, the "Applicable Laws").
- 3.4 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns of the Developer in the ownership or development of any portion of the CHG Project or the Property.
- 3.5 Release of Developer. In the event of a transfer of the Property, Developer shall obtain an assumption by the transferee of the Developer's obligations under this Development Agreement and, in such an event, the transferee shall be fully substituted as Developer under this Development Agreement and the Developer executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement.

- 3.6 Duration; Survival of Developer's Obligations and Rights. The term of this Development Agreement shall commence on the date this Development Agreement is executed by both Parties and shall continue unless either terminated as provided herein or by agreement by both parties, but in no event shall the term hereof be longer than the term of the MDA as set forth in Section 12.1 thereof. Notwithstanding the foregoing, Developer's rights, remedies, obligations and responsibilities under this Development Agreement shall survive and continue beyond termination of this Development Agreement as to subdivisions and/or site plans that have been given final approval and have been recorded and for all offsite or other improvements that Developer has obligated to construct or make in connection with or as a condition of such final approval.
- 3.7 Notices. Any notice, confirmation or other communication hereunder shall be given in writing by hand delivery (receipted), nationally-recognized, overnight courier service, United States mail, or facsimile (confirmed) to the following addresses or numbers:

Midvale City:

Midvale City Manager
MIDVALE CITY CORPORATION
7505 S. Holden Street
Midvale City, UT 84047
FAX: (801) 567-0518

Midvale City Community Development Director
MIDVALE CITY CORPORATION
7505 S. Holden Street
Midvale City, UT 84047
FAX: (801) 567-0518

Midvale City Attorney
MIDVALE CITY CORPORATION
7505 S. Holden Street
Midvale City, UT 84047
FAX: (801) 567-0518

Developer:

Arbor Commercial Real Estate L.L.C.
126 West Segoe Lily Drive, Suite 275
Sandy, Utah 84070
Attention: John Gust

With a copy required for notice to:
K.C. Gardner Company, L.C.
90 South 400 West, Suite 360
Salt Lake City, Utah 84101-1365
Attention: Christian Gardner

- Any Party hereto may change its address by notice given to the other Parties in the manner required for other notices above.
- 3.8 Savings Clause; Severability. If any provisions of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of this Development Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid. If any part or provision of this Development Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Development Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Development Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- 3.9 No Third Party Rights. This Development Agreement does not create any third party beneficiary rights. It is specifically understood by the Parties that: (a) the development of the Property under this Development Agreement is a private development, (b) the City has no interest in or responsibilities for or duty to third parties concerning any improvements on the Property, and (c) Developer shall have full power over and exclusive control of the Property subject to the obligations of Developer under this Development Agreement, the Easement Agreement and all Applicable Laws.
- 3.10 Integration. Except as otherwise specified and agreed in writing, this Development Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind of nature, and may only be modified by a subsequent writing duly executed by the Parties hereto. By this reference, the foregoing recitals and the attached exhibits are incorporated in and made a part of this Development Agreement by this reference.
- 3.11 Further Assurances. The Parties to this Development Agreement agree to reasonably cooperate with each other in effectuating the terms and conditions of this Development Agreement and, further, agree to execute such further agreements, conveyances and other instruments as may be required to carry out the intent and purpose of this Development Agreement.

- 3.12 Waiver: Time of Essence. No failure or delay in exercising any right, power or privilege hereunder on the part of any Party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the Party making the waiver. Time is of the essence of this Development Agreement.
- 3.13 Obligations and Rights of Mortgage Lenders. Developer may finance the Property and may execute one or more mortgages, deeds of trust or other security arrangements with respect to the Property and may assign this Development Agreement to a holder of any such financial instrument without prior written notice to or consent of the City. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Development Agreement by virtue of such assignment to construct or complete improvements or to guarantee such construction or completion, but, upon a foreclosure or delivery of a deed in lieu of foreclosure of such mortgage, deed of trust or other security arrangement, shall otherwise be bound by all of the terms and conditions of this Development Agreement which pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to all requirements and obligations of this Development Agreement and any pro rata claims for payments or charges against the Property, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Development Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than following a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, such holder shall be permitted to construct the improvements provided for or authorized by this Development Agreement. Additionally, nothing herein shall be so construed as to prohibit a mortgage or deed of trust holder from providing security for the standard installation of development improvements pursuant to the Applicable Laws.
- 3.14 Disputes. In the event that a dispute arises in the interpretation or administration of this Development Agreement or if the default mechanism contained herein shall not resolve a default under this Development Agreement, then prior to taking any action to terminate this Development Agreement every continuing dispute, difference, and disagreement shall be referred to a single mediator agreed upon by the Parties. If no single mediator can be agreed upon, a mediator or mediators shall be selected from the mediation panel maintained by the United States District Court for the District of Utah in accordance with any designation process maintained by such court. The Parties shall mediate such dispute, difference, or disagreement in a good faith attempt to resolve such dispute, difference or disagreement. The mediation shall be non-binding. Notwithstanding the foregoing, the Parties agree that the City retains the right to exercise

enforcement of its police powers in the event Developer is in direct violation of a provision of this Development Agreement or of any Applicable Law.

- 3.15 Institution of Legal Action; Restriction on Remedies. In the event that the mediation does not resolve a dispute, either Party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Development Agreement or to enjoin any threatened or attempted violation of this Development Agreement, or to terminate this Development Agreement; provided, however, the Parties agree that in no event shall either Party seek or be entitled to money damages for any breach, default or violation of this Development Agreement. Legal actions shall be instituted in the Third Judicial District Court of the County of Salt Lake, State of Utah.
- 3.16 Counterparts. This Development Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 3.17 Costs and Expenses; Attorneys' Fees. Except as otherwise specifically provided herein, each Party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Development Agreement and the negotiation of all agreements and preparation of documents contemplated by this Development Agreement. In the event of a breach or dispute arising under this Development Agreement, the nonbreaching Party or the Party prevailing in such dispute shall be entitled to recover from the breaching or nonprevailing Party its costs, including, without limitation, court costs, reasonable attorneys' fees, expert witness fees, fax, copy, telephone and other incidental charges.

IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, and by a duly authorized representative of the Gardner Company, as of the above stated date.

[signature and acknowledgment pages follow]

CITY:

MIDVALE CITY CORPORATION

By: _____
JoAnn B. Seghini, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

APPROVED AS TO FORM:

Print Name: _____
City Attorney

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the ____ day of _____, 2015, personally appeared before me JoAnn Seghini, who being by me duly sworn did say she is the Mayor of Midvale City Corporation, and that the within and foregoing instrument was signed on behalf of such Corporation.

Notary Public
Residing at: _____

My Commission Expires:

DEVELOPER:

ARBOR GARDNER BINGHAM JUNCTION
OFFICE 3, L.C., a Utah limited liability company,
by its Managers

By: K.C. Gardner Company, L.C., a Utah
limited liability company

By: _____

Name: _____

Its: _____

By: Arbor Commercial Real Estate L.L.C., a
Utah limited liability company

By: _____

Name: _____

Its: _____

ARBOR GARDNER BINGHAM JUNCTION
OFFICE 4, L.C., a Utah limited liability company,
by its Managers

By: K.C. Gardner Company, L.C., a Utah
limited liability company

By: _____

Name: _____

Its: _____

By: Arbor Commercial Real Estate L.L.C., a
Utah limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description of the Property

That certain real property located in Salt Lake County, Utah, as more particularly described as follows:

All of Lot 1, 2, 3, & 4 of the “View 72 Retail Subdivision 3rd Amended” recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015P at Page 165, containing a total of 564,922 square feet or 12.969 acres.

Exhibit A

EXHIBIT B

Large Scale Master Plan Conditions



7505 South Holden Street
Midvale, Utah 84047
Phone (801) 567-7200
www.midvalecity.org

Thursday, May 28, 2015

Mr. Mark Murdock
Gardner Company
400 W. 90 S.
Salt Lake City, UT 84101
mark@gardnercompany.net

Subject: Large Scale Master Plan Approval – CHG Office Building and Campus @ 7250 S. Bingham Junction Blvd.

Dear Mr. Murdock:

This letter is to confirm action taken by the Midvale City Planning Commission at its meeting held on May 27, 2015 regarding the above project. It was the decision of the Planning Commission to approve the Large Scale Master Plan with the following conditions:

1. The required public open space areas within the site boundary shall be improved in compliance with the approved landscaping, lighting, and amenities plan for the Junction at Midvale Master Plan. This includes a minimum eight-foot wide walkway/trail adjacent to Bingham Junction Boulevard. Plans for these areas shall be reviewed and approved as part of the overall development plan.
2. Pedestrian connections need to be provided interior to the site to provide connections between the parking areas/structures and the office buildings, and to the public open space walkways/trails.
3. All development within the Large Scale Master Plan shall comply with the requirements of the Fire Marshall regarding fire and emergency vehicle access.
4. All development within the Large Scale Master Plan shall comply with the applicable development, architectural, and landscaping standards in The Junction at Midvale Overlay.
5. All development within the Large Scale Master Plan shall comply with the common development and parking standards in the Bingham Junction Zone.
6. All development within the Large Scale Master Plan shall be compatible with the approved Junction at Midvale Thematic Design Elements, i.e. pathway lighting, benches, etc.
7. The recorded subdivision plat for this area will need to be amended, reviewed, approved, and recorded to reflect the actual project boundary. This subdivision plat shall be recorded prior to Final Site Plan approval.
8. The applicant shall work with the City in drafting a Development Agreement for this project site. This agreement will need to be done in conjunction with the Small Scale Master Plan and executed prior to Final Site Plan approval and Building Permit issuance.

If you have any questions regarding this decision, please contact Matt Hilderman at (801) 567-7231.

Sincerely,

Matt Hilderman
Associate Planner

Exhibit B-2

EXHIBIT C

Small Scale Master Plan Conditions

Exhibit C-1



7505 South Holden Street
Midvale, Utah 84047
Phone (801) 567-7200
Fax (801) 567-0518

Monday, June 29, 2015

Gardner Company
C/o: Mark Murdock, VP Development
400 W. 90 S.
Salt Lake City, UT 84101

Subject: Small Scale Master Plan/Prelim. Site Plan for CHG Office Building and Campus

Dear Mr. Murdock:

This letter is to confirm action taken by the Midvale City Planning Commission held on Wednesday, June 24, 2015 in regards to the above request. It was the decision of the Planning Commission to approve the Small Scale Master Plan/Preliminary Site Plan for **CHG Office Building and Campus**, a master planned development, to be located at **7250 South Bingham Junction Boulevard** with the following conditions:

Motion 1: Findings

1. The proposed Small Scale Master Plan is consistent with the approved Large Scale Master Plan for this area;
2. With the conditions below, the proposed Small Scale Master Plan complies with the development standards and requirements of the Junction at Midvale Development Agreement, including the Bingham Junction Zone District and the Junction at Midvale Overlay Development standards; and
3. The sidewalk on the eastside of the property should remain at a five-foot sidewalk due to it being consistent with the circulation path in the development.

Motion 2: Conditions

1. The applicant shall work with the Fire Marshall to ensure there is adequate emergency access and to ensure any future improvements do not interfere with any required emergency accesses.
2. The walkways along Junction View and Bingham Junction Boulevard shall be widened from five feet to eight feet and include the required pedestrian bollard lighting for these walkways.
3. Stamped concrete/asphalt crosswalks shall be incorporated across all of the driveways to provide continuous pedestrian connections along all of the public walkways. These crosswalks shall match the pattern and color used in the adjacent developments.
4. Nine street trees shall be added along Grandeur View Drive.
5. Lighting on the top deck of the parking structure shall comply with the City's exterior lighting standards and included as part of the exterior lighting plan in the final site plan. Efforts shall be made to avoid light poles being located near the perimeter of the top deck.

Exhibit C-2

6. The exterior lighting plan shall also include photometric data and illustrations of the bollard lighting along Junction View Drive and Bingham Junction Boulevard and any interior pedestrian walkway lighting.
7. An irrigation plan, complying with Section 17-7-9.5 E of the Zoning Ordinance, shall be prepared and included in the final site plan submittal.
8. The final site plan shall be prepared in accordance with Section 17-3-3 E of the Zoning Ordinance and shall be reviewed and approved by the City Engineer, Fire Marshall and City Planner. The final site plan shall address the conditions of this approval.
9. The View 72 Retail Subdivision 3rd Amended plat shall be recorded before final site plan approval.
10. The applicant shall work with the City in drafting a Development Agreement for this project site. This agreement will need to be executed prior to Building Permit issuance on any of the structures.

We have enjoyed working with you on this project and look forward to future collaborations. If you have any further questions or concerns, please feel free to contact our office.

Thank you.

Best Regards:



Matt Hilderman, Associate Planner
Ph. 801-567-7231
mhilderman@midvale.com

Cc: File

EXHIBIT D

Final Site Plan

Exhibit D-1

* TO BE INCLUDED WHEN COMPLETED *

When recorded, return to:

Parcel ID: 21-26-276-006

Midvale City
7505 South Holden Street
Midvale, UT 84047
Attn: Midvale City Recorder

**EASEMENT AGREEMENT
(CHG PROJECT)
Midvale City, Utah**

THIS EASEMENT AGREEMENT (this “Agreement”) is made this _____ day of _____, 2015 by Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company (“Owner”), in favor of Midvale City Corporation, a Utah municipal corporation (“Midvale City” or “City”). Owner and City are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

A. Property. Owner is the owner of certain real property within Midvale City (as more particularly defined on **Exhibit A** attached hereto, the “Property”).

B. Amended Plat. The Property constitutes all of the lots created by that certain subdivision plat entitled “View 72 Retail Subdivision 3rd Amended, Amending Lot 10 Parcel A of View 72 Retail Subdivision 2nd Amended” recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015P at Page 165, a copy of which is attached hereto as **Exhibit B** (the “Amended Plat”).

C. CHG Project. Developer intends to construct on the Property Class A office buildings with parking (as more particularly defined below, the “CHG Project”).

D. Master Development Agreement and Junction Agreement. The Property is subject to that certain Master Development Agreement for the Bingham Junction Project between Littleton, Inc. and Midvale City, dated April 6, 2005 and recorded on March 10, 2006 in Book 9265 at Page 4838 as Entry No. 9659803 (the “MDA”), and to that certain Development Agreement for The Junction at Midvale Project between Arbor Gardner Bingham Junction Holdings, L.C. and Midvale City dated November 14, 2007 and recorded on March 16, 2012 in Book 9999 at Page 8618 as Entry No. 11351482 (the “Junction Agreement”).

E. Large Scale Master Plan. The Midvale City Planning Commission (the “Planning Commission”) approved a Large Scale Master Plan for the overall CHG Project on May 27, 2015 (the “Large Scale Master Plan”). The conditions of approval of

the Large Scale Master Plan are set forth in a letter dated May 28, 2015 from the City to Developer.”).

F. Small Scale Master Plan. The Planning Commission approved a Small Scale Master Plan for Phase I of the CHG Project on June 24, 2015 (the “Small Scale Master Plan”). The conditions of approval of the Small Scale Master Plan are set forth in a letter dated June 29, 2015 from the City to Developer.

G. Development Agreement. Pursuant to the Large Scale Master Plan and the Small Scale Master Plan, and in accordance with the City’s zoning ordinances, City and Owner entered into that certain Development Agreement dated as of the _____ day of October, 2015 recorded with the County Recorder for Salt Lake County, Utah on _____, 2015 as Entry No. _____ in Book _____ at Page _____ (the “Development Agreement”).

H. Final Site Plan. In connection with the execution of the Development Agreement, the City approved the Final Site Plan for Phase I of the CHG Project on _____, a copy of which is attached to the Development Agreement (the “Final Site Plan”).

I. Easement Agreement. In consideration of the benefits to Owner as a result of City agreeing to enter into the Development Agreement and in consideration of the benefits to Owner as a result of City agreeing to allow Owner to continue to own the areas on the Amended Plat designed as the Perpetual Open Space Public Use Easement, in the dimensions shown on the Amended Plat and the Final Site Plan (the “Easement Areas”), rather than dedicating such areas to City. Owner has agreed to grant City an easement over and across the Easement Areas and to construct thereon the Perimeter Open Space Improvements (as such term is defined in the Development Agreement). Pursuant to the terms of the Development Agreement, Owner has agreed to enter into an easement agreement in the form hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, for themselves and their successors and assigns, hereby covenant as follows:

1. EASEMENT

1.1. *Perpetual Public Open Space Easement*. Subject to the terms of this Agreement, Owner hereby grants and conveys to City a perpetual non-exclusive easement and right-of-way on and over the Easement Areas to provide pedestrian access by City and the public (the “**Easement**”).

1.2. *Design and Construction of Easement Areas*. Owner shall construct (and reconstruct, if applicable) the Perimeter Open Space Improvements on the Easement Areas in accordance with the Development Agreement and the Final Site Plan.

1.3. **No Interference.** Owner shall not construct any wall, impediment, or other structure on any portion of the Easement Areas, or engage in any other act, which would unreasonably obstruct the right granted herein to the general public for access over, across and through the Easement Areas. Notwithstanding the foregoing, Owner may temporarily close portions of the Easement Area to ensure the safety of pedestrians during periods of snow removal, maintenance and repairs within the Easement Areas. In the event of any such closure, Owner shall use commercially reasonable efforts to cure the condition requiring closure in a reasonable time and provide alternate access routes to pedestrian traffic during the closure.

2. MAINTENANCE AND REPAIR

2.1. **Maintenance.** Owner shall at its sole cost and expense: repair, replace, restore and maintain the Easement Areas and the Perimeter Open Space Improvements in a good condition and repair; keep the Easement Areas and the Perimeter Open Space Improvements reasonably clean and free of rubbish, debris, filth, refuse, snow, ice, standing water, graffiti, and hazards to persons using the Easement Areas and the Perimeter Open Space Improvements on a regular basis in order to detect needed repairs or maintenance; and provide all security necessary and appropriate to protect the health and safety of persons using the Easement Areas and the Perimeter Open Space Improvements. Except to the extent of damage caused by the City or its employees or contractors, City shall have no obligation whatsoever to repair, replace, restore, or maintain the Easement Areas or the Perimeter Open Space Improvements.

2.2. **Repair.** If the Easement Areas or the Perimeter Open Space Improvements are damaged or destroyed by any cause whatsoever, Owner shall proceed with diligence to reconstruct the Easement Areas and/or the Perimeter Open Space Improvements affected to substantially its condition prior to such damage or destruction. The foregoing shall not prevent Owner from seeking reimbursement from any party that has damaged or destroyed such Perimeter Open Space Improvements.

3. DEFAULT

3.1. **Right to Cure.** Should Owner fail to timely perform any of its obligations hereunder and such failure shall continue for ninety (90) days after its receipt of notice from City (or, if a cure reasonably takes longer than ninety (90) days to effect, such longer period as may be required to cure if the cure is commenced within ninety (90) days and thereafter diligently prosecuted to completion) then City shall, in addition to any other remedy provided by law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of Owner. Owner shall reimburse City, as the case may be, for the actual cost incurred by City in performing Owner's obligations, together with interest on all amounts advanced at the rate of six percent (6%) per annum over the "Federal Reserve Discount Rate" as set by the Federal Reserve Bank from time to time (the "**Default Rate**") within thirty (30) days after receipt of billing therefor and proof of payment thereof.

3.2. **Enforcement.** In the event Owner does not reimburse City within such thirty (30) days, City shall have the right to exercise any and all rights which such curing party might have by law or in equity to collect the same. In the event of any violation or threatened violation of any provision of this Agreement, City shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

3.3. **Attorneys' Fees.** In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to receive and shall receive from the defaulting party, a reasonable sum as attorneys' fees and costs.

4. NOTICES

All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be either hand delivered or mailed by United States mail, registered or certified with return receipt requested and postage prepaid, addressed as follows:

Owner:

Arbor Commercial Real Estate L.L.C.
126 West Sege Lily Drive, Suite 275
Sandy, Utah 84070
Attention: John Gust

With a copy to:

K.C. Gardner Company, L.C.
90 South 400 West, Suite 360
Salt Lake City, Utah 84101-1365
Attention: Christian Gardner

If to City:

Midvale City Manager
Midvale City
7505 South Holden Street
Midvale, Utah 84047

Midvale City Attorney
Midvale City
7505 South Holden Street
Midvale, Utah 84047

Notices and demands shall be deemed effective upon receipt if hand delivered, or three (3) days after the date postmarked, if properly mailed. The person and place to which

notices are to be given may be changed by a Party by notice to the other Parties pursuant to this Section.

5. INDEMNIFICATION

Owner shall release, indemnify, defend, and hold harmless City from and against any and all judgements, claims, expenses, causes of action, damages, and liabilities (including reasonable attorneys' fees and actual costs) (the "Claims and Actions"), directly or indirectly arising out of the willful misconduct, acts, negligence, errors, or omissions of Owner (or any other party acting by, through or under Owner, including without limitation a tenant) in connection with the Easement and the Easement Areas and the Perimeter Open Space Improvements including, without limitation, any Claims or Actions relating to Owner's (or any such other party's) design, construction, use, operation, maintenance, repair or security of the Easement or the Easement Area of the Perimeter Open Space Improvements, or the permitting, prohibiting or regulating the use or non-use of, the Easement or the Easement Areas or the Perimeter Open Space Improvements for activities that are protected by the United States Constitution or the Utah State Constitution; provided, such indemnification shall not extend to or be applied with respect to any Claims or Actions arising out of the willful misconduct or gross negligence of City.

6. GENERAL PROVISIONS

6.1 **Nuisance.** Owner shall not cause, maintain, or permit any nuisance or waste in or about the Easement Areas.

6.2 **Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to be bound by every covenant, condition, and restriction contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in the Property.

6.3 **Headings.** The headings used herein are for convenience only and are not intended to be a part of this Agreement or in any way to define, limit, or describe the scope and intent of the sections to which they refer.

6.4 **Effect of Invalidation.** If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

6.5 **Amendments.** This Agreement may not be modified or rescinded, in whole or in part, except by a writing executed by Owner and City. Any such written amendment shall become valid when recorded with the Salt Lake County Recorder's Office against the Property.

6.6 ***Binding Effect.*** It is intended and agreed that the covenants set forth herein shall run with the land and that they shall be binding on the Owner, as provided herein, to the fullest extent permitted by law and equity. This Agreement and the covenants, conditions and the rights of City set forth in this Agreement shall run in favor of City regardless of whether City owns any real property adjoining or near the Property.

6.7 ***Governing Law.*** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

[The remainder of this page was purposely left blank, signature pages to follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

OWNER:

ARBOR GARDNER BINGHAM HOLDINGS,
L.C., a Utah limited liability company, by its
Managers

By: K.C. Gardner Company, L.C., a Utah
limited liability company

By: _____

Name: _____

Its: _____

By: Arbor Commercial Real Estate L.L.C., a
Utah limited liability company

By: _____

Name: _____

Its: _____

CITY:

MIDVALE CITY CORPORATION

By: _____
JoAnn B. Seghini, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

APPROVED AS TO FORM:

Print Name: _____
City Attorney

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the ____ day of _____, 2015, personally appeared before me _____, who being by me duly sworn did say he/she is the _____ of K.C. Gardner Company, L.C., a Utah limited liability company, and that he/she had signed the within and foregoing instrument on behalf of such limited liability company.

Notary Public
Residing at: _____

My Commission Expires:

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the ____ day of _____, 2015, personally appeared before me _____, who being by me duly sworn did say he/she is the _____ of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, and that he/she had signed the within and foregoing instrument on behalf of such limited liability company.

Notary Public
Residing at: _____

My Commission Expires:

Legal Description of Property

That certain real property located in Salt Lake County, Utah, as more particularly described as follows:

All of Lot 1, 2, 3, & 4 of the “View 72 Retail Subdivision 3rd Amended” recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015P at Page 165, containing a total of 564,922 square feet or 12.969 acres.

Amended Plat

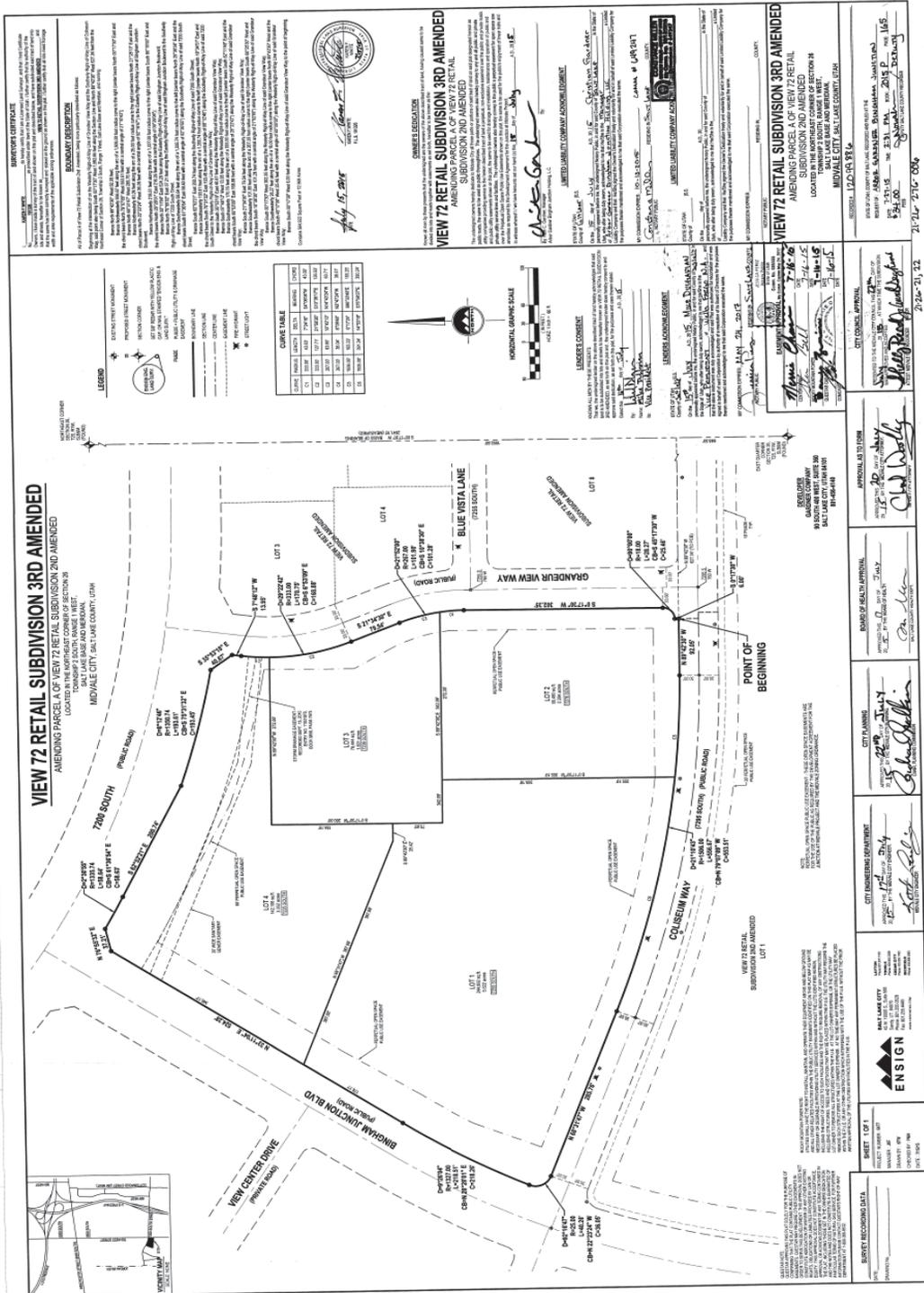


Exhibit B