

**ORDINANCE NUMBER 2006-07**

**AN ORDINANCE, PURSUANT TO SECTION 10-9a-102,  
UTAH CODE ANNOTATED, ADOPTING MODERATE  
INCOME HOUSING REGULATIONS FOR LAND USE AND  
DEVELOPMENT WITHIN MIDWAY CITY.**

WHEREAS, Utah law requires cities to take steps to ensure that moderate income housing is available and/or made available within city limits; and

WHEREAS, the City Council of Midway City finds that there exists a need for additional moderate income housing within the Midway City limits; and

WHEREAS, the City finds it in the public interest to cooperate with the Wasatch County Housing Authority in administering a program and regulations for moderate income housing in Midway City.

NOW THEREFORE, pursuant to Section 10-9a-102, Utah Code Annotated, the City Council of Midway City hereby adopts, passes and publishes the following as the “Midway City Moderate Income Housing Ordinance”:

**Midway City Corporation  
Moderate Income Housing**

**Sections:**

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**Section 1 Title**

This Ordinance shall be known as the Moderate Income Housing Ordinance.

**Section 2 Findings**

- A. Utah Code requires Cities to prepare a Moderate Income Housing Plan; and

- B. Midway City, in conjunction with Wasatch County, has developed a moderate income housing element of the General Plan which looks at the estimated existing supply, the estimated five year need, a survey and evaluation of zoning's effect on moderate income housing, and a description of Midway City's programs to encourage an adequate supply of moderate income housing;
- C. The study performed for Wasatch County and the municipalities shows that new development which does not include or provide for moderate income housing serves to aggravate the current moderate income housing shortage, by reducing the supply of residential land available for moderate income housing development, and creating larger numbers of service oriented, low-paying jobs, creating a greater demand for moderate income housing by increasing the numbers of low wage earners; and
- D. A continuing shortage of moderate income housing is detrimental to the public health, safety and welfare as it contributes to overcrowded and substandard conditions for lower-income families, and the inability of industry to find and retain a quality labor supply; and
- E. A requirement of ten percent (10%) of all new development units being created as moderate income housing units is strongly recommended by the County-wide Moderate Income Housing Plan; and
- F. A requirement to contribute to moderate income housing can be off-set by allowing reasonable density bonuses to help the developer recover the cost of such moderate income housing requirement.

### **Section 3 Purpose and Intent**

It is an objective of the City to ensure that all development provides a range of housing opportunities for all identifiable economic segments of the population, including households of low and moderate income. It is the policy of the City to focus its moderate income housing efforts on monitoring the need and providing opportunity for low to moderate income families to obtain housing that meets their needs and not focus merely on building low income units; to provide a variety of housing types for our elderly or senior citizens including assisted care, independent care, and targeted senior retirement communities; and recognize the need for special target groups for moderate income housing, namely: families in crisis; handicapped and other special need groups. It has therefore become a requirement of development in Midway City:

- A. To require all developments of 4 units or more to provide units equal to ten percent (10%) of the Equivalent Residential Units proposed for their project as moderate income housing units within the development, or to pay a fee-in-lieu to the Wasatch County Housing Authority to be used to assist in other ways to create moderate income housing within Wasatch County and/or the municipalities.
- B. When approved by Midway City and the Wasatch County Housing Authority, to allow alternatives to onsite construction in order to provide a special use deemed necessary and appropriate to accomplish the purposes of moderate income housing.

#### **Section 4 Requirements**

This ordinance shall apply to all developments of 4 equivalent residential units or more as defined in this ordinance, including detached and attached single family residential units (i.e., duplex, townhome, condominium, etc.). "Development" shall include the receipt of final approval for the creation of lots for sale or the construction of residential units.

- A. This ordinance shall not apply to:
  - 1. Developments consisting of less than 4 lots;
  - 2. Apartment buildings;
  - 3. Existing buildings which are altered, improved, restored, repaired, expanded, or extended, provided that the number of equivalent residential units (ERUs) is not increased;
  - 4. The re-construction of units that were destroyed not more than one year prior to the application for a building permit to re-build the structure, provided that the number of equivalent residential units (ERUs) does not increase.
- B. An equivalent of ten percent (10%) of each development to which this ordinance applies, shall be moderate income housing through either construction of moderate income housing units on-site within the development being proposed or off-site when meeting a planning objective such as in-fill or by payment of a fee-in-lieu of construction.
- C. Midway City shall grant additional density to such development in an amount intended to allow the developer to recapture some or all of the funds expended for such moderate income housing requirement. Such additional density will be calculated based upon the intended sales price of a market-rate unit in the development and the amount of any fee-in-lieu paid, so that when the additional density units sell, the developer will be reimbursed in whole or in part the approximate cost of such moderate income housing requirement. (Example, if a developer elects to pay a fee-in-lieu of \$45,000.00, and the developer's market-rate lots each sell for \$45,000.00, the developer will be allowed one additional unit to sell at market rate. If a market-rate unit sells for \$500,000.00 and the developer pays \$400,000.00 as a fee-in-lieu, it is likely the developer will also be granted only one additional unit to sell at market rate.) If a developer builds a required moderate income housing unit, rather than paying the fee-in-lieu, the bonus shall be calculated in the same manner. This section is a specific exception to provisions of the code limiting density in certain developments, to the extent necessary to meet the moderate income housing requirements. The calculations of density bonuses will be determined by the Planning Staff using this formula. The Planning Staff recommendation will be considered by the Planning Commission as part of the preliminary approval of the development.
- D. Lots within developments shall meet the minimum area and frontage requirements of the underlying zone. However, additional lots allowed through density bonuses may be incorporated in the development or offsite through the construction of Moderate Income developments.
- E. Moderate Income homes shall be allowed in all zones, but will be encouraged in the R-1-7, R-1-9, R-1-11, and R-1-15 zones. Where possible, Midway City will cooperate with the Wasatch County Housing Authority to designate specific

parcels as Moderate Income Housing properties for the purpose of grant applications, low to moderate income construction projects, etc.

## **Section 5 Standards**

- A. The moderate income housing units should be built within the development project site to allow for a blending of such units with market rate units. Moderate Income Housing obligations should be met onsite within respective jurisdictions in Wasatch County; Midway City should not be the primary source for moderate income housing obligations from other jurisdictions.
- B. The moderate income housing units should be built concurrently with market rate units.
- C. Moderate income rental units shall remain restricted and affordable to the designated group of qualified individuals for the life of the unit. Notwithstanding anything to the contrary, no moderate income rental unit shall ever be approved for rental in an amount which exceeds ninety percent (90%) of the rent charged at that point in time, for a comparable market unit in the same development, if any. Actual rent to be charged and later increases shall be determined in an Moderate Income Housing Agreement to be entered into prior to receiving final approval on any project.
- D. The design of units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.
- E. One moderate income unit shall normally be consistent in size with a single-family dwelling residence intended for a family of four. If the developer wishes to provide any smaller units for single tenants, no such unit shall be less than 500 square feet per tenant in size and shall receive credit for the moderate income requirements based upon the ERU classification for that unit. Therefore, it may take three or more single units to equal one unit of moderate income housing.
- F. Moderate Income housing units shall provide a mix of number of bedrooms in the affordable dwelling units in response to moderate income housing demands identified by the Wasatch County Housing Authority, so that the total ERUs provided for moderate income housing equal 10% of the ERUs contained in the project, and the traits being provided are of a size necessary to meet the current demand.
- G. No building permit shall be issued and no final approval granted which does not meet the requirement of this ordinance.
- H. If a developer intends to build his required amount of moderate income housing units at one time which is not concurrent with the building of the market-rate units, and a later construction schedule is agreed upon as part of the development approval process (not to exceed one year), a bond or other financial assurance equal to 110% of the current fee-in-lieu, shall be placed with Midway City to ensure the building of the moderate income housing units within the time agreed upon or one year from final approval, whichever is sooner.
- I. The City, during the development approval process, may approve alternatives to the construction of new moderate income housing units contained within the

development, where the proposed alternative supports specific housing policies and goals, and assists the City in meeting those goals. Alternatives may include acquisition and rehabilitation of moderate income housing units, conversion of existing market rate units to moderate income units, construction of special needs projects or shelters.

**Section 6 Fees Paid in Lieu of Construction**

- A. Contributions of fees-in-lieu are considered a viable choice to building on-site, so that public and private dollars can be leveraged for more moderate income housing good.
- B. The fee to be paid for each market rate unit shall be determined by the subsidy needed to make a market rate unit affordable to a moderate income household. This subsidy shall be based upon a determination of the average subsidy that would be required to make a typical new starter home consisting of three bedrooms/two baths affordable to a family earning 80% of the median gross income of the metropolitan statistical area for households of the same size.
- C. The actual fee to be charged and the method of payment shall be fixed by a schedule adopted periodically, by resolution of the Wasatch County Housing Authority, based upon current costs of construction and interest rates. Said fee shall be assessed against the market rate lots/units of a development and shall be paid by the developer.
- D. All fees-in-lieu shall be deposited in a Housing Trust Fund. Said fund shall be administered by the Wasatch County Housing Authority and shall be used for the purpose of providing funding assistance for the provision of moderate income housing of both for rent and for sale units, the alternatives approved under Section 5 of this ordinance, and reasonable costs of administration consistent with the policies and programs of the Wasatch County Housing Authority.
- E. At the discretion of Midway City County and the Wasatch County Housing Authority, a developer may make an irrevocable dedication of land or other non-monetary contribution of a value not less than the sum that would have been due as a fee-in-lieu, if it is determined that the non-monetary contribution will be helpful in furthering the goals and policies of the Midway City Moderate Housing Element and the Wasatch County Housing Authority. Any costs associated with such appraisal or transfer of contribution shall be borne by the developer.

**Section 7 Moderate Income Housing Agreement as a Condition of Development**

- A. Developers subject to this ordinance shall demonstrate compliance by executing a Moderate Income Housing Agreement approved by the Wasatch County Housing Authority. Agreements shall be reviewed by the Midway City Planning Department for ERU compliance and density bonus calculations, the Executive Director of the Wasatch County Housing Authority for completeness and approved by the Chairman of the Board of the Wasatch County Housing Authority. The approval and execution of the Moderate Income Housing Agreement shall take place prior to the final approval of the development.

Agreements which involve special concessions or incentives shall require the recommendation of the Wasatch County Housing Authority Board and the Midway City Council prior to execution. An Moderate Income Housing Agreement, for which the housing requirement will be satisfied through new construction of moderate income housing units, shall establish, but not be limited to, the following:

1. The total number of units proposed in the project,
  2. The average selling price of a unit for each of the phases of the development,
  3. The number of moderate income units proposed,
  4. The square footage, calculated ERUs and numbers of bedrooms,
  5. The proposed location of the units,
  6. The schedule for production of dwelling units, both affordable and market rate,
  7. Production cost associated with dwelling construction,
  8. Appraisals for units,
  9. Providing copies of plans for such units,
  10. Security posted or to be posted prior to recording of final plat, for building of units, if construction of such units will not take place at the same time as the market rate units in a proportionate manner.
- B. A Moderate Income Housing Agreement will not be required for projects which will be satisfying their moderate income housing requirements through payment of a fee-in-lieu, provided such payment is made prior to a final plat approval. The developer is required to provide the Planning Department with a statement of the average anticipated selling price for a unit in each planned phase of the development.
- C. A Moderate Income Housing Agreement for which moderate income housing requirements will be satisfied all or in part through an in-lieu contribution other than money, shall include the method of determination, schedule and value of total in-lieu contributions, which must be approved by the Midway City Council and the Wasatch County Housing Authority.

## **Section 8 Enforcement**

- A. The provisions of this ordinance shall apply to all developers and their agents, successors and assigns proposing any development in Midway City of more than four units.
- B. The City and/or the Wasatch County Housing Authority may institute any appropriate legal actions or proceedings necessary to ensure compliance with this ordinance, including but not limited to actions to revoke, deny or suspend any permit or development approval.
- C. It shall be a class "B" misdemeanor for any individual or entity to sell or rent a restricted moderate income housing unit for a sum in excess of the rate set forth in the Moderate Income Housing Agreement governing that unit. Excess proceeds

of an unlawful sale or unlawful rental shall be forfeited and shall be paid to the Housing Authority Trust Fund.

- D. Any and all units dedicated as Moderate Income Housing shall be Deed Restricted to ensure a cap on appreciation, thus keeping the unit affordable as originally intended. The growth cap will be based on the cost of living index over the life of the unit.

### **Section 9 Severability**

If any of the provisions of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

### **Section 10 Definitions**

The following words shall have the described meaning when used in this ordinance. If any words are used in this ordinance that are not defined herein, the ordinary meaning contained in the dictionary shall be the meaning intended, unless a contrary meaning is apparent from the context of the word.

- A. Moderate Income Housing: Housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the metropolitan statistical area for households of the same size.
- B. Moderate Income Housing Agreement: A legally binding agreement between a Developer and Midway City and the Wasatch County Housing Authority which ensures that the requirements of this ordinance are satisfied.
- C. Allowable Housing Expense: The total monthly or annual recurring expenses required of a household to obtain shelter. These expenses include loan principal and interest, property and mortgage insurance, property taxes, homeowners association dues, etc. In a rental unit only, this amount would include the cost of obtaining basic public utility services.
- D. Moderate Income Housing Unit: A dwelling unit that will be offered for rent or for sale exclusively to, and which shall be affordable to, moderate-income households as required by this ordinance.
- E. Base Residential Units: The number of lots or equivalent residential units associated with each development from which are calculated the number of affordable units to be provided or the amount of the fee-in-lieu to be paid.
- F. Conversion: The change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.
- G. Equivalent Residential Unit (Also known as an “ERU”): A unit size which represents the size of an average single family home which comfortably houses at least four people. Smaller units shall represent a portion of an equivalent residential unit (ERU). The Planning Staff shall make a determination of ERU

calculations using this chart as a guide, which shall be subject to review by the Planning Commission and established as part of preliminary approval. For obvious reasons, moderate income housing needs shall be met with residential ERUs.

- H. Financial Assistance: Assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs or construction costs, the use of Community Development Block Grant (CDBG) Funds, down payment assistance, interest buy-downs, or the provision of other direct financial aid or other monetary compensation by Midway City or the Wasatch County Housing Authority.
- I. Moderate Income: Eight percent (8%) or less of median family income for Wasatch County.
- J. Market Rate Unit: A dwelling unit where the rent, a rate or sales price is not restricted by requirements imposed by local, state or federal moderate income housing programs.
- K. Qualified Applicants: Applicants for moderate-income units must make 80% or less than median family income for Wasatch County. If all other requirements are equal, first preference shall be given to public service employees employed within Wasatch County, including municipal, county, school district, state and federal employees. Second preference shall be given to applicants who have been residents of Wasatch County for at least one year prior to application. Third preference shall be given to applicants who reside elsewhere, but are employed full-time in Wasatch County. Fourth preference shall be given to applicants who neither work or live in Wasatch County.

This ordinance shall be effective upon the posting of three (3) copies in each of three (3) public places within the corporate limits of Midway City and publishing of a summary in a paper of local circulation.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Aye                      Nay

Council Member Huggard

Council Member Bonner

Council Member Hayward

Council Member Thacker

Council Member Tatton

APPROVED:

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Connie Tatton, Mayor

ATTEST:

APPROVED AS TO FORM:

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City Recorder

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City Attorney

City Seal