

ORDINANCE 614
CITY OF DAYTON, OREGON

An Ordinance Amending Chapter 7 – The City of Dayton Land Use and Development Code, to Make Changes to the Residential Parking Provisions, Clear Vision Areas, Home Occupations and to Remove Fees From Chapter 7 and Refer to the City’s Fee Schedule.

WHEREAS, the City Council desires to adopt the text amendments to Chapter 7 included in Exhibit 1; and

WHEREAS, the Planning Commission has considered text amendments to Chapter 7 – the Dayton Land Use and Development Code (DLUDC) pursuant to DLUDC Section 7.3.112 to make changes to the Residential Parking Provisions, Clear Vision Areas, Home Occupations, and to remove fees from Chapter 7 and refer to the City’s fee schedule; and

WHEREAS, a public hearing was held before the Planning Commission on August 19, 2013; and

WHEREAS, the Planning Commission unanimously recommended that said text amendments be adopted; and

WHEREAS, the City has timely forwarded a copy of the proposed amendments to the Department of Land Conservation and Development of the State of Oregon and provided proper notice pursuant to DLUDC Section 7.3.204; and

WHEREAS, the City Council of the City of Dayton conducted a public hearing to consider changes to the Residential Parking Provisions, Clear Vision Areas, Home Occupations, and to remove fees from Chapter 7 and refer to the City’s fee schedule on September 3, 2013; and

WHEREAS, on September 3, 2013, the City Council considered the information provided by staff and deliberated on the proposed action.

The City of Dayton ordains as follows:

- Section 1.** The City Council hereby adopts Ordinance 614 and the findings in the Staff Report dated August 23, 2013 attached as Exhibit 2 and incorporated by reference herein; and
- Section 2.** The City Council adopts the amendments to Chapter 7 of the DLUDC attached as Exhibit 1 and incorporated by reference herein; and
- Section 3.** This Ordinance shall become effective 30 days after adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Dayton on this 7th day of October 2013.

Mode of Enactment:

Date of first reading: September 3, 2013

Date of second reading: October 7, 2013

No Council member present at the meeting requested that the ordinance be read in full.

A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.

1

DLCD Notice of Proposed Amendment or
 Periodic Review work Task Proposed Hearing or
 Urban Growth Boundary or Urban Reserve Area

THIS COMPLETED FORM, including the text of the amendment and any supplemental information, must be submitted to DLCD's Salem office at least 35 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING ORS 197.610, OAR 660-018-0020 and OAR 660-025-0080

Jurisdiction: City of Dayton

Date of First Evidentiary Hearing: 08/19/2013

Local File Number:

Date of Final Hearing: 09/02/2013

Is this a REVISION to a previously submitted proposal? [X] No [] Yes Original submittal date:

- [] Comprehensive Plan Text Amendment(s)
[X] Land Use Regulation Amendment(s)
[] Transportation System Plan Amendment(s)
[] Periodic Review Work Task Number
[] Other (please describe):
[] Comprehensive Plan Map Amendment(s)
[] Zoning Map Amendment(s)
[] Urban Growth Boundary Amendment(s)
[] Urban Reserve Area Amendment(s)

Briefly Summarize Proposal in plain language IN THIS SPACE (maximum 500 characters):

This proposed amendment removes fees from Chapter 7 - Land Use/Development of the Dayton Municipal Code. The proposed amendment also makes minor changes to Residential Parking Provisions, removes the Clear Vision Exemption, and makes minor changes to Home Occupations in Chapter 7 - Land Use/Development of the Dayton Municipal Code.

Has sufficient information been included to advise DLCD of the effect of proposal? [X] Yes, text is included

Are Map changes included: minimum 8 1/2" x 11" color maps of Current and Proposed designations. [] Yes, Maps included

Plan map change from: NA To: NA

Zone map change from: NA To: NA

Location of property (Site address and TRS): NA

Previous density range: NA New density range: NA Acres involved: 0.00

Applicable statewide planning goals:

- 1 [] 2 [X] 3 [] 4 [] 5 [] 6 [] 7 [] 8 [] 9 [] 10 [] 11 [] 12 [] 13 [] 14 [] 15 [] 16 [] 17 [] 18 [] 19 []

Is an exception to a statewide planning goal proposed? [] YES [X] NO Goal(s):

Affected state or federal agencies, local governments or special districts (It is jurisdiction's responsibility to notify these agencies.)

City of Dayton

Local Contact person (name and title): Scott Pingel, City Manager

Phone: 503-864-2221

Extension:

Address: 416 Ferry Street, PO Box 339

City: Dayton

Zip: 97114-

Fax Number: 503-864-2956

E-mail Address: spingel@ci.dayton.or.us

- FOR DLCD internal use only -

DLCD File No

7.2.303.10 Residential Parking Provisions *(Added by Ordinance #534, 11/05/01 – Effective 12/05/01)*

In addition to the parking requirements in Section 7.2.303, vehicle parking and storage within the R-1, R-2, R-3 and CR zones shall be subject to the following provisions:

- A. For the purpose of this Section, the following terms shall apply:
1. Parking - “Parking” shall refer to the temporary storage of registered vehicles that are used on a daily or weekly basis. “Registration” shall mean a currently licensed and insured vehicle that may operate on the public roads and streets of the State.
 2. Storage - “Storage” shall refer to the long-~~range-term~~ parking of vehicles, and may include but is not limited to automobiles, trucks, motorcycles, boats, trailers, recreational vehicles and similar equipment. Storage is distinguished from “parking” in that the vehicle is used occasionally or seasonally and often for recreational purposes. The term “storage” shall apply to all non-registered vehicles and those registered vehicles that are not self-propelled.
- B. Yard Parking Restrictions. Exclusive of driveways, it shall be prohibited for any automobile, truck, motorcycle, boat, trailer, recreational vehicle or similar vehicle to be parked or stored in a front yard or yard adjacent to the street, for a period in excess of 24 hours within any 7-day period.
- C. Storage. The storage of vehicles, trucks, motorcycles, utility trailers, house or vacation trailers, boats, or other similar vehicles not located within a garage shall be subject to the following:
1. A property owner shall be permitted to locate one vehicle storage space ~~parallel~~adjacent to a driveway. This storage space shall be paved with concrete, asphalt, gravel, or surfaced with similar improvements such as brick or concrete paving stones. Dirt, bark dust, ~~gravel~~ or similar material shall not be used as a surfacing material. This additional space shall be limited ~~solely~~ to registered ~~self-propelled~~ vehicles.
 2. All remaining vehicle storage space(s) shall be located in the rear or side yards and screened by a six-foot, sight-obscuring fence, wall or hedge. The enclosure shall comply with the provisions regarding the location for fences and maintaining a clear vision area. ~~These space(s) shall be paved with concrete, asphalt or surfaced with similar improvements such as brick or concrete paving stones. Dirt, bark, dust, gravel or similar material shall not be used as a surfacing material.~~ The number of vehicles stored in this manner shall be consistent with provisions in the Dayton Municipal Code.
 3. For Properties located within a floodplain, all recreational vehicles shall be fully licensed and ready for highway use, on its wheels or jacking system, have no permanently attached additions, and comply with all other applicable City regulations. *(Updated by ORD 594, adopted 2/1/10 & enacted 3/2/10)*

7.2.308.08 Clear Vision Area

A clear vision area shall be maintained where streets and private points of access intersect. The clear vision area shall conform with the following:

- A. Measurement. A clear vision area at an intersection shall be the triangular area established according to the following procedure:
 - 1. A line extending a certain number of feet from the intersection along a public street right-of-way;
 - 2. A line extending a certain number of feet from the intersection along the intersecting access;
 - 3. A third line that creates the triangular clear vision area by connecting the ends of the lines described in 1., and 2., above.
- B. Street-Driveway. The clear vision area for a street-driveway intersection shall be 10 feet along the driveway from its intersection with the street right-of-way and 30 feet along the street right-of-way at the point of intersection with the driveway.
- C. Street-Alley. The clear vision area for street-alley intersections shall be 10 feet along the alley from its intersection with the street right-of-way and 30 feet along the street right-of-way at the point of intersection with the alley.
- D. Street-Private Access Driveway. The clear vision area for street-access easement intersections shall be 10 feet along the access easement from its intersection with the street right-of-way and 30 feet along the street right-of-way at the point of intersection with the access easement.
- E. Corner Lots. The clear vision area for corner lots shall be 20 feet along the right-of-way of each intersecting street.
- F. Prohibited Development. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding 36 inches in height, measured from the top of the curb or, where no curb exist, from the established street centerline grade, except that the following may be allowed in the clear vision area:
 - 1. Trees, provided all branches and foliage are removed to a height of eight feet above grade;
 - 2. Telephone, power, and cable television poles; and
 - 3. Telephone switch boxes provided they are less than ten inches wide at the widest dimension.
- G. ~~Exemption. Clear vision areas shall not be required at intersections containing traffic control devices.~~

7.2.406 HOME OCCUPATIONS

Where permitted as a special use, a home occupation shall meet the following use and development standards:

- A. ~~Business Registration. The owner/operator of the home occupation must first register their business with the City and pay the associated registration fee.~~
- B. Operations. The owner/operator of the home occupation shall reside in the home in which the home occupation is conducted. No more than one outside employee shall be permitted per residence.
- C. Compatibility. The home occupation shall be continuously conducted in such a manner as not to create any off premise nuisance, including but not limited to traffic, noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.
- D. Signs. Signs shall be limited to those placed within a window. Window displays and outdoor signage shall be prohibited.
- D. ~~Location. The home occupation shall be conducted entirely within the dwelling, any attached garage, or in an unattached accessory building.~~
- E. ~~Area. The total floor area devoted to the home occupation shall not exceed 500 square feet.~~
- F. Alterations. Structural alterations are permitted provided the residential character of the building is not altered.
- F. Parking. The number of required on-site parking spaces shall not be reduced; however, no additional parking is required.
- G. Hours of Operation. Visits by suppliers or customers are limited to the hours of 8:00 a.m. and 8:00 p.m.
- H. Outdoor Storage. Outdoor storage or display of materials, equipment, or merchandise shall be prohibited.
- I. Vehicle Repair. The repair, alteration, painting (including body work), cleaning, detailing or rebuilding of vehicles, including automobiles, motorcycles, tractors and similar mechanized equipment, shall be prohibited.
- J. Day Care Provisions. The provisions in this section do not apply to day care or family day care providers.

7.3.105.07 Expedited Land Division

- A. Eligibility. Land designated for residential use, including recreational and open space uses accessory to residential use, is eligible to apply for an expedited land division process when creating two or three parcels. The expedited land division process may be used in lieu of a Type I process.
- B. Exclusion.
 - 1. Property and process exclusions include properties specifically mapped and designated in the Comprehensive Plan or Development Code for full or partial protection of natural features under the statewide planning goals that protect open space, scenic and historic areas and natural features and not eligible for the construction of dwelling units or accessory buildings.
 - 2. The expedited land division process is not a land use or limited land use decision and is not subject to the permit requirements of City enabling legislation. Decisions are not subject to the Comprehensive Plan and not eligible for appeal to the Land Use Board of Appeals (LUBA).
- C. Complete Application. The City shall review an application and makes a decision on its completeness within 21 days of submittal. Upon determination of an incomplete application, the applicant has 180 days to submit the missing information.
- D. Public Notice. Upon submittal of a complete application, the City shall send written notice to affected governmental agencies and property owners within 100 feet of the site proposed for the land division. The notice shall include the following:
 - 1. The deadline for submission of written comments.
 - 2. The time and place where all copies of evidence submitted by the applicant will be available for review.
 - 3. The name, address, and telephone number of the City's staff person available to comment on the application.
 - 4. Summary of the local decision making process for such a decision.
 - 5. Applicable decision criteria.
 - 6. Notification that participants must raise all issues during the written comment period.
- E. Initial Decision. The local government must allow at least 14 days for written comments and shall render a decision within 63 days of a complete application. No public hearing may be held during the initial decision making phase.

- F. Notice of Final Decision. A notice of decision must be given to the applicant and other participants of the decision. The notice of decision shall state the appeal process.
- G. Time Extension.
 - 1. Applicant: If a decision is not made within 63 days, the applicant may seek review by writ of mandamus.
 - 2. City: The City may extend the 63 day period up to 120 days based on the determination that an unexpected or extraordinary increase in applications makes the 63 day period impracticable. Following a 7 day notice to the applicant, consideration of an extension is considered at a regularly scheduled City Council meeting. That determination is specifically declared not to be a land use decision or limited land use decision.
- H. Decision Criteria. Criteria for approving the partition shall be as follows:
 - 1. The criteria established in Section 3.105.05
 - 2. Density. The application must be able to establish at least 80 percent of the allowable density of the applicable residential zone.
 - 3. Street Standards. The application must comply with the most recent City of Dayton Transportation Plan or provide evidence of meeting the City's minimum street connectivity standards contained within this Code.
- I. Appeal of Initial Decision. A decision may be appealed to a local hearings officer within 14 days of filing the notice of decision by the applicant or any person or organization that filed comments on the initial decision.
- J. Appeal Fee. Filing an appeal requires a deposit according to the City's Fee Schedule of ~~\$300.00~~ to cover costs. An appellant faces the possibility of a higher assessment of ~~\$500.00~~ for the total costs of local proceedings if the appellant does not prevail. If an appellant materially improves its position, the deposit and appeal fee shall be refunded.
- K. Basis of an Appeal of the Initial Decision. The local appeal is shall based on the following:
 - 1. The failure to meet local substantive and procedural requirements.
 - 2. Unconstitutionality,
 - 3. The decision was not within the expedited land division category, or
 - 4. A party's substantive rights have been substantially prejudiced by an error in procedure of the local government.

- L. Hearings Officer. The appeal of the initial expedited land use decision shall be heard by a City designated hearings officer. The hearings officer may not be a City officer or City employee.
- M. Hearings Officer Notification. Within 7 days of the hearings officer's appointment, the City shall notify the appellant, the applicant (if not the appellant), and the persons or organizations entitled to notice and which provided written comments, of the hearing date before the hearings officer. If a person submitting comments did not appeal, the issues presented by that person are limited to those in their submitted comments.
- N. Appeal Hearing. The hearings officer conducts a hearing that:
 - 1. Follows the Commission proceeding requirements.
 - 2. Allows the local government's explanation of its decision, and
 - 3. May consider evidence not previously considered.
- O. Hearings Officer Decision. In all cases, not involving a procedural issue, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements. The hearings officer may not reduce the density of the application or remand the application to the City, but shall make a written decision on the appeal within 42 days of the filing of the appeal. Unless the local government determines that exigent circumstances exist, a hearings officer who fails to decide a case within the 42 day period shall receive no compensation for services as the hearings officer. If the decision was not an expedited land division, the hearings officer must remand the decision for proper procedural determination.
- P. Appeal of Hearings Officer Decision. Appeals of the Hearings Officer decision are to the Oregon Court of Appeals.
- Q. Basis of an Appeal of the Hearings Officer Decision. The grounds for review of a hearings officer's decision are limited to:
 - 1. Whether the decision followed the process for an expedited land division and the appellant raised that issue.
 - 2. Unconstitutionality, and
 - 3. Certain bias or interest on the part of the hearings officer or local government.
- R. Process for Final Plat Approval. Final plats for expedited land divisions shall be reviewed consistent with the requirements in Section 3.105.06 .

7.3.109.07 Expedited Land Division

- A. Eligibility. Land designated for residential use, including recreational and open space uses accessory to residential use, is eligible to apply for an expedited land division process when creating more four or more lots. The expedited land division process may be used in lieu of a Type II process.
- B. Exclusion.
 - 1. Property and process exclusions include properties specifically mapped and designated in the Comprehensive Plan or Development Code for full or partial protection of natural features under the statewide planning goals that protect open space, scenic and historic areas and natural features and not eligible for the construction of dwelling units or accessory buildings.
 - 2. The expedited land division process is not a land use or limited land use decision and is not subject to the permit requirements of City enabling legislation. Decisions are not subject to the Comprehensive Plan and not eligible for appeal to the Land Use Board of Appeals (LUBA).
- C. Complete Application. The City shall review an application and makes a decision on its completeness within 21 days of submittal. Upon determination of an incomplete application, the applicant has 180 days to submit the missing information.
- D. Public Notice. Upon submittal of a complete application, the City shall send written notice to affected governmental agencies and property owners within 100 feet of the site proposed for the land division. The notice shall include the following:
 - 1. The deadline for submission of written comments.
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 - 3. The name, address, and telephone number of the City's staff person available to comment on the application.
 - 4. Summary of the local decision making process for such a decision.
 - 5. Applicable decision criteria.
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2. City: The City may extend the 63 day period up to 120 days based on the determination that an unexpected or extraordinary increase in applications makes the 63 day period impracticable. Following a 7 day notice to the applicant, consideration of an extension is considered at a regularly scheduled City Council meeting. That determination is specifically declared not to be a land use decision or limited land use decision.

H. Decision Criteria. Criteria for approving the subdivision shall be as follows:

1. The criteria established in Section 3.109.04.
2. Density. The application must be able to establish at least 80 percent of the allowable density of the applicable residential zone.
3. Street Standards. The application must comply with the most recent City of Dayton Transportation Plan or provide evidence of meeting the City's minimum street connectivity standards contained within this Code.

I. Appeal of Initial Decision. A decision may be appealed to a local hearings officer within 14 days of filing the notice of decision by the applicant or any person or organization that filed comments on the initial decision.

J. Appeal Fee. Filing an appeal requires a deposit according to the City's Fee Schedule of ~~\$300.00~~ to cover costs. An appellant faces the possibility of an higher assessment of ~~\$500.00~~ for the total costs of local proceedings if the appellant does not prevail. If an appellant materially improves its position, the deposit and appeal fee shall be refunded.

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L. Hearings Officer. The appeal of the initial expedited land use decision shall be heard by a City designated hearings officer. The hearings officer may not be a City officer or City employee.

- M. **Hearings Officer Notification.** Within 7 days of the hearings officer's appointment, the City shall notify the appellant, the applicant (if not the appellant), and the persons or organizations entitled to notice and which provided written comments, of the hearing date before the hearings officer. If a person submitting comments did not appeal, the issues presented by that person are limited to those in their submitted comments.
- N. **Appeal Hearing.** The hearings officer conducts a hearing that:
1. Follows the Commission proceeding requirements.
 2. Allows the local government's explanation of its decision, and
 3. May consider evidence not previously considered.
- O. **Hearings Officer Decision.** In all cases, not involving a procedural issue, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements. The hearings officer may not reduce the density of the application or remand the application to the City, but shall make a written decision on the appeal within 42 days of the filing of the appeal. Unless the local government determines that exigent circumstances exist, a hearings officer who fails to decide a case within the 42 day period shall receive no compensation for services as the hearings officer. If the decision was not an expedited land division, the hearings officer must remand the decision for proper procedural determination.
- P. **Appeal of Hearings Officer Decision.** Appeals of the Hearings Officer decision are to the Oregon Court of Appeals.
- Q. **Basis of an Appeal of the Hearings Officer Decision.** The grounds for review of a hearings officer's decision are limited to:
1. Whether the decision followed the process for an expedited land division and the appellant raised that issue.
 2. Unconstitutionality, and
 3. Certain bias or interest on the part of the hearings officer or local government.
- R. **Process for Final Plat Approval.** Final plats for expedited land divisions shall be reviewed consistent with the requirements in Section 3.109.06..

CITY OF DAYTON
416 Ferry Street – P O Box 339
Dayton, OR 97114-0039
503-864-2221 FAX: 503-864-2956

STAFF REPORT
August 23, 2013
(for City Council Hearing: September 3, 2013)

FILE: Code Amendments 2013-01

Applicant: City of Dayton

Request: A text amendment to the City of Dayton Land Use and Development Code, Section 7.2.303, Residential Parking Provisions; 7.2.308, Clear Vision Areas; 7.2.406, Home Occupations; and amends the fee schedule under Section 7.3 to reference the most current adopted fee schedule.

Criteria: Dayton Land Use and Development Code, Section 7.3.112.03

Procedure: Type IV (Land Use and Development Code, Section 7.3.112)

Attachments: Attachment A: Draft Code amendments

I. PROCESS

According to the Dayton Land Use and Development Code (DLUDC), subsection 7.3.101.04, a Type IV action is a legislative review in which the City considers and enacts or amends laws and policies. The amendments were initiated by city staff. According to a Type IV process, a public hearing is conducted before the Planning Commission and the Commission makes a recommendation to the City Council. City Council conducts a public hearing toward making a final decision. Newspaper publications provide notice for the hearings.

II. BACKGROUND

The updates/corrections to section of the code are staff initiated changes to provide clarification or correct discrepancies within the code.

III. CRITERIA

Amendments to the Development Code text shall be reviewed in accordance with the Type IV review procedure. Text shall be approved if evidence can substantiate the following (LUDC, Section 7.3.112.03):

- A. Impact of the proposed amendment on land use and development patterns within the City, as measured by:

1. Traffic generation and circulation patterns;
2. Demand for public facilities and services;
3. Level of park and recreation facilities;
4. Economic activities;
5. Protection and use of natural resources; and
6. Compliance of the proposed with existing and adopted special purpose plans or programs, such as public facilities improvements.

Finding: Changes to the LUDC related to the home occupations, clear vision areas, and fee schedule are administrative clarifications requested by staff and are determined to have no impact upon the measurements above. The updates to the parking standards for storage will not change traffic patterns, the allowance for storage or other criteria above but rather seeks to clarify the text and allow for gravel to be used as one of the several surfaces permitted for storage. The code updates are not determined to negatively impact traffic, increase demand on public facilities and service, change the level of needed park/recreational facilities, or diminish protection and use of natural resources. Staff and the Planning Commission found this criteria is met.

B. A demonstrated need exists for the product of the proposed amendment.

Finding: Staff is seeking to clarify the requirement for a business license associated with home occupations and the applicability of the most current fee schedule as adopted by the City Council. Further clarifications are seen by staff as needed to better implement the existing code and revisions to requirements or permissions are not included as part of this code update. Staff and the Planning Commission found this criteria is met.

C. The proposed amendment complies will all applicable Statewide Planning Goals and administrative rule requirements.

Finding: The City of Dayton Comprehensive Plan helps to ensure compliance with Statewide Planning Goals. In reviewing the City's Comprehensive Plan that localizes the State Goals for the City of Dayton, staff finds the amendments are in compliance with the applicable Goals and Policies.

Goal 1 (Citizen Involvement) is used in the process upon considering the code amendments during the public hearing process. Notice was mailed to the Department of Land Conservation and Development 35 days prior to the first hearing date and notice was published in the paper on August 2, 2013 in compliance with 7.3.204. Staff and the Planning Commission found this goal is met. Goal 2 (Land Use Planning) establishes the planning process and framework for land use decisions. The code update is considered a legislative amendment and subject to the Section 7.3.112 of the DLUDC. Notice was published in the paper and posted outside of city hall per the procedures outlined in section 7.3.112. The staff report was available for review one week prior to the public hearings on the proposed amendments. Staff and the Planning Commission found these criteria to be met.

Staff and the Planning Commission found Goals 3-19 do not apply to the code update.

D. The amendment is appropriate as measured by at least one of the following criteria:

1. It corrects identified error(s) in the provision of the plan.
2. It represents a logical implementation of the plan.
3. It is mandated by changes in federal, state, or local law.
4. It is otherwise deemed by the council to be desirable, appropriate, and proper.

Finding: Staff has identified the amendments as clarifications required to implement the code and existing requirements. The amendments will also ensure adequate registration and fees can be required as part of the existing requirements for home occupations and fee schedules. Staff and the Planning Commission found criteria D.1 and D.2 were met.

IV. CITY COUNCIL ACTION

Following a public hearing conducted by the Planning Commission and based upon the findings as indicated above, the Planning Commission made a unanimous recommendation (3-0 vote) to recommend that the City Council adopt the code amendments as presented by staff and by the Planning Commission.

Following the City Council public hearing, the Council may take one of the following actions:

- A. Adopt the code amendments as presented in Attachment A based upon the findings and conclusions as indicated in the staff report; or
- B. Adopt the code amendments with modifications to Attachment A indicating the changes and stating the findings and conclusions to support the modifications; or
- C. Reconsider the code amendments as presented in Attachment A indicating the basis for not adopting and the additional information needed to complete the adoption process.
- D. Continue the City Council hearing, to a date and time certain and stating the date and time, in order to collect more information.