

**ORDINANCE No. 607
CITY OF DAYTON, OREGON**

AN ORDINANCE AMENDING CHAPTER 7 - THE CITY OF DAYTON LAND USE AND DEVELOPMENT CODE, TO CHANGE THE CITY STAFF MEMBER REFERENCE FROM CITY ADMINISTRATOR TO CITY MANAGER, TO DEFINE AND ALLOW SMALL WIND ENERGY SYSTEMS AS ALTERNATIVE ENERGY SOURCES, AND TO ESTABLISH REGULATIONS FOR WIRELESS FACILITIES

WHEREAS, the City of Dayton Planning Commission initiated text amendments to Chapter 7 - the Dayton Land Use and Development Code (DLUDC) pursuant to DLUDC Section 7.3.112 to change the city staff member reference from City Administrator to City Manager, to define and allow small wind energy systems as alternative energy sources, and to establish regulations for wireless communication facilities; and

WHEREAS, a public hearing was held before the Planning Commission on March 24, 2011; 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 city staff member reference from City Administrator to City Manager, to define and allow small wind energy systems as alternative energy sources, and establish regulations for wireless communication facilities on April 4, 2011; and

WHEREAS, on May 2, 2011, the City Council considered the information provided by staff, deliberated on the proposed action, and recommended additional amendments to Chapter 7 of the DLUDC.

The City of Dayton ordains as follows:

Section 1. The City Council hereby adopts the findings in the Staff Report dated March 28, 2011 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, as amended, and incorporated by reference herein.

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 6th day of June 2011.

Mode of Enactment:

Date of first reading: May 2, 2011 by title only

Date of second reading: June 6, 2011 by title only

 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.

ORDINANCE No. 607
CITY OF DAYTON, OREGON

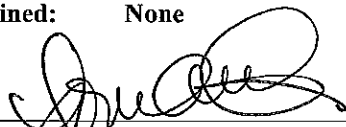
Final Vote:

In Favor: Evers, Frank, Utt, White, Witt, Wytoski

Opposed: None

Absent: Blackburn

Abstained: None



Jolie White, Mayor

6/20/11

Date of Signing

Attest:


Peggy Selberg, City Recorder

6/6/11

Date of Enactment

Attachments:

- Exhibit 1 – Code Amendments
- Exhibit 2 – Staff Report

~~7.2.106~~ COMMERCIAL (C)

7.2.106.01 Purpose

The Commercial (C) Zone is the primary commercial zone within the City. The zone is specifically designed to provide area for commercial activities to serve the residents of the City and the surrounding area. The Commercial Zone is suitable for the Commercial Plan designation.

7.2.106.02 Permitted Uses *(Amended effective 9/6/07, Ordinance #583)*

The following uses, when developed under the applicable development standards in the Zoning Code, are permitted in the C zone:

- A. Pre-schools, nurseries and kindergartens.
- B. Non-profit member organizations, such as business associations, labor unions, political organizations or fraternal lodges.
- C. Public and semi-public buildings, structures and uses, such as parks, parking, municipal offices, libraries, police and fire stations and hospitals.
- D. Public utility structures and buildings, such as pump stations, reservoirs, electric substations, and necessary right-of-way for public utilities.
- E. Business offices including, but not limited to, insurance, real estate and title insurance; credit agencies, newspaper, periodical, publishing and printing offices, and, similar business offices.
- F. Professional offices and clinics including, but not limited to, medical, dental, engineering and legal services, but excluding veterinary clinics.
- G. Banks services, brokerages, loan companies, investment companies and other financial institutions.
- H. Hotels and motels.
- I. Retail sales outlet including, but not limited to, food stores, pharmacy, furniture store, hobby or photography store, florist and garden supply including greenhouse, liquor store, hardware store, appliance or stereo equipment store, pet shop, sporting goods, department store, jewelry, gift, and other types retail activities.
- J. Restaurants, drive-ins, taverns, snack shops and other types of eating and drinking establishments, including entertainment facilities.

- K. Retail and service related stores such as TV and radio sales and service, bicycle shop, equipment rental or other similar activities where a service department is customarily a secondary activity to the retail use.
- L. Service related businesses such as barber shops, beauty shops, advertising agencies, printing or photocopying, or other activities which provide a service to retail customers.
- M. Residences limited to second or upper stories.
- N. Wineries with retail sales. *(Amended effective 9/6/07, Ordinance #583)*

7.2.106.03 Special Permitted Uses

The following uses, when developed under the applicable standards in the Code and special development requirements, are permitted in the C zone:

- A. Partitions, subject to the provisions in Section 7.2.307.
- B. Subdivision, subject to the provisions in Section 7.2.307.
- C. Accessory structures and uses prescribed in Section 7.2.203 and subject to the provisions in Section 7.2.309.
- D. The following uses subject to the applicable standards in Section 7.2.4:
 - 1. Home occupations (Section 7.2.406).
 - 2. RV Parks (Section 7.2.408).
- E. Small wind energy systems, subject to the provision in Section 7.2.413.**

7.2.106.04. Conditional Uses: *(Amended effective 9/6/07, Ordinance #583)*

The following uses require a Conditional Use Permit:

- A. Automobile service station, including towing service and vehicle washing and polishing facilities, and services.
- B. Automobile, truck, motorcycle, trailer, agricultural equipment, recreational vehicle and boat sales, lease and rentals.
- C. Tractor, farm equipment, heavy construction equipment, and logging equipment, rental, sales and service.

- D. Vehicle repair and maintenance, including electric motor repair, paint and body shop, tire recapping and similar automotive repair facilities.
- E. Part and accessory sales for automobiles, trucks, motorcycles, trailers, agricultural equipment, recreational vehicles and boats, including retail tire sales; but, specifically prohibiting junk yards, wrecking yards, or auto salvage and restoration yards.
- F. Laundry or dry cleaning.
- G. Warehouse for short term storage, including mini-warehouse.
- H. Lumber yard and contracting supplies for lumber, stone, masonry or metal.
- I. Special trade contracting facilities such as; floor laying, building equipment, masonry and stone, plumbing, electrical, metal work or painting.
- J. Cabinet shop where activities are conducted wholly within a building.
- K. Welding and blacksmith shop.
- L. Mortuary
- M. Small-scale manufacturing businesses conforming to requirements in Section 7.2.411. *(Amended effective 9/6/07, Ordinance #583)*
- N. Park and Ride Lot: Parking spaces cannot count as required parking or be used for vehicle storage. *(Amended 4/2/09, Ordinance #589)*
- O. Wireless Communication Facility, subject to the provisions in Section 7.2.412.**

7.2.106.05 Dimensional Standards

- A. Lot Dimension and Height Requirements
 - 1. Lot Size. The parcel size shall be adequate to comply with setback requirements and applicable development standards.
 - 2. Maximum Height. The maximum height shall be 35 feet.
- B. Minimum Yard Setback Requirements
 - 1. Front: None.

2. Side, Rear Yard: None, provided the setback shall be no less than the minimum rear yard setback of the zone on the adjacent property.

7.2.106.06 Development Standards

- A. Development Exemptions: Commercial property located in the Central Business Area shall be subject to the requirements in Section 7.2.111.
- B. Use Restrictions. The following use restrictions shall apply:
 1. No permitted, special permitted or conditionally permitted use shall in any way involve any of the slaughter, rendering or processing of animals. The processing of grains, fruits, vegetables, or dairy products for breads, wines, jams, cheeses and similar products may be allowed as part of a commercial business or small-scale manufacturing where permitted in the zone. *(Amended effective 9/6/07, Ordinance #583)*
 2. All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:
 - a. Off-street parking and loading.
 - b. Drive-in windows.
 - c. Temporary display and sales of merchandise; provided it does not interfere with pedestrian or automobile circulation.
 - d. Outdoor seating for eating and drinking places.
 - e. Outdoor display customary to a business (e.g. auto sales).
- C. Unless otherwise exempted, all development in the C Zone shall comply with the applicable provisions of this Code. The following references additional development requirements:
 1. Off-street parking. Parking shall be as specified in Section 7.2.303.
 2. Yards and Lots. Yards and lots shall conform to the standards of Section 7.2.308.

3. Site Development Review: Development within the C Zone shall be subject to the Site Development Review requirements and procedures in Section 7.3.1.
4. Lot Coverage: The maximum coverage allowed for buildings, accessory structures and paved parking shall be 90%.
5. Landscaping: All required yards shall be landscaped. Landscaped areas shall be landscaped as provided in Section 7.2.306. A minimum 10% of the property shall be landscaped.

7.2.107 INDUSTRIAL (I)

7.2.107.01 Purpose

The purpose of the I Zone is to provide areas suitable for warehousing, primary and secondary processing, packaging, fabricating of finished goods and equipment with related outdoor storage and incidental sales. The Industrial zone is appropriate in those areas designated Industrial in the Comprehensive Plan where the location has access to an arterial street or highway and where the noises, lights, odors, and traffic will not conflict with residential areas.

7.2.107.02 Permitted Uses

The following uses, when developed under the applicable development standards in this Zoning Code, are permitted in the I zone:

- A. Dwelling for a caretaker or watchman on the premises being cared for or guarded.
- B. Commercial activities:
 - 1. Vehicle repair and maintenance, including electric motor repair, paint and body shop, tire recapping and similar automotive repair facilities.
 - 2. Warehouse for short term storage, including mini-warehouse.
 - 3. Lumber yard and contracting supplies for lumber, stone, masonry or metal.
 - 4. Special trade contracting facilities, such as; floor laying, building equipment, masonry and stone, plumbing, electrical, metal work or painting.
 - 5. Cabinet shop.
 - 6. Tractor, farm equipment, heavy construction equipment, and logging equipment, rental, sales and service.
 - 7. Welding and blacksmith shop.
 - 8. Machine shop, and sales, service and repair of machinery
- C. Manufacturing and Assembly, Secondary Processing

1. Food processing, including canning, freezing, drying, dairy products and similar food processing and preserving., beverage bottling facility, including warehousing and distribution. BUT EXCLUDING processes which involve the slaughter of animals.
2. Textile mill products including apparel and other finished products made from fabrics and similar materials.
3. Furniture and fixtures including retail wood products.
4. Printing, publishing, and allied industries.
5. Rubber and miscellaneous plastics.
6. Leather and leather goods (31) BUT EXCLUDING leather tanning and finishing.
7. Cement, glass, clay and stone products manufacturing.
8. Fabricated metal products, BUT EXCLUDING metal forgings, metal plating, coating and engraving, ordnance and accessories.
9. Electrical and electronic equipment, machinery and supplies BUT EXCLUDING storage batteries and primary batteries, dry and wet.
10. Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks.
11. Freight terminals, including loading docks, storage, warehousing and wholesale distribution, cold storage lockers and similar personal storage facilities such as mini-storage warehouses.

ED. Wholesale trade and distribution facilities, BUT EXCLUDING trade and distribution involving:

1. Metals and minerals
2. Machinery and equipment
3. Scrap and waste material
4. Farm-product raw materials
5. Chemicals and allied products
6. Petroleum and petroleum products

7.2.107.03 Special Permitted Uses

The following uses, when developed under the applicable standards in the Code and special development requirements, are permitted in the I zone:

- A. Partitions, subject to the provisions in Section 7.2.307.
- B. Subdivision, subject to the provisions in Section 7.2.307.
- C. Accessory structures and uses prescribed in Section 7.2.203 and subject to the provisions in Section 7.2.309.
- E. Small wind energy systems, subject to the provision in Section 7.2.413.**

7.2.107.04 Conditional Uses

The following uses shall require a Conditional Use permit:

- A. Recycling depots, excluding composting.
- B. Wrecking, demolition, junk yards.
- C. Battery manufacture, sales and service.
- D. Petroleum products storage and distribution, including asphalt plants.
- E. Feed and seed facilities, grain elevators and storage; including agricultural chemical, fertilizer, insecticide storage and distribution
- F. Chemical manufacturing including agricultural chemicals, fertilizers and insecticides.
- G. Manufacture of primary and secondary wood products, including sawmills, paper and allied products.
- H. Auction yard.
- I. Park and Ride Lot: Parking spaces cannot count as required parking or be used for vehicle storage. *(Added Ordinance 589, Effective 3/2/09)*
- J. All uses not specifically identified as a permitted use in, or specifically excluded from, Section 7.2.107.02 or Section 7.2.107.03 may be established by a conditional use permit. *(Added Ordinance 589, Effective 3/2/09)*

I. Wireless Communication Facility, subject to the provisions in Section 7.2.412.

7.2.107.05 Dimensional Standards

A. Lot Dimension and Height Requirements

1. Lot Size. The parcel size shall be adequate to comply with setback requirements and applicable development standards.
2. Maximum Height. 45 feet.

B. Minimum Yard Setback Requirements

ADJACENT PROPERTY USE				
SETBACKS	Single Family or Duplex	Multi-Family	Commercial	Industrial
Front	20 feet	20 feet	20 feet	20 feet
Side	(1), (2)	(1), (2)	(1)	(1)
Rear	(1), (2)	(1), (2)	(1)	(1)
Street-side	20 feet	20 feet	20 feet	20 feet

- (1) The setback shall be no less than the minimum rear yard setback of the zone on the adjacent property. For the I zone, the rear yard setback is 0 feet.
- (2) Yards adjacent to residential zones shall be contained by a sight-obscuring fence, wall, or hedge a minimum of 8 feet in height.

7.2.107.06 Development Standards

All development in the I Zone shall comply with the applicable provisions of this Code. The following includes referenced items as well as additional development requirements:

- A. Offstreet Parking. Parking shall be as specified in Section 7.2.303.
- B. Yards and Lots. Yards and lots shall conform to the standards of Section 7.2.308.

- C. Site Development Review: Development within the I Zone shall be subject to the Site Development Review procedures in Section 7.3.1.
- D. Landscaping: A minimum of 10% of the property shall be landscaped, including all required setback areas. Landscaped areas shall be landscaped as provided in Section 7.2.309.
- E. Lot Coverage: The combined maximum building and parking area coverage shall not exceed 90%.
- F. Open Storage: Open storage of equipment and materials used for the manufacture or assembly of goods is prohibited in required setback areas. Otherwise, such storage shall be enclosed within a sight-obscuring fence, wall or berm a minimum of 8 feet in height.

7.2.108 PUBLIC (P)

7.2.108.01 Purpose

The purpose of the P (PUBLIC) zone is to provide areas appropriate for specific public and semi-public uses and to ensure their compatibility with adjacent uses. The Public zone is applicable to those properties designated Public in the Comprehensive Plan.

7.2.108.02 Permitted Uses

The following uses, when developed under the applicable development standards in this Zoning Code, are permitted in the P zone:

- A. Parks, playgrounds and other recreational facilities.
- B. All public and governmental buildings such as fire stations, police stations, libraries, schools, hospitals, clinics, and community centers.
- C. Utility facilities necessary for public service except public power generation and treatment facilities.

7.2.108.03 Special Permitted Uses

The following uses, when developed under the applicable standards in the Code and special development requirements, are permitted in the P zone:

- A. Partitions, subject to the provisions in Section 7.2.307.
- B. Accessory structures and uses prescribed in Section 7.2.203 and subject to the provisions in Section 7.2.309.
- C. Wireless Communication Facility, subject to the provisions in Section 7.2.412 and reviewed according to Section 7.3.106 (Site Development Review) and the evaluation requirements of subsection 7.3.106.06.**
- D. Small wind energy systems, subject to the provisions in Section 7.2.413.**

7.2.108.04 Conditional Uses

The following uses shall require a conditional use permit:

- A. Power generating facilities.
- B. Water and sewage treatment facilities.

- C. Park and Ride Lot: Parking spaces cannot count as required parking or be used for vehicle storage.
- D. Cemetery.

7.2.108.05 Dimensional Standards

- A. Lot Dimension and Height Requirements
 - 1. Lot Size. The parcel size shall be adequate to comply with setback requirements and applicable development standards.
 - 2. Maximum Height. 45 feet.
- B. Minimum Yard Setback Requirements

ADJACENT PROPERTY USE

SETBACKS	Single Family or Duplex	Multi-Family	Commercial	Industrial
Front	20 feet	20 feet	20 feet	20 feet
Side	(1)	(1)	(1)	(1)
Rear	(1)	(1)	(1)	(1)
Street-side	20 feet	20 feet	20 feet	20 feet

- (1) The setback shall be no less than the minimum rear yard setback of the zone on the adjacent property. For the P zone, the rear yard setback is 10 feet.

7.2.108.06 Development Standards

All development in the P Zone shall comply with the applicable provisions of this Code. The following references additional development requirements:

- A. Offstreet Parking. Parking shall be as specified in Section 7.2.303.
- B. Yards and Lots. Yards and lots shall conform to the standards of Section 7.2.308.
- C. Site Development Review: Development within the P Zone shall be subject to the Site Development Review procedures in Section 7.3.1. Development of property for public uses consistent with a Master Plan

adopted by the Dayton City Council shall not require a Site Development Review.

- D. Lot Coverage: The combined maximum building and parking area coverage shall not exceed 80%.
- E. Landscaping: A minimum of 20% of the property shall be landscaped, including all required setback areas. Landscaped areas shall be landscaped as provided in Section 7.2.309.
- F. Open Storage: Open storage of equipment and materials used for the manufacture or assembly of goods is prohibited in required setback areas. Otherwise, such storage shall be enclosed within a sight-obscuring fence, wall or berm a minimum of 8 feet in height.

7.3.106 SITE DEVELOPMENT REVIEW

7.3.106.01 Purpose

The Site Development Review Process is intended to guide future growth and development in accordance with the Development Codes; provide an efficient process and framework to review development proposals; ensure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment; and resolve potential conflicts that may arise between proposed developments and adjacent uses.

The site development review provisions are not intended to preclude uses that are permitted in the underlying zones.

7.3.106.02 Applicability of Provisions

A. Applicability. Site Development Review shall be applicable to all new developments and major remodeling, except:

1. Single-family detached dwellings;
2. A duplex; or
3. Any commercial, industrial or public facility expansion or remodel that does not exceed 25 percent of the total square footage of the structure existing at the time of the adoption of this Code and/or does not expand the activity/business area on the subject property beyond 25 percent (i.e. outdoor uses).

4. Wireless Communication Facilities for properties within a Public (P) zone district.

B. Underlying Zone. All of the provisions and regulations of the underlying zone shall apply unless modified by other Sections of this Code.

7.3.106.03 Review and Approval Process

Site Development Review applications shall be reviewed in accordance with the Type II review procedures specified in Section 7.3.201.

7.3.106.04 Application and Fee

An application for Site Development Review shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.106.05 Submittal Requirements

The following information shall be submitted as part of a complete application for Site Development Review:

- A. Proposed grading and topographical changes;
- B. All existing and proposed structures, roadway access, adjacent roads, bikeways, pedestrian facilities, public or private, easements or right-of-ways to, or within 200 feet of the subject property and utilities including finished floor elevations and setbacks; *(Amended by Ord 589)*
- C. Motor vehicle, bicycle and pedestrian circulation patterns, parking, loading and service areas; *(Amended by Ord 589)*
- D. Proposed access to public roads and bikeways, pedestrian facilities, railroads or other transportation systems; *(Amended by Ord 589)*
- E. Site drainage plan including methods of storm drainage, sanitary sewer system, water supply system and electrical services. Inverse elevations may be required for all underground transmission lines;
- F. Proposed landscape plan, to include appropriate visual screening and noise buffering, where necessary, to ensure compatibility with surrounding properties and uses;
- G. Proposed on-premise signs, fencing or other fabricated barriers, together with their heights and setbacks; and,
- H. The expected development schedule.
- I. The location of any flood boundary.

7.3.106.06 Evaluation of Site Development Plan

The review of a Site Development Plan shall be based upon consideration of the following:

- A. Conformance with applicable General Development Standards in Section 7.2.3.
- B. Adequacy of public and private facilities.
- C. Traffic safety, internal circulation and parking;
- D. Provision for adequate noise and/or visual buffering from non-compatible uses.

E. Conformance with development requirements of the underlying zone.

7.3.107. CONDITIONAL USE PERMITS

7.3.107.01 Purpose

A conditional use is a use which is generally acceptable as a land use activity in a particular zone, but due to certain aspects of the activity, buffering, screening, time limitations or other conditions are necessary to ensure compatibility with adjacent property. Conditional uses are assumed permitted unless conditions to ensure their compatibility cannot be established.

7.3.107.02 Review and Approval Process

Conditional Use applications shall be reviewed in accordance with the Type II review procedures specified in Section 7.3.201.

7.3.107.03 Application and Fee

An application for a Conditional Use Permit shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.107.04 Criteria for Approval

Conditional Use Permits shall be approved if the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- A. The use is listed as a conditional use in the underlying district.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.
- C. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services, existing or planned development for the area affected by the use.
- D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.

7.2.413 SMALL WIND ENERGY SYSTEMS (---add ordinance #---)

7.2.413.01 Process and Accessory Use.

The City of Dayton zone districts allow, a small wind energy system as an accessory use. Each district establishes the process and requires compliance with Section 7.2.413.02.

7.2.413.02 General Standards

- A. The minimum distance between the ground and any part of a rotor blade must be at least 20 feet. Additionally, wind turbines must be placed at least 30 feet above any physical wind barrier (e.g. trees or buildings) within a 300 foot radius unless verified in writing by the manufacturer that a lesser height is allowed.
- B Small wind energy systems may not be illuminated, except as needed to prevent creating a hazard to aircraft, nor may they bear any signs or advertising.
- C Small wind energy systems must have automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the support structure, rotor blades, and turbine components.
- D All wiring serving small wind energy systems must be underground.
- E Noise produced by small wind energy may not exceed 55dBA measured at the property line.
- F Small wind energy systems must not cause any interference with normal radio and television reception in the surrounding area, with any public safety agency or organization (including but not limited to sheriff, fire, and ambulance) transmissions, or with any microwavable communications link. The owner shall bear the cost of immediately eliminating any such interference should any occur, or must immediately shut down the system or parts of the system causing the interference.
- G A finish (paint/surface) must be provided for the small wind energy system that reduces the visibility of the facility, including the rotors. In most circumstances this condition may be satisfied by painting the support structure and rotors with flat light haze gray paint. If the support structure is unpainted it must be of a single color throughout its height. The owner must maintain the finish, painted or unpainted, so that no discoloration is allowed to occur.
- H The diameter of the area swept by the rotors may not exceed 25 feet.

7.2.413.03 Free-Standing Systems

- A. Setback. The minimum setback from any property line, overhead utility line, or public right-of-way shall be a distance equal to the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point unless the a variance application is approved. In addition to the system's structures, guy wires association with towers shall meet applicable setbacks for the zone district.
- B. Height. Support structures for free-standing systems must be at least 60 feet tall and may not exceed 80 feet in height in any zone.
- C. Security. Support structures for free-standing systems must be unclimbable from the ground to a height of at least 15 feet.
- D. Number. A maximum of one free-standing small wind generator system may be allowed per property

7.2.413.04 Roof-mounted systems, additional standards.

Small wind energy systems may be mounted on the roof of a structure as an appurtenance.

- A. Height. Roof-mounted systems may not be more than 5 feet over the maximum allowed height for the structure.
- B. Number. There is no maximum number of roof-mounted systems permitted.
- C. Engineering report. Before any roof-mounted system is mounted the property owner must submit a report prepared by an Oregon Licensed professional engineer attesting to the fact that the structure to which the system will be mounted is or will be sufficient strong to support the system and to withstand the wind, vibratory, and other loads to which would be subjected as a result of mounting the system on it. This report is subject to approval by the City Manager or his/her designee prior to mounting of the system.

7.2.413.05 Small Wind Energy Systems adjacent historic properties

- A. A Conditional Use permit shall be required to place a small wind energy system adjacent historic properties on an individual lot or parcel adjacent to a significant historical resource as identified in the Dayton Comprehensive Plan. The application shall be subject to the decision criteria contained in Section 7.3.107 as well as the following factors:

1. Location. The system and any accompanying accessory features shall be situated to maintain the greatest possible distance from the adjacent historical site or structure while maintaining compliance with the setback requirements.
2. Screening. Screening and buffering shall be required. Screening may include fencing, berms, vegetation or any combination thereof. The screening shall be designed to maintain the visual integrity of the adjacent historic site or building. For example, a wooden fence may be required instead of a chain-link fence.
3. Intent. It is not the intent of this section to grant a conditional use permit in all circumstances, even if factors 1 and 2 above are successfully met. The Conditional Use shall be granted only under those circumstances which are unique to the subject property and will not impair or adversely impact the integrity of the adjacent historical site. The burden of proof shall be placed by the applicant to ensure these concerns are adequately addressed.

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

STAFF REPORT
 March 28, 2011
(for April 4, 2011, City Council Public Hearing)

- FILE:** Code Amendments 2011-01
- Applicant:** City of Dayton
- Request:** A text amendment to the Dayton and Land Use Development Code to change the city staff member reference from City Administrator to City Manager, to define and allow small wind energy systems as alternative energy sources, and to establish regulations for wireless communication facilities. (Please note that the Planning Commission also considered amendments related to small solar energy systems. However, the Commission recommends not taking action until the status of House Bill 3516 is determined by the Legislature.) See Attachment A.
- Criteria:** Dayton Land Use and Development Code (DLUDC), Section 7.3.112.03
- Procedure:** Type IV (DLUDC, Section 7.3.203)
- Attachments:** Attachment A: Draft Code amendments and comparative chart
 Attachment B: House Bill 3516

I. PROCESS

According to the Dayton Land Use and Development Code (DLUDC), Section 7.3.101.04, text amendments are a Type IV action is a legislative review in which the City considers and enacts or amends laws and policies. The amendments are initiated in response to a citizen inquiry about alternative energy sources and City Council directing Planning Commission to consider and present potential code amendment language to the Council. According to a Type IV process a public hearing is conducted before the Planning Commission making a recommendation to the City Council. City Council conducts a public hearing toward making a final decision. Newspaper publication provides notice for the hearings. Code amendments are officially recorded and enacted following the adoption by City Council under an ordinance process.

II. BACKGROUND

The City of Dayton Planning Commission conducted several work sessions to study solar and wind sources and alternative small energy sources. Because free-standing apparatus can be part of installing such a system, the Commission also considered regulations for wireless

communication towers. As a “clean-up item, terminology currently listed in the DLUDC references the lead City staff person as “administrator.” For clarification purposes, the terminology is updated to City Manager.

The Department of Land Conservation and Development (DLCD) was provided a 45-day notice in regards to the proposed amendments. As of the date of the report, the City did not receive any comments from the State agency.

The City of Dayton Planning Commission reviews the proposed amendments and makes a recommendation to City Council. The final evidentiary hearing is conducted before the City Council on April 4, 2011.

III. SUMMARY OF AMENDMENTS

Specific code amendments are as presented in Attachment A. To follow is a summary of the proposed changes.

The proposed changes replace the City staff member reference of City Administrator with City Manager.

Definitions are added for Small Wind Energy Systems and Wireless Communication Facility (more commonly referred to as “cell towers”).

Proposed revisions to the zone districts uses are as follows:

*In the R-1, R-2, and R-3 (residential) zone districts, installing small wind energy systems are listed as conditional uses. Wireless communication facilities are not permitted.

*In the CR and C (commercial residential and commercial) zone districts the alternative energy system is listed as a special permitted use based upon meeting provisions listed in Section 7.2.413. The ability to request the installation of a wireless communication facility is added to the C zone as a conditional use. Wireless communication facilities are not permitted in the CR zone district.

*In the I (industrial) zone district, wind energy systems and wireless communication facilities are proposed to be added as special permitted uses with provisions listed in Sections 7.2.413 and 7.2.414.

*In the P (public), an alternative energy source and a wireless communication facility are recommended as allowed using a special permitted use based upon the provisions in Sections 7.2.413 and 7.2.414.

*In the Commercial Business Overlay zone (CBO), wireless communication facilities are not be a permitted use.

Because the DLUDC amendments include height requirements for the alternative energy source and wireless communication facilities, additional language was added to Section 7.2.201.07—General Exceptions. Some structural features are listed as being exempt from height limitations. “Wording” is added to note that other sections of the DLUDC address certain “towers, aerials, and similar features.”

The Supplemental Standards for Special Uses, DLUDC, Section 7.2.4, was expanded to add provisions for Wireless Communication Facilities and Small Wind Energy Systems.

*Wireless Communication Facilities: The additions include an extensive submittal list to better allow the City to evaluate the siting of a tower through the conditional use process. There are standards for buffering, a notation that the operation cannot interfere with other the frequencies (e.g. radio and television), a requirement to substantiate the need for the tower, and a requirement to include co-location capability (to lessen the need for numerous towers).

*Small Wind Energy System: Installation of a system is considered an accessory use on a property. Listed as additional general standards are, height of rotor blades, separation requirements from structures and trees, prohibition of tower illumination or placement of advertisement, installation of automatic braking, requirement for underground wiring, establishment of a noise level limitation, prohibition of interference with radio/TV reception, requirement that physical appearance lessens visibility of all apparatus, and limitation for rotor diameter. For free-standing systems property line setbacks, height requirements, security measures, and number are established. For roof-mounted maximum height, number, and engineering details are included. When adjacent historic properties, a conditional use permit is required and City may consider location, screening, and intent in its decision.

*Small Solar Energy System: Code language for small solar systems is also included. However, based upon the potential passing of House Bill 3516, no action is recommended at this time. If the bill passes, installation of small solar systems cannot require a land use application process.

IV. 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:

- 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: The terminology change from Administrator to Manager is not relevant to this criterion.

Allowing small wind energy systems will not impact traffic or circulation patterns, alter the level of park and recreation facilities, and not be a factor related to public facility improvements.

Because energy costs are increasing, some home and business owners are investigating the use of alternative sources. Currently, the City code does not have provisions to either allow a wind

system or provide measures to lessen any potentially negative impacts. Amendments outline standards and regulations and the process to consider the additional use on a property.

Allowing alternative energy sources may or may not have an impact on economic activities. A positive benefit would be attracting a company to sell and install the equipment. At minimum, allowing small wind energy systems could provide methods to lower operational costs of businesses.

The proposed amendments do consider the potential for natural resources in regulating location and height of alternative energy source apparatus. Specific provisions are also included to address use of such systems adjacent properties listed on the National Historic Register.

A telecommunication tower can create visual impacts and their siting needs to be considered based the specific features and location of a property. Providing detailed standards and regulations and requiring review under a conditional use process better allows the City to assess the appropriateness of permitting a facility.

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

Finding: In regards to the staff reference change from Administrator to City Manager, indicating the proper title of the City's lead staff person eliminates any potential confusion.

Interest was expressed by a property owner within the community for use of an alternative energy system. Based upon the discussions among the Planning Commissioners at the work sessions, it appears that other citizen might consider use of wind or solar power if permitted by the City.

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

Finding: Two public hearings are being conducted to address Goal 1: Citizen Involvement. A newspaper notice was published to alert the public about the City reviewing the potential regulation changes before both the Planning Commission and City Council. The City already has a Land Use Planning process in place (Goal 2) and is following the adopted measures for hearings. Goals 3 (Agricultural Lands) and Goal 4 (Forest Lands) are not applicable to the amendments. The only portion of Goal 5 related to the amendments is "Historic Areas." Provisions are proposed to address the use of alternative energy systems adjacent properties under an historic designation. The conditional use process required for energy sources and cells towers allows the governing bodies to establish conditions of approval when there are issues to mitigate.

Goal 13 (Energy Conservation) may be partially applicable because allowing for wind as alternative energy sources may lessen the use of fossil fuels. However, the goal also cites the development of land based upon "sound economic principles." The amendments do include economic principles.

Goals 6 (Air, Water, and Land Resource Quality), 7 (Areas Subject to Natural Hazards), 8 (Recreational Needs), 9 (Economic Development), 10 (Housing), 11 (Public Facilities and Services), 12 (Transportation), and Goal 14 (Urbanization) are not applicable to these amendments. Goals 15 through 19 address the Willamette Greenway and issues that are applicable to coastal communities.

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: The City Council directed the Planning Commission to consider allowing individuals the option of installing small wind systems as an alternative energy source.

IV. PLANNING COMMISSION ACTION

The Planning Commission held a public hearing on March 24, 2011. At the conclusion of the public hearing, the Planning Commission recommended that the City Council approve the Dayton Land Use and Development Code text amendments as presented in Attachment A (excluding any reference to small solar energy systems), based upon the findings and conclusions as indicated in the staff report. The Planning Commission recommendation was unanimous.

In taking action on the Planning Commission recommendation, the City Council may take the following action:

- A. Approve the Dayton Land Use and Development Code text amendments as presented in Attachment A (excluding any reference to small solar energy systems) based upon the findings and conclusions as indicated in the staff report; or
- B. Approve the Dayton Land Use and Development Code text amendments with modifications to Attachment A (excluding any reference to small solar energy systems) indicating changes and stating the findings and conclusions to support the modifications:
or
- C. Reconsider the Dayton Land Use and Development Code text amendments as presented in Attachment A indicating the basis for not recommending adoption and the additional information needed to complete the adoption process.

Please Note: The City Council makes the final decision any Development Code amendments and is required to pass an ordinance before the code amendments are considered officially adopted. The ordinance also establishes the effective date of the amendments.