

ORDINANCE 608
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, TO ESTABLISH REGULATIONS FOR WIRELESS FACILITIES AND REPEALING ORDINANCE 607.

WHEREAS, the City Council of the City of Dayton adopted Ordinance 607 containing text amendments to Chapter 7 on June 6, 2011; and

WHEREAS, the text amendments to Chapter 7 as contained in Exhibit 1 to Ordinance 607 did not contain all of the proposed changes as recommended by City Staff, the City of Dayton’s Planning Commission and the City Council; and

WHEREAS, the City Council desires to adopt the text amendments to Chapter 7 in their entirety; and

WHEREAS, the 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 members 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 communications 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- Section 1.** Ordinance 607 is repealed and replaced in its entirety with Ordinance 608.
- Section 2.** 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 3.** The City Council adopts the amendments to Chapter 7 of the DLUDC attached as Exhibit 1, as amended, and incorporated by reference herein; and
- Section 4.** 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 ___ day of September 2011.

Mode of Enactment:

Date of first reading: August 1, 2011 by title only

Date of second reading:

___ 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.

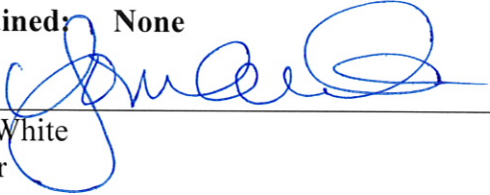
In Favor: Blackburn, Evers, Frank, Utt, White, Wytoski

Opposed: None

Absent: Witt

Abstained: None

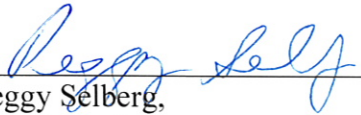
Jolie White
Mayor



9/21/2011
Date of Signing

ATTESTED BY:

Peggy Selberg,
City Recorder



9/6/11
Date of Enactment

CHAPTER 7: DAYTON LAND USE AND DEVELOPMENT CODE

SECTION 7.1.1 GENERAL CODE PROVISIONS

7.1.101 TITLE

The provisions of Chapters 7.1 to 7.3 of Title 7 shall be known as the "Dayton Land Use and Development Code."

7.1.102 PURPOSE AND SCOPE

7.1.102.01 Purpose

This Development Code is enacted to implement the goals and policies of the City of Dayton Comprehensive Plan; provide methods of administering and enforcing the provisions of this Code; and promote the public health, safety, and general welfare of the community.

7.1.102.02 Conformance Required

Except as otherwise noted, effective from the date of the adoption of this Code, the use of all land, including construction, reconstruction, enlargement, structural alteration, use, or occupation of any structure within the City of Dayton shall conform to the requirements of this Code.

7.1.102.03 Administration

The Development Code shall be administered by the City ~~Administrator~~ **Manager** of the City of Dayton. Unless otherwise specifically prohibited, the City ~~Administrator~~ **Manager** has the authority to delegate his/her duties under this Code.

7.1.102.04 Interpretation

The provisions of this Code shall be interpreted as minimum requirements. When this Code imposes a greater restriction than is required by other provisions of law, or by other regulations, resolutions, easements, covenants or agreements between parties, the provisions of this Code shall control.

When a certain provision of the Development Code conflicts with another provision of this Code, or is unclear, the correct interpretation of the Code shall be determined by the City ~~Administrator~~ **Manager**. The ~~Administrator~~ **Manager** may, at his/her discretion, request that City Legal Counsel, the Planning Commission or the City Council resolve the conflict or uncertainty.

7.1.102.05 Effect on Other Public and Private Regulations and Restrictions

It is not the intent of the Development Code to interfere with other laws or Codes relating to the use of structures, vehicles or land, or, relating to the construction or alteration of any buildings or improvements. It is not the intent of this Code to

interfere with any easement, deed restriction, covenant or other legally enforceable restriction imposed on the use or development of land more restrictive than the provisions of this Code. Further, it is not the intent of this Code to enforce deed restrictions, covenants and similar legal instruments.

7.1.102.06 Violations

Violations of the Development Code are subject to the violation provisions of the City.

7.1.102.07 Savings Clause

Should any section, clause, or provision of this Code be declared invalid by a court of competent jurisdiction, the decision shall not affect the validity of the Code as a whole or of the remaining sections. Each section, clause, and phrase is declared severable.

7.1.102.08 Conflicting City Provisions

City of Dayton Ordinances [*insert appropriate Ord. numbers*] and all other ordinances, codes or parts thereof in conflict herewith are hereby repealed.

7.1.103 ESTABLISHMENT OF ZONING DISTRICTS

7.1.103.01 Districts

For the purposes of this Code, the City of Dayton is divided into the following zoning districts:

<u>Classification</u>	<u>Abbreviation</u>
Single Family Residential	R-1
Limited Density Residential	R-2
Medium Density Residential	R-3
Commercial Residential	CR
Commercial	C
Industrial	I
Public	P

For the purposes of this Code, the following overlay zones are placed in certain areas of the City of Dayton:

Limited Use Overlay Zone	LUO
Central Business Area Overlay Zone	CBO
Historic Property Overlay Zone	HPO
Restricted Development Overlay Zone	RDO
Flood Plain Overlay Zone	FPO

7.1.103.02 Comprehensive Plan Designation and Zoning Districts

Zone classifications implement the Comprehensive Plan map designations. Only the following zoning districts allowed in each Comprehensive Plan designation:

Comprehensive Plan Designation

Zone Classification

Residential	R-1, R-2, R-3
General Commercial	CR, C
General Industrial	I
Public Facility	P
Open Space	RDO

7.1.103.03 Boundaries

- A. Zoning Map. The zoning district boundaries are shown on the zoning map of the City of Dayton. This map is made a part of this Code and shall be filed in City Hall. The City ~~Administrator~~ **Manager** shall amend the map as required. The map shall be available for public review with copies provided at reasonable cost.
- B. Zoning Map Interpretation. The City ~~Administrator~~ **Manager** shall resolve any dispute over the exact location of a zoning district boundary. In interpreting the location of the zoning boundaries, the ~~Administrator~~ **Manager** shall rely on the Dayton Comprehensive Plan Map and the following guidelines:
1. Right-of-way. Boundaries indicated as approximately following the centerline or the right-of-way boundary of streets, highways, railways or alleys shall be construed to follow such centerline or boundary.
 2. Lot Lines. Boundaries indicated as approximately following lot lines shall be construed as following such lot lines.
 3. Water Courses. Boundaries indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerline.
 4. Extensions. Boundaries indicated as parallel to or extensions of features indicated in subsections 1., through 3., above, shall be so construed.
 6. Specific Description. Where a Plan map designation or zoning action referenced a specific property description, that description shall establish the boundary. Where two or more property descriptions establish conflicting boundaries, the most recent description shall govern.

CHAPTER 7: LAND USE AND DEVELOPMENT CODE

SECTION 7.1.2 - DEFINITIONS

Section 7.1.200	DEFINITIONS	7.1.2-1
	7.1.200.01 General Provisions.....	7.1.2-1
	7.1.200.02 Grammatical Interpretation.....	7.1.2-1
	7.1.200.03 Definitions	7.1.2-1

7.1.200 DEFINITIONS

7.1.200.01 General Provisions

- A. General and Specific Terms. The definitions contained in this Section include those that are applicable to the entire Code (general), and those terms that are apply to specific Sections (specific). Terms used in specific Sections are identified as follows:

[Flood]	Flood plain Overlay Zone; Section 7.2.1.
[Historic]	Historical Landmark Overlay Zone; Section 7.2.1.
[RV Park]	Recreational Vehicle Park; Section 7.2.4.

7.1.200.02 Grammatical Interpretation.

- A. Words used in the masculine include the feminine, and feminine the masculine. Words used in the present tense include the future, and the singular includes the plural. The word "shall" is mandatory. Where terms or words are not defined, they shall have their ordinary accepted meanings within the context of their use. The contemporary edition of Webster's Third New International Dictionary of the English Language (principal copyright 1961) shall be considered as providing accepted meanings.
- B. Interpretation. When there are two definitions for the same word or phrase, then the definition most applicable for the given situation shall apply. If appropriate, specific terms may be applied to general situations.

7.1.200.03 Definitions.

The following words and phrases, when used in this Code, shall have the meanings ascribed to them in this Section:

Access: The way or means by which pedestrians, bicycles, and vehicles shall have safe, adequate, and usable ingress and egress to a property.

Access Management: Regulations of access to streets, roads, and highways from public roads and private driveways.

Accessory Residential Housing: A subordinate dwelling unit the use of which is incidental to the main building and is used as a dwelling or living quarters.

Accessory Structure: A detached, subordinate building or portion of a main building, the use of which is incidental to the main building or use of the land.

Accessory Structure [Flood]: Sheds or small garages that are exempt from elevation or flood proofing requirements. This definition shall be limited to detached structures less than 480 square feet in area.

Accessory Use: A use incidental and subordinate to the main use of the parcel, lot or building.

Accessway: A right-of-way or easement, not located within a street right-of-way, that provides space for either or both pedestrian and bicycle passage.

Adult Care Facility: See Nursing Home.

Adult Foster Care: See Residential Home and Residential Facility.

Alteration [Historic]: A change, addition, or modification to the exterior of a building.

Appeal: A request for a review of a decision authority's action on an application.

Applicant: The property owner of record, contract purchaser or agent authorized to work on behalf of, or represent, an owner.

Approved: Means approved by the City ~~Administrator~~ **Manager**, Planning Commission or City Council having the authority to grant such approval.

Area: The total area circumscribed by the boundaries of a lot or parcel, except:

1. When the legal instrument creating the property shows the boundary extending into a public street right-of-way, then for purposes of computing the lot or parcel area shall be the street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and $\frac{1}{2}$ of existing right-of-way from the center of the traveled portion of the street.
2. Private access easements, and the access strips to flag-lots, shall not be included when calculating the area of a lot or parcel.

This definition shall not be construed to interpreted to establish property boundaries.

Area of Special Flood Hazard [Flood]: Land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

Assisted Living Center: Means a building, complex or distinct part thereof, consisting of fully self-contained individual living units where six or more seniors and person with disabilities may reside. The facility offers a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents, using a program approach that promotes resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, independence, and home-like surroundings.

Church: A permanently located building primarily used for religious worship, including accessory buildings for related religious activities and a residence.

City: The City of Dayton, Oregon.

Clear-Vision Area: A triangular area at the intersection of two right-of-ways, two sides of which are lines measured from the corner intersection of the right-of-way lines for a specific distance. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides. Where the lines at the intersections have rounded corners the right-of-way lines will be extended in a straight line to a point of intersection.

Commission: The Planning Commission of Dayton, Oregon.

Comprehensive Plan: The officially adopted City of Dayton Comprehensive Plan.

Conditional Use: A use which may be permitted in a particular zone, but because of the type or nature of the uses conditions for its establishment and operation may be necessary to ensure compatibility with adjacent land uses.

Condominium: Development whereby the residences or buildings are owned by individuals and the underlying property and its maintenance is held jointly by a home owners association. Condominiums are subject to provisions in ORS Chapter 94.

Conforming: In compliance with the regulations of this Code.

Conveyance [Flood]: Refers to the carrying capacity of all or a part of the flood plain. It reflects the quantity and velocity of flood waters. Conveyance is measured in cubic feet per second (CFS). If the flow is 30,000 CFS at a cross section, this means that 30,000 cubic feet of water pass through the cross section each second.

Council: The City Council of Dayton, Oregon.

Cultural Resource Inventory [Historic]: Historical buildings or sites placed on the historical resource inventory.

Day Care Facility: An establishment, not a part of a public school system, in which are commonly received 3 or more children, not of common parentage, under the age of 14 years, for a period not exceeding 12 hours per day for the purpose of being given care apart from their parents or guardians.

Decision: The formal act by which the City ~~Administrator~~ **Manager**, Planning Commission or City Council makes its final disposition of a land use action.

Demolish [Historic]: To raze, destroy, dismantle, deface or in any other manner cause partial or total destruction of a landmark or any building within an historic district.

Density: The number of dwellings units per acre of land. "Land" includes all property within an "area" as defined in this section.

Right-of-Way: The full length and width of a public street or way, either planned or constructed.

Rooming and Boarding House: A residential building or portion thereof with guest rooms, providing lodging, or lodging and meals, for 3 or more persons for compensation.

School, Elementary, Junior High or High School: An institution, public or private, offering instruction in the several branches of learning and study, in accordance with the rules and regulations of the State Department of Education.

School, Trade or Commercial: A building where the instruction is given to pupils for a fee, which fee is the principal reason for the existence of the school.

Scrap and Waste Materials Establishment: An business that is maintained, operated or used for storing, keeping, buying or selling old or scrap copper; brass, rope, rags, batteries, paper, rubber, or debris; waste or junked, dismantled, wrecked, scrapped, or ruined motor vehicles or motor vehicle parts (except wrecking yards), iron, steel, or other old scrap metal or non-metal materials. Scrap and waste materials establishments does not include drop stations, solid waste transfer stations, or recycling depot.

Semi-Public Use: A structure or use intended for a public purpose by a non-profit organization.

Service Station: A site and associated buildings designed for the supplying of motor fuel, oil, lubrication and accessories to motor vehicles, but excluding major repair and overhaul. "Major repair and overhaul", as used in this definition, shall be considered to include such activities at painting, bodywork, steam cleaning, tire recapping, and major engine or transmission overhaul or repair involving the removal of a cylinder head or crankcase.

Setback: The distance between a specified lot line and the foundation or exterior wall of a building or structure.

Site, Development, or Complex: A group of structures or other development that is functionally or conceptually integrated, regardless of the ownership pattern of the development or underlying land.

~~**NOT RECOMMENDED FOR ADOPTION Small Solar Energy System: A system of a solar collector, and energy storage facility, and components for the distribution of transformed energy that may be attached to a residence or other structure. A small solar energy system may be a photovoltaic system to convert the sun's energy to electricity or it may be a solar thermal system used to heat water. (House Bill 3516 Pending.)**~~

Small Wind Energy System: A wind energy conversion system consisting of a wind turbine, a support structure, and associated control of conversion electronics and that has a rated capacity of not more than 10kW and that is intended to reduce on-site consumption of utility power.

improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structures. The term does not include:

- a. Any project to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local building code enforcement official and which are the minimum necessary to assure safe living conditions.
- b. Any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places, provided, the alteration will not preclude the structure's continued designation as an historic structure.

Subdivide: To divide an area or tract of land into four or more lots within a calendar year for the purpose of transfer of ownership or building development when such parcel exists as a unit or contiguous units under a single ownership as shown on the tax roll for the year preceding the division of property.

Subdivision: Divisions of property which create four or more lots in a single calendar year.

Tract: An area created as part of a partition or subdivision set aside for the purpose of dedication to the City, or held in ownership by an association, and not intended for residential development.

Urban Growth Boundary: An adopted boundary around the City which defines the area in which the City expects to grow, where public facilities will be extended, and where joint planning responsibilities are exercised with Yamhill County.

Use: The purpose for which land or a structure is designed, arranged or intended, or, for which it is occupied or maintained.

Vanpool: More than five persons commuting in a single vehicle.

Vehicle: For purpose of this Code vehicle shall have the same meaning as the definition in the rules and regulations of the State Department of Motor Vehicles.

Warehouse: A place for the safekeeping of goods and materials for an industrial or commercial enterprise (also see "Mini-Storage Warehouse).

Watercourse [Flood]: A natural or artificial channel in which a flow of water occurs either continually or intermittently in identified floodplain.

Wetland: Land identified as generally containing wet or spongy soil, and the plants associated with such soils, and regulated by the Division of State Lands.

Wireless Communication Facility: Includes cellular towers, antennae, monopoles, and related facilities for signal transmission and receiving.

Wrecking Yard: See Junk Yard/Wrecking Yard.

7.2.102 SINGLE FAMILY RESIDENTIAL - (R-1)

7.2.102.01 Purpose

The purpose of the R-1 zone is to allow development of single family homes on individual lots provided with urban services at urban densities. Other uses compatible with residential development are also appropriate. These areas are designated as Residential in the Comprehensive Plan.

7.2.102.02 Permitted Uses

The following uses, when developed under the applicable development standards in this Code, are permitted in the R-1 zone:

- A. One detached single family dwelling on a separate lot or parcel.
- B. Residential homes.
- C. Child day care service, including family day care provider, for 12 or fewer children.

7.2.102.03 Special Permitted Uses

The following uses, when developed under the applicable standards in this Code and special development requirements, are permitted in the R-1 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. Two-family dwellings (duplexes) subject to the following:
 - 1. The duplex shall be located on a corner lot.
 - 2. Access shall be subject to the following:
 - a. Where both adjacent streets are of the same street designation (e.g. local street) the duplex may obtain access from each adjacent street or share a single access.
 - b. Where the adjacent streets are of a different street designation (e.g. local and collector) a shared access shall be required from the lower street designation.
- E. The following uses, subject to the applicable standards in Section 7.2.4:
 - 1. Manufactured homes on individual lots (Section 7.2.404)

2. Home occupations (Section 7.2.406).

7.2.102.04 Conditional Uses

The following uses require approval of a Conditional Use Permit and are subject to a Site Development Review:

- A. Private or public elementary schools.
- B. Public parks, playgrounds, community clubs including swimming, tennis and similar recreation facilities; and other public or semi-public uses.
- C. Child day-care services for 13 or more children.
- D. Churches.
- E. Small wind energy systems including compliance with Section 7.2.413.**

7.2.102.05 Dimensional Standards

- A. Minimum Lot Dimension and Height Requirements
(Revised by Ordinance #541, 6/03/02 - Effective 07/03/02)

DIMENSION	Residential Uses	Non-Residential Uses
Lot Size	7,000 sq ft - Single Family 9,000 sq. ft. - Duplex	(1)
Average Width	50	(1)
Average Depth	80	(1)
Maximum Height	35 feet	35 feet

- (1) Adequate to comply all applicable development standards

7.2.103 LIMITED DENSITY RESIDENTIAL - (R-2)

7.2.103.01 Purpose

The R-2 zone is intended to provide for detached and attached dwellings on a lot or multiple dwellings on a lot at an intermediate density. Other uses compatible with residential development are also appropriate. R-2 zones are located in areas designated Residential in the Comprehensive Plan.

7.2.103.02 Permitted Uses

The following uses, when developed under the applicable development standards in the Code, are permitted in the R-2 zone:

- A. One detached single family dwelling on a separate lot or parcel.
- B. Buildings with two or more dwelling units.
- C. Combination of permitted attached or detached dwellings on a lot.
- D. Residential homes and facilities.
- E. Child day care service, including family day care provider, for 12 or fewer children.

7.2.103.03 Special Permitted Uses

The following uses, when developed under the applicable standards in the Code and special development requirements, are permitted in the R-2 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. Accessory residential housing (Section 7.2.402).
 - 2. Attached dwelling units (Section 7.2.403).
 - 3. Manufactured homes on individual lots (Section 7.2.404).
 - 4. Manufactured home parks (Section 7.2.405).
 - 5. Home occupations (Section 7.2.406).

7.2.103.04 Conditional Uses. *(Amended effective 12/3/07, Ordinance #584)*

The following uses require approval of a Conditional Use Permit and are subject to a Site Development Review:

- A. Public or private elementary schools.
- B. Public parks, playgrounds, community clubs including swimming, tennis and similar recreational facilities, and other public and semi-public uses.
- C. Child day-care services for 13 or more children.
- D. Churches.
- E. Assisted living centers, nursing homes and similar institutions. These facilities are subject to the development provision for multi-family residential development. *(Amended effective 12/3/07, Ordinance #584)*

F. Small wind energy systems including compliance with Section 7.2.413.

7.2.103.05 Dimensional Standards

- A. Minimum Lot Dimension and Height Requirements.
(Revised by Ordinance #541, 6/03/02 - Effective 07/03/02)

DIMENSION	Single Family	Duplex	Multi-Family	Non-Residential
Lot Size	6000 sq. ft. (1)	7000 sq. ft.	9000 sq. ft. (2)	(3)
Maximum Height	35 feet	35 feet	35 feet	35 feet

- (1) Attached single family dwellings shall have a minimum lot area of 3500 square feet.
- (2) Multi-family development must comply with the density standard in Section 2.103.06.
- (3) Parcel size shall be adequate to contain all structures within the required yard setbacks.

7.2.104 MEDIUM DENSITY RESIDENTIAL (R-3)

7.2.104.01 Purpose

The R-3 zone is intended for multiple family development on a parcel at higher residential densities. Other uses compatible with residential development are also appropriate. RM zoned property is suited to locations near commercial areas and along collector, and preferably, arterial streets. The appropriate Comprehensive Plan designation is Residential.

7.2.104.02 Permitted Uses

The following uses, when developed under the applicable development standards in the Code, are permitted in the R-3 zone:

- A. Residential buildings containing two or more dwelling units.
- B. Residential homes and facilities.
- C. Child day care service, including family day care provider, for 12 or fewer children.

7.2.104.03 Special Permitted Uses

The following uses, when developed under the applicable standards in the Code and special development requirements, are permitted in the RM 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. Manufactured home parks (Section 7.2.405).
 - 2. Home occupations (Section 7.2.406).

7.2.104.04 Conditional Uses. *(Amended effective 12/3/07, Ordinance #584)*

The following uses require a Conditional Use Permit and are subject to a Site Development Review:

- A. Public or private schools.
- B. Public parks, playgrounds, community clubs including swimming, tennis and similar recreational facilities, and other public and semi-public uses.
- C. Child day care service for 13 or more children.

- D. Churches.
- E. Assisted living centers, nursing homes and similar institutions. These facilities are subject to the development provisions for multi-family residential development. *(Amended effective 12/3/07, Ordinance #584)*

F. Small wind energy systems including compliance with Section 7.2.413.

7.2.104.05 Dimensional Standards

A. Minimum Lot Dimension and Height Requirements

DIMENSION	Residential	Non-Residential
Lot Size	6,000 square feet (1) (2)	Adequate to comply with all applicable development standards
Maximum Height	35 feet	35 feet

- (1) Multi-family development must comply with the density standard in Section 7.2.104.06.
- (2) Manufactured home parks must comply with the density requirements in Section 7.2.104.06 and the minimum area requirements in Section 7.2.403.

B. Minimum Yard Setback Requirements

SETBACKS	Residential	Non-Residential
Front	(1)	20 feet
Side	(2)	10 feet
Rear	(2)	20 feet
Street-side	20 feet	20 feet
Garage (3)	20 feet	20 feet

- (1) 15 feet where the front of the dwelling units face the street; otherwise 20 feet.
- (2) The setback shall be no less than the minimum rear yard setback of the zone on the adjacent property. In no case shall the setback be less than 10 feet.

6. Retail and service related stores such as TV and radio sales and service, bicycle shop, gunsmith, upholstery shop or other similar activities where a service department is customarily a secondary activity to the retail use.
7. Service related businesses such as barber shops, beauty shops, tailors, advertising agencies, travel agencies, art or craft studios, self-serve laundry, dry cleaning (except bulk dry cleaning plants), parcel service, printing or photocopying, video rental, or other activities where the primary activity is the providing of a service to retail customers.
8. Accessory structures and uses customarily provided for retail activities.

7.2.105.03 Special Permitted Uses

The following uses, when developed under the applicable standards in the Code and special development requirements, are permitted in the CR 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. Attached dwelling units (Section 7.2.403).
 2. Manufactured homes on individual lots (Section 7.2.404).
 3. Home occupations (Section 7.2.406).
 4. Bed and breakfast establishments (Section 7.2.407).

E. Small wind energy systems, subject to the provision in Section 7.2.413.

7.2.105.04 Conditional Uses *(Amended effective 4/2/09, Ordinance #589)*

The following uses require a Conditional Use Permit:

- A. Public or private schools.
- B. Public parks, playgrounds, community clubs including swimming, tennis and similar recreational facilities, and other public and semi-public uses.
- C. Child day care service for 13 or more children.
- D. Churches.

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.

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.
- D. 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)*

K. 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.

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 I 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.

7.2.111 CENTRAL BUSINESS AREA OVERLAY ZONE (CBO)

7.2.111.01 Purpose

The purpose of the Central Business Area Overlay Zone is to establish development requirements which are specifically designed to address the unique challenges the City's downtown.

7.2.111.02 Central Business Area Defined

For the purposes of this Section, the Central Business Area shall be defined as follows: C zoned land located south of Church Street, east of Fifth Street, north of Alder Street, and west of Second Street.

7.2.111.03 Development Requirements

- A. General Requirements: Notwithstanding provisions contained elsewhere in this Code, the following regulations shall apply to the development of new buildings within the Central Business Area.
- B. Permitted Uses. Unless specifically modified by this Section, regulations in this Section do not prohibit or restrict, nor alter the development requirements of, permitted, specially permitted or conditionally permitted uses within the Commercial zone.
- C. Use Restrictions. In addition to the use limitations in Section 7.2.106.06.B., drive-ups and drive-in windows, and wireless communication facilities shall be prohibited.

7.2.111.04 Parking

Off-street parking and loading areas shall not be required within the Central Business Area. Off-street parking installed at the option of the owner shall comply with the following:

- A. Parking spaces shall be located behind the primary building. For corner lots, this shall be identified as being opposite, and furthest from, the primary building access.
- B. Improvements, such as driveways and parking space dimensions, shall otherwise comply with Code requirements.

7.2.111.05 Landscaping

All new development within the Central Business Area fronting a public or private street shall provide street trees and landscaping in accordance to the following:

- A. Type of Trees. Street trees shall be limited to an approved City of Dayton list. The list of acceptable tree species and planting methods shall be established by the Department of Public Works.

7.2.114 RESTRICTED DEVELOPMENT OVERLAY DISTRICT (RD)

7.2.114.01 Purpose

There are environmentally sensitive areas within the City of Dayton which include unique natural habitat areas, lands valued for their aesthetic qualities and lands which cannot be developed under ordinary standards due to physical limitations. It is the intent and purpose of this zone boundary to maintain and protect the integrity of the natural resources of the City by implementing the goals and policies of the Comprehensive Plan.

7.2.114.02 Application

The provisions of this overlay district shall apply to all lands designated as "Open Space Overlay" on the City of Dayton Comprehensive Plan Map and identified within the Restricted Development Boundary (RD).

7.2.114.03 Review of Uses

Within the RD Overlay a conditional use permit shall be required for all new uses, use changes, intensification of uses or site alteration for uses otherwise permitted in the underlying zone except for the following activities which are not subject to review:

- A. Reasonable emergency procedures necessary for the safety or protection of property.
- B. Maintenance and repair necessary, and usual, for the continuance of an existing use.
- C. The placing by a public agency of signs, markers, aids, etc. to serve the public.
- D. Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical and natural uses of public lands, identified in a public park master plan approved by the City Council. Also see Chapter 7.2.112. *(Revised 11/4/10 ORD 600)*
- E. Public utilities and facilities in conjunction with an approved development or identified as part of a master utility plan approved by the City Council.

7.2.114.04 Review Process

- A. Unless otherwise permitted in Section 2.111.03, all development within the RD Overlay District, shall be require approval of a Conditional Use, pursuant to Section 7.3.107. The application may be processed separately or in conjunction with other required land use actions.
- B. In addition to the submittal requirements for a Conditional Use application, the applicant shall supply the following:
 - 1. Plot plan showing the following:
 - a. Location of the Overlay District Boundary.

- b. The proximity of the activity to any adjacent streams or drainage corridors.
 - c. The location of any existing vegetative fringe along the stream or drainage and other significant vegetation.
 - 2. Statements addressing the additional review standards and criteria in Section 7.2.114.05.
 - 3. Any additional information determined by the City ~~Administrator~~ **Manager** to be necessary to demonstrate compliance with this zone.
- C. With the exception of partitionings, subdivisions and planned unit developments, a parcel located within the RD Overlay District is not subject to a conditional use review if the proposed development will be located entirely outside the boundary of the Overlay District.

7.2.114.05 Review Standards and Criteria

In addition to the Conditional Use criteria in Section 7.3.107, a conditional use permit within the RD Overlay District shall indicate how: (a) the proposal will not affect the following factors; (b) the proposal can be mitigated in some manner to minimize or eliminate potential harmful impacts regarding the following factors; or, (3) the factors do not apply to the request. The factors include:

- A. Development shall be directed away from adjacent streams and drainage corridors to the greatest possible extent.
- B. The development, change, or intensification of use shall provide the maximum possible landscaped area, open space, or vegetation between the activity and adjacent streams or drainage corridors.
- C. The fringe along streams and drainage corridors shall be maintained to the maximum extent practical in order to assure scenic quality, protection of wildlife habitat, and protection from erosion. Management of the natural vegetative, including trees or forest cover, shall be subject to the requirements of Section 7.2.114.06.
- D. Areas of annual flooding, flood plains, and wetlands shall be preserved in their natural state to the maximum possible extent to protect water retention, overflow and other natural functions. The development shall comply with the flood plain or floodway development requirements of the Dayton Land Use and Development Code.

7.2.114.06 Riparian Vegetation

For both permitted uses and conditionally permitted uses, vegetative removal and within the RD Overlay District shall be subject to the following guidelines:

7.2.201 GENERAL STANDARDS

7.2.201.01 Minimum Requirements

In interpreting and applying this Code, these provisions shall be considered the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

7.2.201.02 Building Permits

A. Building Permits Required. No building shall be constructed or structure erected without receiving the appropriate building permit. Building permit shall include electrical, mechanical, structural, foundation and similar types of permits issued by the appropriate building codes agency.

B. Completion of a Structure. Residential structures shall be completed within one year of beginning construction. Public, commercial or industrial structures shall receive a certificate of occupancy within two years of beginning construction. A structure not completed within the required time period of beginning construction shall constitute a violation of this Code and is subject to the violation provisions in Section 7.1.102.05.

7.2.201.03 Lots of Record

A. Legal Lot. A parcel is a legal lot of record for purposes of this Code when the lot conforms to all zoning requirements, subdivision requirements, and Comprehensive Plan provisions in effect on the date when a recorded deed or contract creating the separate lot or parcel was signed by the parties to the deed or contract.

B. Separate Legal Lot. A lot or parcel which is a separate legal lot or parcel prior to the adoption of this Code shall remain a separate legal lot regardless of ownership.

C. Development of a Lot of Record. The use or development of any legal lot of record shall be subject to the regulations applied to the property when such development or use begins, irrespective of the lot width, street frontage, depth or area, but subject to all other regulations.

7.2.201.04 Access to a Public Street

Access Required. All uses shall be located on property having access to a public street. Access to a public street is defined as a minimum of 20 feet of frontage on one of the following:

A. Public Street. A public street with a right-of-way not less than 20 feet wide that has been graveled or paved and is open for public use to the property.

B. Private Street. A private street not less than 20 feet wide graveled or paved and open for use to the property prior to the date this Code is adopted and connecting with a public street qualifying under item 1., above.

C. Private Access Easement. A private access easement of not less than 20 feet in width where the access easement connects the property to a public street and the easement is improved to the minimum standards of this Code.

7.2.201.05 Unsafe Building

Nothing in this Code shall prevent the strengthening or restoring to a safe condition any building or structure declared unsafe by a proper authority.

7.2.201.06 Structures to be on a Lot

All structures and uses shall be entirely situated on a single lot with the following provisions and exceptions:

A. Condominiums. Structures allowed under the Unit Ownership law (ORS 91.400 et seq.) shall be exempt from this requirement.

B. Zero Lot Line. Buildings which are attached at a common property line, but which meet all requirements of the Building Code as separate buildings, shall be considered separate.

C. Placement on Two or More Lots or Parcels. Where a structure is placed on two or more separate lots or parcels under single ownership so that the structure overlaps a common boundary or encroaches on required yards along the common boundary, the separate lots shall be considered a single lot for the purpose of this Code. Nothing in this provision permits the placement of buildings on an easement.

7.2.201.07 Division or Alteration of Lots

In addition to any partitioning or subdivision requirements in the Code, no lot held under separate ownership shall be divided or altered so that it does not meet the requirements in this Code. If a lot does not meet requirements at the time this Code is adopted, it shall not be divided or altered in such a manner that the lot is less in conformity with these regulations in any respect.

7.2.202 GENERAL EXCEPTIONS

7.2.202.01 Building Height Limitations

Projections such as chimneys, spires, domes, elevator shaft housing, towers, aerials, flagpoles, and other similar features not used for human occupancy are not subject to the building height limitations of the underlying zone **unless otherwise specified in supplemental standards for special uses.**

7.2.202.02 Additions to Existing Structures

Additions to the primary structure which do not comply with yard setback requirements of the underlying zone shall be allowed, provided the setback distance will not be decreased by the addition, and, the addition conforms to all other provisions of the zoning district.

7.2.202.03 Public Dedications

Setback restrictions of this Code shall not apply to existing structures whose setback is reduced by a public dedication. Additions to such structures shall be allowed subject to Subsection 7.2.202.02.

7.2.203 PERMITTED USES GENERALLY

7.2.203.01 Permitted Uses

The following uses and activities are permitted in all zones:

A. Utility Facilities. Placement and maintenance of underground or above ground wires, cables, pipes, guys, support structures, pump stations, drains, and detention basins within

TITLE 7: LAND USE AND DEVELOPMENT CODE
SECTION 7.2.3
GENERAL DEVELOPMENT STANDARDS

7.2.303 OFF-STREET PARKING AND LOADING

7.2.303.01 Purpose

The purpose of this Section is to provide adequate areas for the parking, maneuvering, loading and unloading of vehicles for all land uses in the City.

7.2.303.02 Scope

The provisions of this Section shall apply to the following types of development:

- A. New Building. Any new building or structure erected after the effective date of this Code.
- B. Expansion. The construction or provision of additional floor area, seating capacity, or other similar expansion of an existing building or structure.
- C. Change in Use. A change in the use of a building or structure which requires a building permit and/or the change in use is not otherwise permitted outright within the zone.

7.2.303.03 General Provisions Off-Street Parking and Loading

- A. Owner Responsibility. The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. No building permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Code.
- B. Interpretation. Requirements for types of buildings and uses not specifically listed herein shall be determined by the City ~~Administrator~~ **Manager** based upon the requirements of comparable listed uses.
- C. Combined Uses. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed separately, unless a reduction is approved for shared parking.
- D. Use of Parking Spaces. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers,

patrons or employees only, and shall not be used for storage of vehicles or materials or for the parking of trucks used in conducting the use.

- E. Park and ride spaces, handicapped parking and parking for carpools and vanpools cannot count as required parking, loading, or be used for vehicle storage. *(Added by Ordinance 589 – Effective 4/2/09)*

7.2.303.04 Location and Use Provisions

Off-street parking and loading areas shall be provided on the same lot with the main building or structure or use except that:

- A. Non-residential Zone. In any non-residential zone, the parking area may be located off the site of the main building, structure or use if it is within 500 feet of such site. Evidence must be submitted to the City indicating a permanent recorded easement for the off-site parking.
- B. Accessory Parking Use, Non-residential. Parking of vehicles in a structure, or outdoors, is a permitted accessory or secondary use in non-residential zones provided all of the vehicles are owned by the owner or lessee of the lot.
- C. Accessory Parking Use, Residential. Parking of vehicles in a structure or outdoors is a permitted accessory use in conjunction with a dwelling in any zone provided:
 - 1. All of the vehicles are owned by the owner or lessee of the lot.
 - 2. Vehicles parked on a lot in a residential zone shall be for the personal use of the occupants of the dwelling.
 - 3. One vehicle used in conjunction with a home occupation or other employment may be parked on the lot.

7.2.303.05 Shared Use

Parking area may be used for a loading area during those times when the parking area is not needed or used. Parking areas may be shared subject to City ~~Administrator~~ **Manager** approval for public, commercial and industrial uses where hours of operation or use are staggered such that peak demand periods do not occur simultaneously. Such joint use shall not be approved unless satisfactory legal evidence is presented which demonstrates the access and parking rights of parties.

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.

TITLE 7: LAND USE AND DEVELOPMENT CODE

SECTION 7.3.1

APPLICATION REQUIREMENTS AND REVIEW PROCEDURES

7.3.109 SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS

7.3.109.06 Final Plat Review of Subdivisions

- A. Final Review. The final subdivision or PUD plat shall be submitted to the City staff for review. Staff shall review the plat to assure compliance with the approved preliminary plat and with the conditions of approval. The City ~~Administrator~~ **Manager** shall signify staff approval of the final plat by signing the document.
- B. Recording of Approved Plat. No building permit shall be issued, or parcel sold, transferred or assigned until the final approved Plat has been recorded with the County Recorder. The applicant shall be responsible for all recording fees.
- C. Improvements/Bonding. Prior to issuance of an occupancy permit, all improvements required by the conditions of approval shall be constructed or the construction shall be guaranteed through a performance bond or other instrument acceptable to the City Attorney.

TITLE 1: LAND USE AND DEVELOPMENT CODE

SECTION 7.3.2 ADMINISTRATIVE PROCEDURES

7.3.201 GENERAL PROVISIONS

7.3.201.01 Multiple Applications

Applications for more than one land use action for the same property may, at the applicant's discretion, be heard or reviewed concurrently.

7.3.201.02 Multiple Processing Types

Multiple land use requests involving different processing Types shall be heard and decided at the higher processing Type. For example, an application involving a Subdivision (Type II) with a Minor Variance (Type I) shall be reviewed and decided as a Type II request.

7.3.201.03 Generalized Area

Applications involving a generalized area may be aggregated if in the opinion of the City ~~Administrator~~ **Manager** a better understanding of the entire land use proposal is served by combining requests. A final decision shall be granted for each request and each request is appealable individually.

7.3.201.04 Time Limit

If for any reason it appears that such final action may not be completed within the 120 day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Code.

- A. The City staff shall notify the City Council of the timing conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120 day period.
- B. Public notice shall be mailed to affected parties as specified in Section 7.3.204.
- C. The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Section 7.3.206 and render a decision approving or denying the request within the 120 day period. Such action shall be the final action by the City on the application.

7.3.201.05 Performance Bonding

Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant provides information which demonstrates that it is not practical to fulfill all conditions prior to issuance of such permit, the City may require a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions.

- A. Types of Guarantees - Performance guarantees may be in the form of performance bond payable to the City of Dayton, cash, certified check, time certificate of deposit, or other form acceptable to the City. The form must be approved by the City Attorney and appropriate documents filed with the City Recorder.
- B. Amount of Guarantee - The amount of the guarantee must be equal to at least one-hundred-ten percent (110%) of the estimated cost of the performance. The applicant must provide a written estimate acceptable to the City, which must include an itemized estimate of all materials, labor, equipment and other costs of the required performance.
- C. Completion of Performance - All improvements shall be completed within one year of filing the performance guarantee. This time limit may be extended for additional one year periods by the City ~~Administrator~~ **Manager**.

7.3.202 PROCEDURES

7.3.202.01 Procedure for Type I Review

- A. Upon receipt of an application for a Type I land use action, the City staff shall review the application for completeness.
 - 1. Incomplete applications shall not be reviewed until all required information has been submitted by the applicant.
 - 2. If incomplete, the applicant shall be notified and provided additional time of up to 30 days to submit supplemental information as necessary.
- B. The application shall be deemed complete for the purposes of issuing a staff report and related timing provisions either:
 - 1. Upon receipt of the additional information to complete the application; or,
 - 2. If the applicant refuses to submit the information the application shall be deemed complete for review purposes on the 31st day after the original submittal.
- C. Referrals may be sent to affected agencies such as City departments, police and fire departments, school district, utility companies, and applicable state agencies at the ~~Administrator's~~ **Manager** option. When a land use development has either direct access or creates an additional 20% average daily traffic on a county road or state highway, then a referral shall be sent to the Yamhill County Public Works Department or ODOT, as appropriate. *(Amended by Ordinance 589 – Effective 4/2/09)*
- D. Within thirty (30) days of receipt of a complete application, staff shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria as set forth in this Code.
- E. Approvals of a Type I action may be granted subject to conditions and performance agreement requirements.

or recommendation shall be mailed to individuals who request such notice at the public hearing, or, by those individuals who submitted a written request for notice prior to the public hearing.

- I. A Type II land use decision may be appealed to the City Council by either the applicant, persons receiving notice of the decision or the ~~Administrator~~ **Manager**. The appeal shall be filed within 15 days from the date of the decision, pursuant to the provisions of Section 7.3.207. Type III land use applications are automatically reviewed by the City Council.

7.3.203 TYPE IV ACTIONS

7.3.203.01 Initiation

Type IV may be initiated by:

- A. Majority vote of the City Council.
- B. Majority vote of the Planning Commission.
- C. Recommendation by the City ~~Administrator~~ **Manager** subject to majority approval by the City Council or Planning Commission.

7.3.203.02 Procedure for Type IV Actions

- A. Public Hearings by Planning Commission:
 1. A public hearing shall first be held by the Planning Commission on all Type IV requests.
 2. The Planning Commission may continue any hearing in order to make a reasonable decision. Amendments to the original request may be considered and acted upon by the Planning Commission.
 3. A Type IV Planning Commission action shall be in the form of a recommendation to the City Council.
- B. Public Hearing by City Council:
 1. Following the Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation.
 2. The City Council may continue any hearing in order to make a reasonable decision. Amendments to the original request or the Planning Commission's recommendation may be considered and acted upon by the City Council.
 3. An approved Type IV City Council action shall be in the form of an Code.

- C. All hearings or reviews required by the City Council shall be heard within sixty (60) days of the Planning Commission's written decision or appeal request.
- D. The decision shall be made by the City Council and written findings prepared listing findings for approval or denial, and any conditions of approval, within two weeks of the hearing by the City Council.

7.3.206.02 Hearings by City Council

- A. All public hearings shall be conducted pursuant to the City Council's adopted rules of procedure. The City Council shall allow the opportunity for all parties to be heard and may accept new evidence.
- B. Decisions of the City Council may be appealed to the State Land Use Board of Appeals (LUBA), subject to the provisions in ORS 197.805-855.

7.3.206.03 Appeal Review by City Council

- A. Review on Record: The City Council review of an appeal on an action by the Planning Commission shall be confined to the record of the initial proceeding. Parties may offer testimony regarding alleged errors in the prior decision. The meeting shall be conducted as set forth in the City Council's adopted rules of procedures. The record of the initial proceeding shall include:
 1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the Planning Commission as evidence.
 2. All materials submitted by the City Staff with respect to the application.
 3. The minutes of the hearing.
 4. The findings and action of the Planning Commission and the notice of decision.
- B. Submission of New Testimony and De Novo Hearings: The City Council may admit additional testimony and other evidence by holding a de novo hearing. Upon the decision to admit additional testimony or other evidence and to hear the entire matter de novo, the presentation of such testimony and evidence shall be governed by the procedures applicable to the presentation of such matters at the initial hearing.
- C. City Council Action. The City Council may affirm, rescind or amend the action of the Planning Commission. The Council may also remand the matter back to the Planning Commission for additional information, subject to the agreement of the applicant to extend the 120 day review period.

7.3.207 APPEAL PROVISIONS

7.3.207.01 Appeal Period

- A. The decision of the City ~~Administrator~~ **Manager** shall be final for a Type I land use decision unless a notice of appeal from an appropriate aggrieved party is received by the City within 15 days of the date the final written notice is mailed. An appeal stays the proceedings in the matter appealed until the

TITLE 7: LAND USE AND DEVELOPMENT CODE

**SECTION 7.2.4
SUPPLEMENTAL STANDARDS FOR SPECIAL USES**

Section 7.2.401	GENERAL PROVISIONS	7.2.4-2
Section 7.2.402	ACCESSORY RESIDENTIAL HOUSING	7.2.4-3
Section 7.2.403	ATTACHED DWELLING UNITS	7.2.4-4
Section 7.2.404	MANUFACTURED HOMES ON INDIVIDUAL LOTS	7.2.4-5
Section 7.2.405	MANUFACTURED HOME PARKS.....	7.2.4-7
	7.2.405.01 General Requirements.....	7.2.4-7
	7.2.405.02 Design Standards	7.2.4-7
	7.2.405.03 Park Development Requirements	7.2.4-9
Section 7.2.406	HOME OCCUPATIONS (Minor and Major).....	7.2.4-11
Section 7.2.407	BED AND BREAKFAST ESTABLISHMENT.....	7.2.4-12
Section 7.2.408	RECREATIONAL VEHICLE PARKS.....	7.2.4-13
	7.2.408.01 Scope.....	7.2.4-13
	7.2.408.02 Definitions.....	7.2.4-13
	7.2.408.03 Development Requirements.....	7.2.4-14
	7.2.408.04 Operational Requirements	7.2.4-16
Section 7.2.409	SERVICE STATIONS.....	7.2.4-17
Section 7.2.410	AUTOMOTIVE SERVICES	7.2.4-18
Section 7.2.411	SMALL SCALE MANUFACTURING	7.2.4-19
Section 7.2.412	WIRELESS COMMUNICATION FACILITIES.....	
	7.2.412.01 Permitted Uses.....	
	7.2.412.02 Conditional Uses.....	
	7.2.412.03 Conditional Use Permit Submittal Requirements	
	7.2.412.04 Conditional Use Permit Review	
	7.2.412.05 Collocation	
	7.2.412.06 Development Standards.....	
	7.2.412.07 Abandoned Facilities	
Section 7.2.413	SMALL WIND ENERGY SYSTEM	
	7.2.413.01 Accessory Use	

- 7.2.413.02 General Standards
- 7.2.413.03 Free-Standing Systems
- 7.2.413.04 Roof-mounted Systems

SMALL-SCALE MANUFACTURING *(Added 8/6/07 ORD 583)*

7.2.411.01 Standards

A small-scale manufacturing operation may be permitted in the Commercial (C) Zone as a conditional use provided that:

- A. The area involved in the manufacturing of the product does not involve more than 4,000 square feet of floor area, and all storage of materials is enclosed.
- B. The building and site plan are not incompatible with the character of the commercial area nor will seriously interfere with adjacent land uses.
- C. The use shall not be objectionable in relationship to surrounding residential or commercial uses because of odor, dust, smoke, cinders, fumes, noise, glare, heat or vibration.

7.2.411.02 Process

In addition to the limitations in Section 7.2.411.02 and other applicable provisions of the Development Code, the establishment of a small-scale manufacturing business shall be subject to the following procedures:

- A. Small-scale manufacturing uses shall be reviewed in accordance with the Conditional Use Permit criteria and procedures as specified in Section 7.3.107; and
- B. Small-scale manufacturing uses shall be subject to the criteria and procedures of Site Development Review process as set forth in Section 7.3.106.

7.2.412 WIRELESS COMMUNICATION FACILITIES *(section added effective Ordinance #)*

7.2.412.01 Purpose.

The location of Wireless Communication Facilities (WCFs) in the city can and should be accomplished in a manner that minimizes visual impacts, and thereby maintains the natural character of the landscape, by making maximum use of natural vegetative screening; use of colors, textures and other design elements that blend with the site and setting; avoiding locations subject to FAA-required coloring and lighting; encouraging co-location; employing height limitations and setbacks; and avoiding major view corridors.

7.2.412.02 Submittal Requirements

In addition to required application materials and the standard conditional use permit application materials (if a conditional use is required based upon the zone district), any request for a wireless communication facility shall include the following items:

- A. Eight photo simulations of the proposed facility and equipment enclosure as viewed from residential properties and public right-of-ways at varying distances at locations within a 1,000 foot radius of the proposed facility that are agreed upon by planning staff and the applicant prior to filing the application.
- B. Map showing the location and service area of the proposed wireless communication facility and an explanation of the need for the facility.
- C. Map showing the locations and service areas of other wireless communication facilities/sites operated and proposed by the applicant that are close enough to affect service.
- D. Site/landscaping plan; showing the specific placement of the wireless communication facility and the on-ground facility area sufficient to accommodate multiple users; showing the location of existing structures, trees, and other significant site features; showing type and locations of proposed screening; and the proposed color(s) for the wireless communication facility and equipment enclosure.
- E. Signed agreement providing that the applicant shall remove the facility and equipment enclosure within 6 months of the date it ceases to be operational
- E. Lease agreement with the landowner or contract purchaser that allows the landowner or contract purchaser to enter into leases with other providers; and specifies that if the provider fails to remove the facility and equipment enclosure within 6 months of the date it ceases

to be operational, the responsibility for removal falls upon the landowner or contract purchaser.

G. Anticipated capacity of the wireless communication facility (including number and types of antennae which can be accommodated); and the number of additional wireless communication facilities attached that may be co-located on the proposed tower.

H. Evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:

1. Written verification or other documentation revealing the availability and/or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.

2. Demonstrated by providing evidence of mailing the following co-location request letter to all other wireless providers licensed to provide service within the city: "Pursuant to the requirements of DLCD, Section 7.2.412, (wireless provider) is hereby providing you with notice of our intent to make application with the City of Dayton to locate a wireless communication facility that will be located at (location). In general, we plan to construct a support structure of (height) feet in height for providing (service type) service. Please inform us whether you have any wireless facilities located within (distance) of the proposed facility that may be available for possible co-location opportunities. Please provide us with this information within 15 business days after the date of this letter. Your cooperation is appreciated."

3. Tower type and height of potential co-location facilities.

4. Specific reasons why co-location is or is not feasible. Reasons may include but are not limited to the following:

a. A statement from a qualified radio engineer indicated whether the necessary service can or cannot be provided by co-location at the identified site(s) by the other provider(s).

b. Evidence that the lessor of the site(s) identified by the other provider(s) either agrees or disagrees to co-location on their property.

c. Evidence that adequate site area exists or does not exist

at the site(s) identified by the other provider(s) to accommodate needed equipment and meets all of the site development standards.

I. A narrative discussion of how the proposed facility and equipment enclosure complies with applicable use and development standards.

1. All lattice, monopole, guyed or other freestanding support structures shall be limited to a total height, including antennae, of 150 feet above natural grade.

2. Lattice, monopole, guyed or other freestanding support structures, antennae associated enclosures and all exterior mechanical equipment, shall be surfaced to be nonreflective. For the purposes of this requirement, a galvanized metal monopole shall be considered nonreflective.

3. The wireless communication facility including equipment enclosures shall be fenced by a 6 foot high fence, wall or hedge.

4. The exterior base of a lattice, monopole, guyed or other freestanding support structure shall be separated from all dwellings and residential accessory structures, not located on the subject property, and residential zones boundaries by a distance equal to one foot greater than the total height of the support structure and antennae. A freestanding support structure may be placed closer to a residential zone boundary where it is demonstrated that location of the proposed facility closer to the boundary will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impacts.

5. WCFs, associated enclosures, and all exterior mechanical equipment, shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.

6. WCFs up to 70 feet in height shall have provisions that will allow for co-location of at least one additional user or wireless communication provider. Structures exceeding 70 feet in height shall have provisions that will allow for co-location of at least two additional users or wireless communication providers.

7. A permittee shall cooperate with other wireless communication providers and others in co-locating additional antennae on support structures. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site.

provided such shared use does not result in substantial technical impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Good faith shall include sharing technical information sufficient to evaluate the feasibility of co-location. In the event a dispute arises, as to whether a permittee has exercised good faith in accommodating other users, the city require a third party technical study at the expense of either or both the applicant and permittee.

8. Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit.

9. The facility owner or property owner shall remove WCFs within six months of the date it ceases to be operational.

7.2.412.03 Wireless Communication Facilities

A. Esthetics

1. WCFs requiring construction of a support structure must be located on a portion of a site that is effectively isolated from view of residential areas by structures or terrain features unless they are integrated or act as an architectural element of the structure, such as a flag pole.

2. Whip and tubular antennas shall be camouflaged and located to minimize views from residential structures and rights-of-way.

3. Parabolic, ancillary and other antennas shall be completely screened from residential views and public rights-of-way in a manner that is architecturally compatible with the building on which it is located.

4. Equipment enclosures shall be located within the building on which the facility is placed or located underground.

B. Radio Frequency Standards

1. The applicant shall comply with federal standards for radio frequency emissions. Within 6 months after the issuance of its operational report, the applicant shall submit a project implementation report that provides cumulative field measurements of radio frequency emission of all antennas installed at the subject site and compares the results with

established federal standards. Said reports shall be subject to review and approval of the city for consistency with federal standards. If on review, the city finds that the WCF does not meet federal standards, the city may revoke or modify this Conditional Use permit.

2. The applicant shall ensure that the WCF will not cause interference with the reception of area television or radio broadcasts. If, on review, the City finds that the WCF interferes with such reception, and such interference is not cured within 60 days, the city may revoke the approval or modify an issued Conditional Use permit.

3. At the time of the application and at all other times, the applicant shall supply information as to the number of channels capable of being employed at the site, their individual and combined potential capacities and all other information requested by the city.

7.2.412.04 Wireless Communication Facilities adjacent historic properties

A. A Conditional Use permit shall be required to place a wireless communication facility 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 tower and accessory structures 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.

7.2.413 SMALL WIND ENERGY SYSTEMS *(Added ORD 607, effective 3/6/11)*

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, Planning Commission 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, 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 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 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.

House Bill 3516

Sponsored by Representatives CANNON, BAILEY, J SMITH; Representatives BOONE, GARRARD, GARRETT, KRIEGER, MATTHEWS, MCLANE, Senators BOQUIST, DINGFELDER, GEORGE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Authorizes installation and use of solar photovoltaic energy system on residential or commercial structure in zones in which residential or commercial structures are authorized. Requires local government reviewing permit application to make ministerial decision approving or denying permit. Prevents local government from collecting land use permit application fee for application to install solar photovoltaic energy system. Limits certain land use reviews of site.

A BILL FOR AN ACT

1 Relating to solar energy generation by retail electricity consumers.

2 Be It Enacted by the People of the State of Oregon:

3 SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 757.360 to
4 757.380.

5 SECTION 2. (1) The installation and use on or adjacent to a residential structure of a
6 solar photovoltaic energy system that is a residential qualifying system is an outright per-
7 mitted use in any zone in which residential structures are planned.

8 (2) The installation and use on or adjacent to a commercial structure of a solar
9 photovoltaic energy system that is a small commercial qualifying system is an outright per-
10 mitted use in any zone in which commercial structures are planned.

11 (3) If the installation of a qualifying system under this section can be accomplished
12 without causing the height or footprint of the residential or commercial structure to exceed
13 the maximum limits in the zone, approval of a permit application under ORS 215.402 to
14 215.438 or 227.160 to 227.186 is, notwithstanding the definitions of "permit" in ORS 215.402 and
15 227.160, a ministerial function. As part of the permit approval process, a city or county:

16 (a) May not charge a fee pursuant to ORS 215.416 or 227.175 for processing a permit;

17 (b) May not require extension surveys or site evaluations including, but not limited to,
18 vegetation surveys, contour maps and elevation drawings; and

19 (c) May charge building permit fees pursuant to ORS 455.020, 455.210 and 455.220,
20
21

ATTACHMENT B

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted
New sections are in boldfaced type.