

**ORDINANCE 647  
CITY OF DAYTON, OREGON**

**AN ORDINANCE AMENDING THE DAYTON LAND USE AND DEVELOPMENT CODE, CHAPTER 7 OF THE DAYTON MUNICIPAL CODE, SECTION 7.2.402, I, RELATED TO DELETING THE 1-SPACE PARKING REQUIREMENT FOR ACCESSORY DWELLING UNITS**

**WHEREAS**, the City Council desires to adopt the text amendments to Chapter 7, Section 7.2.402, I, Dayton Land Use and Development Code (DLUDC), that are detailed in Exhibit 1; and

**WHEREAS**, the City timely forwarded a copy of the proposed amendments to the Oregon Department of Land Conservation and Development; and

**WHEREAS**, the City noticed the changes to Chapter 7 as required under Section 7.3.204.03 of the DLUDC for the public hearings held before the Planning Commission and City Council, and

**WHEREAS**, a public hearing was held before the Planning Commission on March 12, 2020 where the Commission considered the proposed text amendments to Section 7.2.402, I, Accessory Dwelling Unit Parking Standard, of the DLUDC; and

**WHEREAS**, the Planning Commission recommended the proposed text amendments be adopted by the City Council with a vote of 5 to 0; and

**WHEREAS**, the City Council conducted a public hearing on May 4, 2020 to consider the proposed amendments regarding the deletion of the 1 off-street parking space requirement for Accessory Dwelling Units.

**The City of Dayton ordains as follows:**

- Section 1.** The City Council hereby adopts the findings in the Staff Report dated May 4, 2020, attached as Exhibit 1.
- Section 2.** The City Council adopts the amendments to Chapter 7 of the DLUDC detailed in Exhibit 1 and set forth in their final form in Exhibit 2.
- Section 3.** This Ordinance shall become effective 30 days after adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Dayton on this 1st day of June, 2020.

Mode of Enactment:

Date of first reading: May 4, 2020 In full \_\_\_\_\_ or by title only X

Date of second reading: June 1, 2020 In full \_\_\_\_\_ or by title only X

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

X 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.

Final Vote:

**In Favor:** Collins, Holbrook, Marquez, Price, Sandoval-Perez and Wytoski

**Opposed:** Mackin

**Absent:** None

**Abstained:** None

Elizabeth Wytoski  
Elizabeth Wytoski, Mayor

6/3/2020  
Date of Signing

ATTESTED BY:

Patty Ringnalda  
Patty Ringnalda, City Recorder

6/11/20  
Date of Enactment

**Ordinance 647  
Exhibit 1**

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

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**STAFF REPORT**  
CITY COUNCIL – MAY 4, 2020

**REPORT DATE:** April 27, 2020

**FILE NUMBER:** LA 2020-01 (Legislative Amendment)

**APPLICANT:** City of Dayton

**REQUEST:** Amend the Dayton Land Use and Development Code, Accessory Dwellings Units, to Delete the Off-street Parking Requirement.

**PROPERTY:**

<u>Tax Lot</u>	<u>Size</u>	<u>Zoning</u>
Citywide	NA	Residential Zones, R-1, R-2, R-3, CR.

**ZONING:** Residential Zones, R-1, R-2, R-3, CR.

**SURROUNDING ZONING:** North: NA. South: NA. East: NA. West: NA.

**CURRENT USE:** NA

**CRITERIA:** Dayton Land Use and Development Code (LUDC)  
Section 7.3.112.03: Criteria to Amend Development Code Text

**ATTACHMENT:** Fair Housing Council of Oregon/Housing Land Advocates Comments.

**I. PURPOSE**

The purpose of this staff report is to provide the City Council with information related to the 2019 Legislature's HB 2001 which prohibits local governments from requiring off-street parking and owner occupancy for Accessory Dwelling Units (ADU).

The staff report provides background on HB 2001, lists the proposed change to the LUDC, includes a "mark-up" copy of the language to be changed and includes findings to support the proposed amendment.

**II. PROCESS**

The proposed amendments are a legislative change to the Dayton Land Use and Development Code (LUDC) and are processed as a legislative Type IV land use action. The highly prescriptive requirements of a quasi-judicial process do not apply to the legislative process, e.g., ex-parte contact is allowed. The LUDC Type IV process set forth in Section 7.3.203.01, Type IV Initiation, requires a Type IV process to be initiated by a majority of the City Council, a majority of the Planning Commission or by a recommendation by the City Manager subject to majority approval by Planning Commission or the City Council. At the Planning Commission's February 13, 2020 work session the Commission passed a motion confirming the City Manager's initiation of the amendment process.

### III. BACKGROUND

ORS 197.646 requires local governments to amend their comprehensive plan and/or zone code to meet newly enacted Statutes.

The 2019 Legislature passed House Bill 2001 wherein Section 7, among other things, prohibits cities of 2,500 or greater population to require off-street parking or owner occupancy for ADU's on all residential zoned property with a detached single family dwelling. In Oregon 105 cities are over 2,500 population. Dayton's estimated population was 2,740 as of 7/1/19 (Oregon Population Research Center).

The Bill requires the amended provisions to be effective by January 1, 2020. Where a city's amendments are not effective on January 1, 2020, a city cannot require the off-street parking and ownership requirements. Thus, if an ADU were proposed in Dayton, it would not be required to provide off-street parking nor would the owner be required to live in one of the units.

Section 7 of HB 2001 amended ORS 197.312(5) and (6) to read:

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single family dwellings the development of at least one accessory dwelling unit for each detached single family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection:

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "Reasonable local regulations relating to siting and design" does not include owner occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking. (emphasis added)

(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.

In 2018 the City amended the LUDC to amend the then existing ADU provisions (Ord. 642, effective July 2, 2018) to, among other requirements, provide 1 off-street parking space for an ADU. The City did not include a requirement that either the primary dwelling or the ADU be owner occupied. Due to HB 2001 the existing off-street parking requirement must be deleted from the LUDC.

#### IV. PROPOSED AMENDMENTS – AMENDMENTS LISTED

The LUDC is organized such that ADU's are shown as a permitted use in each residential zone and the ADU standards are in Section 7.2.4, Supplemental Standards For Special Uses, and the individual standards are in Subsections 7.2.402, A – I.

The following lists the proposed amendment to the LUDC. The only proposed amendment is to Subsection I.

1. 7.2.402, I, ADU Standards, Parking. Propose adding language stating that parking for an ADU is not required. Propose deleting the 1-space off-street parking requirement at 7.2.402, I. Propose clarifying that where a developer chooses to provide off-street parking, the existing parking standards in LUDC 17.2.203, Off-Street Parking and Loading, and in Subsection I, regarding access, be retained.

#### V. PROPOSED AMENDMENTS – MARK-UP VERSION

The following shows the current language in Section 7.2.402, A – I, Accessory Dwelling Unit, in Times New Roman font. The proposed amendments are shown in ~~strikeout~~ for language proposed to be deleted and in **bold italics** for language proposed to be added.

#### 7.2.4 SUPPLEMENTAL STANDARDS FOR SPECIAL USES

#### 7.2.402 ACCESSORY DWELLING UNIT

Where permitted as a special use, an accessory dwelling unit shall meet the following use and development standards: (Amended Effective 06/06/16, Ordinance 633)

A. Only one accessory dwelling unit is permitted per detached single-family dwelling, in association with a primary residence. (Added ORD 642-Effective 07/02/18)

B. Location. The accessory dwelling unit shall be located within the side or rear yard, but not in a side yard adjacent to a street. A detached ADU shall be physically separated from the primary residence by a minimum distance of 6 feet. A covered walkway, which contains no habitable space, may connect the two buildings without violation of the setback requirements. (Amended ORD 642-Effective 07/02/18)

C. Entrance. The entrance to an attached ADU shall not face the street on the same side as the entrance for the primary residence. (Added ORD 642-Effective 07/02/18)

D. Design. All detached ADU's shall meet the design requirements of Section 7.2.310: Single Family Dwelling Design Standards. Detached ADUs that are more than 15 feet in height shall meet the following standards for the exterior of the ADU: Exterior finish materials, roof pitch, trim, eaves, window orientation and dimension must be the same or visually match those of the primary dwelling OR must be made from wood, composite boards, vinyl or aluminum products composed in a shingle pattern, or in a horizontal clapboard or shiplap pattern with boards 6 inches or less in width. ADUs in design or historic overlays may be subject to additional design requirements. ADUs in the Historic Property Overlay Zone (Section 7.2.112) that can be seen

from the street must be approved through Historic Resource review. (Amended ORD 642-Effective 07/02/18)

E. Area. The accessory dwelling unit shall contain the lesser of 50% of the floor area of the primary residence or 750 square feet, unless the ADU is a conversion of an existing space, in which case the ADU can exceed this maximum requirement. (Amended ORD 642-Effective 07/02/18) Dayton Land Use and Development Code – Revised (07/02/18) 7.2.4-2

F. Setbacks. The ADU shall conform to the setback requirements of the primary residence in the zone in which it is located. A detached ADU located in a side yard shall be set back five (5) feet from the front building line of the primary residence. (Amended ORD 642-Effective 07/02/18)

G. Any legal nonconforming structure that doesn't meet current setback requirements is permitted to contain or be converted to an ADU, as long as the development does not increase the nonconformity of the structure. (Added ORD 642-Effective 07/02/18)

H. Height. The maximum height shall be 25 feet but in no case shall the height exceed the height of the primary residence.

I. Parking. ~~One (1) parking space,~~ ***Off-street parking is not required for an ADU. Where the developer of an ADU chooses to provide off-street parking for an ADU, in addition to the parking required for the primary residence, it shall be provided*** in conformance with the parking standards outlined in Section 7.2.303, ***Off-Street Parking and Loading*** ~~is required per ADU, in addition to the parking required for the primary residence.~~ No new access is permitted for an additional driveway for the ADU, unless the lot is located on a corner. An ADU on a corner lot may have one driveway per street frontage. Alley access for an ADU is permitted for lots located on an alley. (Added ORD 642-Effective 07/02/18)

END OF PROPOSED AMENDMENTS TO 7.2.402, ACCESSORY DWELLING UNIT.

## **Vi. APPLICABLE APPROVAL CRITERIA**

The Dayton Land Use and Development Code, Section 7.3.112.03, Criteria For Approval of Development Code text amendments.

### **7.3.112.03 CRITERIA FOR APPROVAL, DEVELOPMENT CODE TEXT AMENDMENTS**

#### **7.3.112.03:**

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

**1. *Traffic generation and circulation patterns;***

**FINDINGS:** Not applicable because the proposed amendment deletes the requirement to provide one off-street parking space for an ADU. Whether a parking space is off-street or

on-street will not affect traffic generation or circulation patterns. The current overall parking requirements allow residents to park on the street unless it is posted "No Parking." Once the amendment is adopted, "No Parking" can still be posted on a given public street.

**2. Demand for public facilities and services;**

**FINDINGS:** Not applicable because the proposed amendment does not affect public facilities and services.

**3. Level of park and recreation facilities;**

**FINDINGS:** Not applicable because the proposed amendment does not affect park and recreation facilities.

**4. Economic activities;**

**FINDINGS:** Not applicable because the proposed amendment does not affect economic activities.

**5. Protection and use of natural resources;**

**FINDINGS:** Not applicable because the proposed amendment does not affect natural resources.

**6. Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.**

**FINDINGS:** Not applicable because the proposed amendment does not affect adopted special purpose plans or programs such as public facilities improvements.

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

**FINDINGS:** The product of the proposed amendment (deleting the requirement to provide 1 off-street parking space for an ADU) is needed to ensure the Dayton Land Use and Development Code is clear and is consistent with HB 2001's (ORS 197.312) prohibition of off-street parking for an ADU.

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

**FINDINGS:** The Statewide Planning Goals follow.

**Goal 1, Citizen Involvement:** The Planning Commission held a public work session regarding the proposed amendment on February 13, 2020 at the Planning Commission's usual monthly meeting. The Planning Commission held a public hearing on March 12, 2020. The City Council's April meetings were canceled due to Covid-19. The hearing is scheduled on May 4, 2020 to receive comments from the

public. The hearings are consistent with the Development Code's procedures for legislative amendments to the Development Code. Goal 1 is met.

Goal 2, Land Use Planning: Goal 2 supports clear and thorough local procedures. The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged LUDC for processing legislative amendments to the LUDC. ORS 197.646 requires local governments to amend their comprehensive plan and/or zone code to meet newly enacted Statutes. House Bill 2001 from the 2019 Legislative Session (applicable language set forth in ORS 197.312(5)) prohibits local governments from requiring off-street parking for an ADU, thus the City is deleting the off-street parking requirement for ADU's from the Dayton Land Use and Development Code to be consistent with ORS 197.312(5). The proposed amendment is discussed in the staff report which shows the language to be added and deleted. Goal 2 is met.

Goal 3, Agricultural Lands and Goal 4, Forest lands: Goals 3 and 4 are not applicable. The proposal does not involve or affect farm or forest lands.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources. Goal 5 is not applicable. The proposal amends the City's historic resources regulations in accordance with Goal 5 requirements.

Goal 6, Air, Water and Land Resource Quality: Goal 6 is not applicable. The proposal does not address Goal 6 resources.

Goal 7, Natural Hazards: Goal 7 is not applicable. The proposal does not address Goal 7 resources.

Goal 8, Recreation: Goal 8 is not applicable. The proposal does not address recreational needs.

Goal 9, Economic Development: Goal 9 is not applicable. The proposal does not address Goal 9 issues.

Goal 10, Housing: Goal 10 is applicable because ADU's are a type of "needed housing" per ORS 197. The proposed amendment would delete the requirement for off-street parking for an ADU. The deletion of the off-street parking requirement would marginally lower the cost of creating an ADU and make it more affordable at price and rent levels available to all Oregonians. The Fair Housing Council of Oregon / Housing Land Advocates submitted March 6, 2020 comments on Goal 10 findings (Attachment 1).

The purpose of Statewide Planning Goal 10 is to ensure the opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process to reduce housing costs.

OAR 660-008-0010 provides standards for compliance with Goal 10, Housing, to implement ORS 197.303 through 197.307:

*OAR 660-008-0010 Allocation of Buildable Land*

*The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.*



The Dayton residential land and housing needs analysis was adopted as part of the City's initial acknowledgement in 1979. The Housing Needs Analysis (HNA) and Buildable Lands Inventory (BLI) have not been updated since 1979.

Per ORS and LUDC definition, ADUs are only permitted in conjunction with a detached single-family dwelling, therefore, they will not utilize vacant land. ADU's provide an infill opportunity that was not accounted for in the Buildable Land Inventory. Therefore, removing the requirements for off-street parking (making it easier and less expensive to construct an ADU) in the Single Family Residential (R-1), Limited Density Residential (R-2), Medium Density Residential (R-3) and Commercial Residential (CR) Zones will not have an effect of reducing the buildable land in those zoning districts, and will have an effect of increasing the City's ability to provide housing to accommodate the projected population forecast.

The proposed Development Code amendments have no detrimental impact on the Buildable Land Inventory and they have the potential to allow more housing within the developed areas of the city, particularly the smaller rental units that meet the projected need of smaller households who need affordable options. The density of residentially zoned lands will not be reduced, and instead it will be increased whenever an ADU is constructed that would otherwise not be constructed due to the parking requirements which the proposed amendments will delete. It is not known at this time how many ADU's may be constructed over time and, therefore, it is not possible to know how much the built density in the residential zones will increase. With the proposed amendment, the density will not decrease it can only remain the same if no ADU's are constructed or increase if one or more ADU's are constructed. The proposed Development Code amendments comply with OAR 660-008-0010. Goal 10 is met.

Goal 11, Public Facilities and Services: Goal 11 is not applicable. The proposal does not address Goal 11 issues.

Goal 12, Transportation: Goal 12 is not applicable. The proposal does not address Goal 12 issues.

Goal 13, Energy Conservation: Goal 13 is not applicable. The proposal does not address Goal 13 resources.

Goal 14, Urbanization: Goal 14 is not applicable. The proposal does not address Goal 14 issues. The proposed amendments to the Development Code are consistent with the Statewide Goals 1, 2 and 10, and the remaining Goals are not applicable because the amendments do not affect issues addressed by Goals 3 – 9 and 11 - 14.

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

**1. It corrects identified error(s) in the provisions of the plan.**

**FINDINGS:** Not applicable because the proposed amendment does not correct an identified error.

**2. It represents a logical implementation of the plan.**

**FINDINGS:** Not applicable because the proposed amendments are measured by Subsection D, 1, above.

**3. It is mandated by changes in federal, state, or local law.**

**FINDINGS:** The proposed amendment is mandated by HB 2001, Section 7, as set forth in Section III, above (p.2) (ORS 197.312). As indicated in the explanation for the proposed amendment, the amendment will bring the LUDC into conformance with HB 2001 (ORS 197.312). ORS 197.646 requires local governments to amend their comprehensive plan and/or zone code to meet newly enacted Statutes. Deleting the 1-space off-street parking requirement for an ADU will bring the LUDC into conformance with HB 2001 (ORS 197.312).

**4. It is otherwise deemed by the council to be desirable, appropriate, and proper.**

**FINDINGS:** Not applicable because the proposed amendment is mandated by HB 2001, Section 7, as set forth in Section III, above (p.2) (ORS 197.312). above.

**VII. PLANNING COMMISSION RECOMMENDATION**

The Planning Commission conducted a public hearing on March 12 and after closing the public hearing, unanimously passed a motion recommending the City Council approve the proposed amendment.

**VIII. STAFF RECOMMENDATION**

Based upon the staff report and the above findings, staff recommends the City Council pass a motion adopting the staff report and the findings as shown above and approving the proposed amendment.

**IX. CITY COUNCIL OPTIONS – Sample Motions**

A. Option 1: Adopt As presented.

Motion: I move the City Council adopt the staff report with the findings and approve the proposed amendment.

B. Option 2: Adopt with changes.

Motion: I move the City Council adopt the staff report with the findings as changed by the Council...state the changes...and approve the proposed amendment.

C. Option 3: Do not adopt.

Motion: I move the City Council deny the proposed amendment because...and state the reasons.

D. Option 4: Continue the Hearing.

Motion: I move the City Council continue the public hearing to a date/time/location certain for staff to provide more information on the following issues...and state the issues.

Ord. 647  
Exhibit 2

AMENDMENTS, FINAL LANGUAGE AS AMENDED

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