

**ORDINANCE NO. 639
CITY OF DAYTON**

AN ORDINANCE AMENDING THE DAYTON LAND USE AND DEVELOPMENT CODE TO PERMIT ACCESSORY DWELLING UNITS AS SPECIAL PERMITTED USES IN THE COMMERCIAL RESIDENTIAL (CR) ZONE PER THE SUPPLEMENTAL STANDARDS FOUND IN SECTION 7.2.402 OF THE DAYTON LAND USE AND DEVELOPMENT CODE.

WHEREAS, the City of Dayton conducted a review of the Dayton Land Use and Development Code; and

WHEREAS, on January 12, 2017, the Dayton Planning Commission conducted a properly noticed public hearing concerning proposed amendments to the Dayton Land Use and Development Code, at which time interested parties and the general public had an opportunity to be heard; and

WHEREAS, on January 17, 2017, the Dayton City Council conducted a properly noticed public hearing, at which time interested parties and the general public had an opportunity to be heard, to review all matters presented regarding proposed amendments to the Dayton Land Use and Development Code; reviewed the record and recommendations of the Planning Commission; and, adopted findings.

NOW THEREFORE, THE CITY OF DAYTON DOES ORDAIN AS FOLLOWS:

Section 1. The City of Dayton hereby adopts the findings in support of the proposed Dayton Land Use and Development Code amendments contained in the Staff Report attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 2. The Dayton Land Use and Development Code, Subchapter 7.2.105.03, is hereby amended as contained in Exhibit "B", incorporated herein by this reference.

Section 3. All unamended provisions of Dayton Land Use and Development Code shall remain in full force and effect.

Section 4. This ordinance shall become effective thirty days after final passage and its signature by the Mayor.

First Reading to the Council this 17th day of January, 2017

Second Reading to the Council this 6th day of February, 2017

Adopted this 6th day of February.

Signed by the Mayor this

10th day of February


Elizabeth Wytoski, Mayor

ATTEST:


Rochelle Roaden, City Recorder

CITY OF DAYTON
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**CITY COUNCIL
STAFF REPORT**

HEARING DATE: January 17, 2017
REPORT DATE: December 28, 2016
FILE NUMBER: LUCA-2016-02
APPLICANT: City of Dayton
REQUEST: Amendment to the Dayton Land Use and Development Code (DLUDC):
Section 7.2.105.3 Accessory Dwelling Units
ATTACHMENTS: Exhibit A – Strike and Underline Accessory Dwelling Units Amendment
CRITERIA: **Dayton Land Use and Development Code (DLUDC)**
Section 7.3.112 Text Amendments

I. BACKGROUND

An amendment to the Dayton Land Use and Development Codes is a Type IV (Legislative) action. A Type IV action requires a recommendation from the Planning Commission to the City Council, which makes the final decision. The Dayton Planning Commission will consider the amendment during a public hearing scheduled for January 12, 2017 and make a recommendation to City Council.

II. SUMMARY OF PROPOSED AMENDMENT

The term accessory dwelling unit is defined in Section 7.1.200.03 of the DLUDC as, “a detached dwelling unit with its own independent living facilities, the use of which is residential and subordinate to the primary dwelling located on the same parcel or lot.”

The purpose of the amendment is to permit accessory dwelling units as special permitted uses in the Commercial Residential (CR) zone per the supplemental standards found in Section 7.2.402 of the DLUDC.

The City Council considered the matter at their November 7, 2016 meeting and initiated an amendment to the DLUDC regarding accessory dwelling units. Staff has drafted a proposed amendment to the DLUDC which reflect City Council priorities regarding accessory dwellings in the CR zone (see Exhibit A).

STAFF FINDINGS

7.3.112 TEXT AMENDMENTS

7.3.112.03 Criteria for Approval

Amendments to the Comprehensive Plan or Development Code text shall be approved if the 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;*
 6. *Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.*

FINDING: Staff finds that the proposed amendment will impact the six factors listed above as follows:

1. Traffic generation and circulation patterns: Estimated trip generation for an accessory dwelling is not anticipated to exceed that of other permitted residential and commercial uses in the CR zone.
2. Demand for public facilities and services: Any proposal for development would need to meet engineering and Public Works standards for integration with public facilities.
3. Level of park and recreation facilities: Any proposal for development under the proposed amendment would be subject to system development charges.
4. Economic activities: Any development under the proposed amendment would increase the improvement value of subject tax lots.
5. Protection and use of natural resources: If permitted by special use permit, accessory dwelling units would be sited in existing urban growth areas which will conserve resource land by promoting infill development.
6. Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements: Permitting accessory dwelling by special use permit will help to achieve Dayton Forward Goal 11: Housing which has the following guidelines; *integrate higher density housing near and within the retail core as way of supporting activity and commercial services; concentrate on providing higher density, infill housing between the business core and the riverfront.*

Staff finds that the proposed amendment is not determined to negatively impact traffic, increase demand on public facilities and service, change the level of needed park/recreational facilities, or diminish protection and use of natural resources.

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

FINDING: The 2008 Planning Atlas and Comprehensive Plan states that a total of 393 new residential units must be constructed to meet 2028 housing demands. 252 of these needed housing units are single family housing types. Permitting accessory dwelling units in the CR zone by special use permit would increase the land area that can accommodate needed housing units. The supplemental standards for special uses states that the area of accessory dwelling units shall contain the lesser of 25% of the floor area of the primary residence or 750 square feet. Smaller accessory dwelling units will increase the housing mix in the City.

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

FINDING: The State has adopted 19 goals for state and local land use decisions. The proposed amendment complies with the Goals as described below:

Goal 1 Citizen Involvement: Requires that the City develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. Agency and public notice are provided as required by law. Public hearings by the Planning Commission and City Council will be held.

Goal 2 Land Use Planning: Requires that the City establish a land use planning process and policy framework as a basis for all decisions related to the use of land and to assure an adequate factual basis for such decisions. The acknowledged Dayton Land Use and Development Code contains procedures and requirements for facts and findings which are carried out herein.

Goal 3 Agricultural Lands & Goal 4 Forest Lands: Goals 3 and 4 are not applicable. The proposal does not affect consistency with the goal.

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces: The proposal does not affect consistency with the goal.

Goal 6 Air, Water and Land Resource Quality: The proposal does not affect consistency with the goal.

Goal 7 Natural Hazards: The proposal does not affect consistency with the goal.

Goal 8 Recreation: The proposal does not affect consistency with the goal.

Goal 9 Economic Development: The proposal does not affect consistency with the goal.

Goal 10 Housing: The proposed amendment to permit accessory dwellings as a special permitted use in the CR Zone will increase the land area that can accommodate needed housing units.

Goal 11 Public Facilities and Services: The proposed amendment to permit accessory dwellings as a special permitted use in the CR Zone will encourage development to take place in areas already serviced by public infrastructure.

Goal 12 Transportation: Housing options in closer proximity to commercial and recreational designations will encourage use of non-motorized modes of transportation in the commercial (downtown) area.

Goal 13 Energy Conservation: The proposal does not affect consistency with the goal.

Goal 14 Urbanization: The proposal does not affect consistency with the goal.

Goals 15-19 do not apply within the City of Dayton.

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.*
- 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: As described above, Staff finds that the proposed amendment (Exhibit A) will help achieve Dayton Forward Goal 11: Housing which has the following guidelines; *integrate higher density housing near and within the retail core as way of supporting activity and commercial services; concentrate on providing higher density, infill housing between the business core and the riverfront.*

IV. CONCLUSION & STAFF RECOMMENDATION

The City Council makes the final local decision on the proposed amendment and may adopt such via ordinance. Staff recommends that the City Council adopt the findings in the staff report and approve the proposed amendment to the DLUDC as shown in Exhibit A.

V. CITY COUNCIL OPTIONS

The City Council has the following options regarding the proposed DLUDC amendment. Based upon the findings and conclusion above, Staff recommends that the City Council make a motion reflecting Option #1, below.

1. Approve the Land Use and Development Code amendment and adopt the findings contained in the staff report.
2. Approve modified Land Use and Development Code amendment with amended findings.
3. Deny the Land Use and Development Code amendment with amended findings and conclusions addressing reasons why the proposal fails to comply with the applicable decision criteria.
4. Continue the hearing, to a date and time certain, if additional information is needed to determine whether applicable standards and criteria are sufficiently addressed.

EXHIBIT A – “STRIKE AND BOLD” AMENDMENTS TO THE DAYTON LAND USE AND DEVELOPMENT CODE

Proposed Amendments

The following shows language to be added in underline and language to be deleted in ~~strikeout~~.

7.2.105 COMMERCIAL RESIDENTIAL ZONE (CR)

7.2.105.1 Purpose

To provide areas for the development of a mixture of single family, multi-family, and manufactured homes, and limited retail and service commercial uses.

7.2.105.2 Permitted Uses. *(Amended ORD 584, Effective 12/3/07)*

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

- A. The following residential uses are permitted in the CR zone:
1. Single family dwellings, detached
 2. Duplexes.
 3. Multi-family dwellings.
 4. Residential care homes and facilities
 5. Child day care service, including family day care provider, for 12 or fewer children.
 6. Assisted living centers, nursing homes and similar institutions. These facilities are subject to the development provisions for multi-family residential development. *(Amended ORD 584, Effective 12/3/07)*
- B. The following commercial uses are permitted:
1. Business offices including, but not limited to, insurance, real estate and title insurance; credit agencies, brokerages, loan companies, and investment companies; television and radio broadcast studios (excepting a broadcast antennae or dish), and, miscellaneous offices such as detective agencies, drafting services or contractors offices.
 2. Professional offices and clinics including, but not limited to, medical, dental, engineering and legal services, but excluding veterinary clinics.
 3. Banks and other financial institutions.
 4. Retail sales outlet including, but not limited to, food stores, pharmacy, furniture store, artist supplies, hobby or photography store, florist, hardware store, appliance or stereo equipment store, pet shop, sporting goods, department store, clothing, jewelry, gift, and other types retail activities but excluding liquor stores.

EXHIBIT A – “STRIKE AND BOLD” AMENDMENTS TO THE DAYTON LAND USE AND DEVELOPMENT CODE

5. Restaurants, bakeries, coffee and snack shops but excluding taverns, bars and similar establishments.
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.

7.2.105.3 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. Accessory dwelling units (Section 7.2.402).
 - ~~2.~~ Attached dwelling units (Section 7.2.403).
 - ~~2.3.~~ Manufactured homes on individual lots (Section 7.2.404).
 - ~~3.4.~~ Home occupations (Section 7.2.406).
 - ~~4.5.~~ Owner occupied short-term rentals (Section 7.2.417). *(Amended Effective 06/06/16, Ordinance 633)*
 - ~~5.6.~~ Short-term rentals (Section 7.2.417). *(Amended Effective 06/06/16, Ordinance 633)*
- E. Small wind energy systems, subject to the provisions in Section 7.2.413. *(Amended ORD 608, Effective 10/06/1)*
- F. Drive-through windows and walk-up windows as part of a permitted use, subject to the provisions in Section 7.2.414 and 7.2.415 respectively. *(Amended*

EXHIBIT A – “STRIKE AND BOLD” AMENDMENTS TO THE DAYTON LAND USE AND DEVELOPMENT CODE

ORD 610, Effective 4/2/12)

7.2.105.4 Conditional Uses *(Amended ORD 589, Effective 4/2/09)*

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.
- E. Park and Ride Lot: Parking spaces cannot count as required parking or be used for vehicle storage. *(Amended ORD 589, Effective 4/2/09)*
- F. Commercial activities which do not comply with the provisions in Section 7.2.105.02.B. *(Amended ORD 610, Effective 4/2/12)*
- G. Wineries with retail sales. *(Amended ORD 583, Effective 9/6/07)*

7.2.105.5 Dimensional Standards

The following dimensional standards shall be the minimum requirements for all development in the CR District.

- A. Minimum Lot Area and Density Standards
 - 1. Single-family dwelling, detached 5,000 square feet
Single-family dwelling, attached 3,500 square feet
 - 2. Duplex 7,000 square feet
 - 3. Multi-family dwelling 9,000 square feet
(Multi-family development must comply with the density standards in Section 7.2.105.06).
 - 4. Commercial Use 5,000 square feet
 - 5. Mixed commercial and residential: Shall comply with the minimum for multi-family development.
 - 6. Public utility structures: Lot area shall be adequate to contain all proposed structures within the required yard setbacks.
- B. Minimum Yard Setback Requirements
 - 1. Residential Uses
 - a. Front Yard 15 feet

EXHIBIT A – “STRIKE AND BOLD” AMENDMENTS TO THE DAYTON LAND USE AND DEVELOPMENT CODE

- b. Garage Setback 20 feet
 - c. Rear Yard 10 feet
 - d. Side Yard (interior) 5 feet
 - e. Side Yard (adjacent to street) 15 feet
 - 2. Commercial Uses
 - a. Front Yard None
 - b. Rear Yard
 - i. Abutting a non-residential district None
 - ii. Abutting a residential district 10 feet
 - c. Side Yard
 - i. Abutting a non-residential district None
 - ii. Abutting a residential district 10 feet
 - 3. Mixed Commercial and residential
 - a. Front Yard 5 feet
 - b. Rear Yard
 - i. Abutting a non-residential district 5 feet
 - ii. Abutting a residential district 10 feet
 - c. Side Yard
 - i. Abutting a non-residential district 5 feet
 - ii. Abutting a residential district 10 feet
 - 4. Public
 - a. Front Yard 15 feet
 - b. Garage setback 20 feet
 - c. Rear Yard 10 feet
 - d. Side Yard (interior) 5 feet
 - e. Side Yard (adjacent to street) 15 feet
 - C. Maximum Structure Height
 - 1. Principal Structure 30 feet
 - 2. Accessory Structure 20 feet
- 7.2.105.6 Development Standards
- A. Use Restrictions. The following use restrictions shall apply:
 - 1. No permitted, special permitted or conditionally permitted use shall in any way involve any of the slaughter, rendering or processing of animals. The processing of grains, fruits, vegetables, or dairy products for breads, wines, jams, cheeses and similar products may

EXHIBIT A – “STRIKE AND BOLD” AMENDMENTS TO THE DAYTON LAND USE AND DEVELOPMENT CODE

be allowed as part of a permitted or conditionally permitted commercial business. (*Amended ORD 583, Effective 9/6/07*)

- B. Commercial Uses. Commercial uses in the CR zone shall comply with the following additional standards: (*Amended ORD 630, Effective 12/2/15*)
1. All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:
 - a) Off-street parking and loading.
 - b) Temporary display and sales of merchandise: provided it does not interfere with pedestrian or automobile circulation, or areas of a permitted drive-through window or walk-up window.
 - c) Outdoor seating for a permitted eating and drinking establishment, subject to screening and buffering provisions in Section 7.2.306.04. The greater of 12 or 75 percent of indoor seating capacity of the establishment is allowed for outdoor seating. (*Added ORD 630, Effective 12/2/15*)
 2. The maximum lot size for any commercial use shall be one acre.
 3. Any new commercial structure shall maintain a residential appearance. Metal buildings, pole barns and similar structures are prohibited within the CR zone.
 4. Commercial uses shall not engage in the manufacturing, processing, assembly, or compounding of projects other than those clearly incidental to the business conducted on the premises.
 5. The commercial use shall have a maximum floor area of 2,500 square feet per lot.
 6. Any outside storage maintained in the CR Zone shall be enclosed by a 6 foot sight obscuring fence or a hedge row not less than 3 feet high and capable of attaining a height of 6 feet.
- C. Mixed Commercial and Residential Uses. Development of mixed commercial and residential uses shall be subject to the provisions in item B., above.
- D. Unless otherwise exempted, all development in the CR Zone shall comply with the applicable provisions of this Code. The following references additional development requirements:
1. Off-street parking. Parking shall be as specified in Section 7.2.303.
 2. Yards and Lots. Yards and lots shall conform to the standards of Section 7.2.308.
 3. Subdivisions and Partitions. Land divisions shall be reviewed in accordance with the provisions of Section 7.2.307.
 4. Site Development Review: Multi-family and/or commercial uses within the CR Zone shall be subject to the Site Development Review requirements and procedures in Section 7.3.1. In addition, any conversion of an existing residence which includes a commercial

EXHIBIT A – “STRIKE AND BOLD” AMENDMENTS TO THE DAYTON LAND USE AND DEVELOPMENT CODE

use shall require a site development review.

5. Lot Coverage: The maximum coverage allowed for buildings, accessory structures and paved parking shall be as follows:
 - a. Residential 73%
 - b. Commercial 85%
 - c. Mixed Residential and Commercial 80%
6. Landscaping: All required yards shall be landscaped. Landscaped areas shall be landscaped as provided in Section 7.2.306 and shall comply with the following coverage requirements:
 - a. Residential 25%
 - b. Commercial 15%
 - c. Mixed Residential and Commercial 20%

Multiple family developments shall comply with provisions in Section 7.2.306.06. (*Added ORD 530, effective 7/4/01*)