

**ORDINANCE 630
CITY OF DAYTON, OREGON**

An Ordinance Amending Chapter 7 – Dayton Land Use and Development Code to Make Specific Changes to Section 7.2.105 Commercial Residential Zone and Section 7.2.106 Commercial Zone regarding outdoor eating and cooking.

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

WHEREAS, the Planning Commission has considered text amendments to Chapter 7 – Dayton Land Use and Development Code (DLUDC) pursuant to DLUDC Section 7.3.112 to make changes to statutes regarding outdoor eating and cooking in the Commercial Residential Zone and Commercial Zone; and

WHEREAS, a public hearing was held before the Planning Commission on September 10, 2015; 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 outdoor eating and cooking provisions on October 19, 2015; and

WHEREAS, on October 19, 2015, the City Council considered the information provided by staff and deliberated on the proposed action.

The City of Dayton ordains as follows:

- Section 1.** The City Council hereby adopts Ordinance 630 and the findings in the Staff Report dated September 23, 2015 attached as Exhibit 1; and
- Section 2.** The City Council adopts the amendments to Chapter 7 of the DLUDC attached as Exhibit A and incorporated by reference herein; and
- Section 3.** This Ordinance shall become effective 30 days after adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Dayton on this 2nd day of November , 2015.

Mode of Enactment:

Date of first reading: October 19, 2015 by title only.

Date of second reading: November 2, 2015 by title only.

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

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

Final Vote:

In Favor: Bixler, Collins, Frank, Marquez, Price, Taylor, Wytoski

Opposed: None

Absent: None

Abstained: None



Mayor

 11/4/15
Date of Signing

ATTESTED BY:



Rochelle Roaden,
City Recorder

 11/2/2015
Date of Enactment

CITY OF DAYTON
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STAFF REPORT: CITY COUNCIL

DATE: September 23, 2015
FILE NUMBER: LUCA-2015-01
HEARING DATE: October 19, 2015
APPLICANT: City of Dayton
REQUEST: Amendment to the Dayton Land Use and Development Code (LUDC) to allow outdoor seating for permitted eating and drinking establishments in the Commercial Residential (CR) Zone, and outdoor cooking for permitted eating and drinking establishments in the Commercial (C) Zone.
CRITERIA: **Dayton Land Use and Development Code (LUDC)**
Section 7.3.112 Text Amendments
ATTACHMENTS: Exhibit A: Strike and Underline Amendments to the LUDC

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. On September 10, 2015, the Dayton Planning Commission voted unanimously to recommend approval of the proposed amendments to the City Council. The City Council is the final decision maker at the local level.

II. SUMMARY OF PROPOSED AMENDMENT

The purpose of the proposed amendments is to expand the types of outdoor activities that are permitted in association with eating and drinking establishments, and clarify the limitations on those uses in the Commercial and Commercial Residential Zones. The City of Dayton has a growing restaurant industry, and these proposed amendments are designed to enhance the vibrancy of this industry and the City itself while mitigating potential impacts to surrounding uses.

The proposed amendments would allow a permitted eating or drinking establishment to set up a certain amount of permanent outdoor seating on private property a back patio or courtyard. The proposed amendments would not permit a restaurant or bar to set up tables on the sidewalk in the public right-of-way (ROW). Outdoor eating (and/or drinking) in the public ROW may be allowed by the City, but under a separate process not explicitly affected by these amendments. The proposed amendments, shown in detail in Exhibit A, are summarized below.

Proposed amendment to Section 7.2.105.06 Development Standards (Commercial Residential Zone)

B. *Commercial Uses. Commercial uses in the CR zone shall comply with the following additional standards:*

1. *All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:*

*(***)*

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 seats or 75 percent of the indoor seating capacity of the establishment is allowed for outdoor seating.*

CONCLUSION: The amendment allows outdoor seating for eating and drinking establishments, uses already permitted in the zone, subject to screening and buffering provisions which will minimize conflicts with surrounding uses (i.e. residential uses). The maximum amount of outdoor seating is set at 12 seats or 75% the indoor capacity, whichever is greater.

Proposed amendment to Section 7.2.106.06 Development Standards (Commercial Zone)

2. *All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:*

*(***)*

d. *Outdoor cooking and seating for a permitted eating and drinking establishment, subject to screening and buffering provisions in Section 7.2.306.04. The greater of 12 seats or 75 percent of the indoor seating capacity of the establishment is allowed for outdoor seating.*

CONCLUSION: The amendment allows outdoor cooking for eating and drinking establishments subject to screening and buffering provisions which will minimize conflicts with surrounding uses. The maximum amount of outdoor seating, which is already allowed, is set at 12 seats or 75% the indoor capacity, whichever is greater.

III. 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: Of the six factors listed above, Staff finds that the proposed amendments will only impact two, addressed below:

4. Economic activities: As stated above, the City of Dayton has a growing restaurant/hospitality industry, and is situated to capture a growing share of the surrounding wine industry tourism. However, it is also important that Dayton maintain its character and identity, and that existing residential uses are protected through mitigation measures such as screening and buffering.

6. Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements: The Dayton Planning Atlas and Comprehensive Plan makes multiple references to strengthening the existing downtown and attracting customers to it. Furthermore, the Economy section lists the following policy: *The City shall encourage, and establish regulations supporting, the location of wineries and their attendant businesses in the community.*

The restaurant industry and wine industry are closely related, especially in Oregon's wine country. Wineries and restaurants are permitted uses in Dayton's Commercial Zone, and restaurants and wine retail are permitted in the Commercial Residential Zone. The majority of land zoned Commercial and Commercial Residential is located in downtown (with smaller pockets of Commercial east along Ferry Street). The proposed amendment expands the permitted outdoor activities associated with eating and drinking establishments in these zones, which will help cultivate a more vibrant downtown during the warmer months. Allowing eating and drinking establishments to expand their seating into the outdoors also enables them to accommodate more customers during peak tourist season.

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

FINDING: Staff has received multiple inquiries about outdoor cooking and seating related to permitted eating and drinking establishments during the past year. Creating better definition to the scope of permitted outdoor activities adds needed certainty to developers, business owners, and neighbors.

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. A public hearing by the Planning Commission was held on September 10, 2015. The City Council is scheduled to hold a public hearing on the proposed amendments on October 19, 2015.

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 proposed amendments support economic development and the applicable policies in the acknowledged Planning Atlas and Comprehensive Plan as discussed above.

Goal 10 Housing: The proposal does not affect consistency with the goal.

Goal 11 Public Facilities and Services: The proposal does not affect consistency with the goal.

Goal 12 Transportation: The proposal does not affect consistency with the goal.

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 represents a logical implementation of Economy Section, Policy 4: *The City shall encourage, and establish regulations supporting, the location of wineries and their attendant businesses in the community.*

IV. CONCLUSION & STAFF RECOMMENDATION

Staff concludes that the proposed amendments comply with the applicable decision criteria. Staff recommends that the City Council adopt the findings in the staff report and approve the proposed amendments, as shown in Exhibit A, to the Dayton Land Use and Development Code. The City Council makes the final decision on the proposed amendments and may adopt such via ordinance.

V. CITY COUNCIL OPTIONS

The City Council has the following options regarding the proposed Land Use and Development Code amendments. Based upon the findings and conclusion above, Staff recommends that the City Council make a motion reflecting Option #1.

1. Approve the Land Use and Development Code amendments and adopt the findings contained in the staff report.
2. Approve the Land Use and Development Code amendments with amended findings.
3. Approve modified Land Use and Development Code amendments with amended findings.
4. Deny/reject the Land Use and Development Code amendments.
5. 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 Underline” Amendments to the LUDC

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)

7.2.105.06 Development Standards *(Amended ORD 583, Effective 9/6/07)*

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

~~2. All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:~~

~~a. Off street parking and loading.~~

~~b. 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. *(Amended ORD 610 effective 4/2/12)*~~

B. Commercial Uses. Commercial uses in the CR zone shall comply with the following additional standards:

1. All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:~~The activity shall be conducted wholly within an enclosed structure with the exception of a business with a permitted drive through window or walk up window. *(Amended ORD 610 effective 4/2/12)*~~

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 seats or 75 percent of the indoor seating capacity of the establishment is allowed for outdoor seating.

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.

EXHIBIT A – “Strike and Underline” Amendments to the LUDC

4. Commercial uses shall not engage in the manufacturing, processing, assembly or compounding of products 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 space 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.

7.2.106 COMMERCIAL (C)

7.2.106.06 Development Standards

- A. Development Exemptions: Commercial property located in the Central Business Area shall be subject to the requirements in Section 7.2.111.
- B. Use Restrictions. The following use restrictions shall apply:
 1. No permitted, special permitted or conditionally permitted use shall in any way involve any of the slaughter, rendering or processing of animals. The processing of grains, fruits, vegetables, or dairy products for breads, wines, jams, cheeses and similar products may be allowed as part of a commercial business or small-scale manufacturing where permitted in the zone. *(Amended ORS 583, Effective 9/6/07)*
 2. All business, service, processing or merchandise displays shall be conducted wholly within an enclosed building, except for the following:
 - a. Off-street parking and loading.
 - b. Walk-up and drive-through windows as part of a permitted use with the window meeting the required standards of Sections 7.2.414 and 7.2.415 respectively. *(Amended ORD 610 effective 4/2/12)*
 - c. Temporary display and sales of merchandise; provided it does not interfere with pedestrian or automobile circulation, or areas used for an approved drive-through or walk-up window. *(Amended ORD 610 effective 4/2/12)*
 - d. Outdoor cooking and seating for a permitted eating and drinking places establishment, subject to screening and buffering provisions in Section 7.2.306.04. The greater of 12 seats or 75 percent of the indoor seating capacity of the establishment is allowed for outdoor seating.
 - e. Outdoor display customary to a business (e.g. auto sales).

EXHIBIT A – “Strike and Underline” Amendments to the LUDC

7.2.306 SITE AND LANDSCAPING DESIGN

7.2.306.04 Screening and Buffering

- A. Screening. Screening shall be used to eliminate or reduce the visual impacts of the following uses:
1. Commercial and industrial uses when abutting residential uses.
 2. Industrial uses when abutting commercial uses.
 3. Service areas and facilities, including garbage and waste disposal containers, recycling bins, and loading areas.
 4. Outdoor storage areas.
 5. Parking areas for 20 or more vehicles for multi- family developments, or 30 or more vehicles for commercial or industrial uses.
 6. At and above-grade electrical and mechanical equipment, such as transformers, heat pumps, and air conditioners.
- B. Screening Methods. Screening may be accomplished by the use of sight-obscuring plant materials (generally evergreens), earth berms, walls, fences, building parapets, building placement or other design techniques. Where vegetative methods are used, the screening shall reach a minimum of six feet in height upon maturity.
- C. Buffering. Buffering shall be used to mitigate adverse visual impacts, dust, noise or pollution, and to provide for compatibility between dissimilar adjoining uses. Where buffering is determined to be necessary, one of the following buffering alternatives shall be employed:
1. Planting Area: Width not less than 15 feet, planted with either one row of trees staggered and spaced not more than fifteen 15 feet apart; or, at least one row of shrubs forming a continuous hedge at least 5 feet in height within one year of planting.
 2. Berm Plus Planting Area. Width not less than 10 feet, with the combined total height of the berm and hedge not less than 5 feet.
 3. Wall Plus Planting Area. Width must not be less than 5 feet with a masonry wall or fence not less than 5 feet in height and lawn, shrubs or ground cover covering the remaining area.
 4. Other approved methods which produce an adequate buffer considering the nature of the impacts to be mitigated.