



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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AMENDED NOTICE OF ADOPTED AMENDMENT

November 19, 2007



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Dayton Plan Amendment
DLCD File Number 001-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: November 30, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative
Walt Wendolowski, City of Dayton

<paa> ya/

DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

DEPT OF LAND CONSERVATION AND DEVELOPMENT NOV 13 2007

Jurisdiction: City of Dayton Local File No. Dev Code Amendment 07-01 (If no number, use none)

Date of Adoption: 8-6-07 (Must be filled in) Date Mailed: 11-9-07 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 3-20-07

- Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
XX Land Use Regulation Amendment
Zoning Map Amendment
New Land Use Regulation
Other: (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Establish similar use section of City Dayton Land Use and Development Code (LUDC)

Establish wineries as a permitted use in the Commercial (C) zone and as a conditional use within the commercial/residential (C/R) zone.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Added small scale manufacturing to section 7.2.405 of the LUDC within the commercial and commercial/residential zones.

Plan Map Changed from : to

Zone Map Changed from: to

Location: City of Dayton Acres Involved:

Specify Density: Previous: New:

Applicable Statewide Planning Goals: 9, 11, 14

Was an Exception Adopted? Yes: No: XX

DLCD File No.: 001-07 (15968)

**ORDINANCE NO. 583
CITY OF DAYTON, OREGON**

Title: ***AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 7
(LAND USE & DEVELOPMENT CODE) OF THE DAYTON MUNICIPAL
CODE***

WHEREAS, on July 2, 2007, the Dayton City Council conducted a public hearing on a recommendation from the Planning Commission to modify the Dayton Municipal Code by adopting modifications to certain sections of Chapter 7, Land Use and Development Code (attached hereto as Exhibit "A" and by this reference made a part hereof); and

WHEREAS, Council considered various Findings in arriving at its decision to approve the modifications (attached hereto as Exhibit "B" and by this reference made a part hereof);

THE PEOPLE OF THE CITY OF DAYTON ORDAIN AS FOLLOWS:

Section 1. **THAT** the City Council of the City of Dayton does hereby adopt the attached Exhibit "A," Amendments to Chapter 7, Land Use and Development Code, of the Dayton Municipal Code; and

Section 2. **THAT** the City Council of the City of Dayton does hereby adopt the attached Exhibit "B," City Council Findings.

PASSED AND ADOPTED by the City Council of the City of Dayton on this 6th day of **August, 2007**.

Mode of Enactment:

Date of first reading _____ In full ___ or by title only ___

Date of second reading _____ In full ___ or by title only ___

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

 X A copy of the ordinance was provided for each council member; three copies were provided for public inspection in the office of the city recorder not later than one week before the first reading of the ordinance; and notice of the availability of copies is given by written posting at the city hall and two other public places in the city or by advertisement in a newspaper of general circulation in the city.

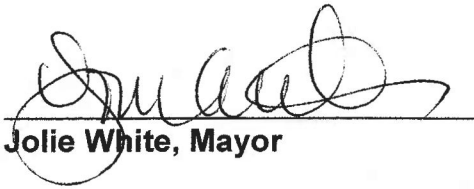
Final Vote:

In Favor: Blackburn, Dickson, Evers, Hensley, Hutchins, Webb, White

Opposed: None

Absent: None

Abstained: None

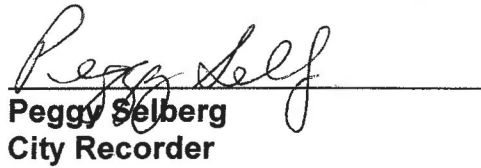


Jolie White, Mayor

Aug 14, 2007

Date of Signing

Attested by:



Peggy Selberg
City Recorder

8/6/07

Date of Enactment

Attachments

WKS4\ORDINANCES\2007\ORD.583

EXHIBIT "A"
Amendments to the Dayton Land Use and Development Code

I. Commercial Residential Zone

*The following items will be added to section 7.2.105.04 (new language in **bold**):*

7.2.105.04 Conditional Uses

F. Wineries with retail sales.

Section 7.2.105.06.A.1., shall be replaced with the following new language:

7.2.105.06 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 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.

II. Commercial Zone

*The following item will be added to Section 7.2.106.02 (new language in **bold**):*

7.2.106.02 Permitted Uses

N. Wineries with retail sales.

*The following item will be added to Section 7.2.106.02 (new language in **bold**):*

7.2.106.04 Conditional Uses

M. Small-scale manufacturing businesses conforming to requirements in Section 7.2.405.

Section 7.2.106.06.B.1., shall be replaced with the following new language:

7.2.106.06 Development Standards

B. Use Restrictions. The following use restrictions shall apply:

1. No permitted, special permitted or conditionally permitted use shall in any way involve 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.

III. Small Scale Manufacturing

The following new Section will be added to Chapter 7.2.4:

7.2.405 SMALL-SCALE MANUFACTURING

7.2.405.01 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.

7.2.405.02 Process

In addition to the limitations in Section 7.2.405.02 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.

IV. Similar Use

The following new Section will be added to Chapter 7.3.1:

7.3.114 SIMILAR USES

7.3.114.01 Purpose and Scope

The purpose of this Section is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein. Zoning districts in which a similar use may be authorized are:

- A. Limited Density Residential Zone (R-2)
- B. Medium Density Residential Zone (R-3)
- C. Commercial Residential Zone (CR)
- D. Commercial Zone (C)
- E. Industrial Zone (I)

7.3.114.02 Review and Approval Process

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

7.3.114.03 Application and Fee

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

7.3.114.04 Review Criteria

A similar use may be authorized provided that the applicant demonstrates that the proposed use satisfies the following criteria:

- A. The use is consistent with the purpose of the underlying zoning district and is similar in character, scale and performance to permitted uses specified in the underlying district.
- B. The use is capable of conforming with the applicable standards and limitations of the underlying zoning district.

7.3.114.05 Conditions of Approval

In approving an application for a similar use, the Planning Commission may impose such conditions as it deems appropriate to ensure compliance with the standards of the development code.

7.3.114.06 Site Development

The development of an approved similar use in any zone shall be subject to a Site Development Review.

EXHIBIT "B"
City Council Findings

In the Matter of the)	LUCA File No. 07-01
)	
Application of)	1. Code Amendments
)	
City of Dayton)	

I. NATURE OF THE APPLICATION

This matter comes before the Dayton City Council on the application of the City of Dayton to amend the Development Code by allowing wineries within the commercial zone, establishing provisions for small-scale manufacturing and establishing a process to consider similar uses.

II. GENERAL INFORMATION

A. Location

This action affects property within the Commercial Residential (CR) and Commercial (C) zones.

B. Background Information

The City intends to adopt the following amendments to the Dayton Land Use and Development Code:

1. The Commercial Residential (CR) zone will amended to conditionally permit wineries. Restrictions in Section 7.2.105.06.A.1., were modified to continue the prohibition in the slaughtering/rendering of animals but to permit processing of fruits, grains, etc., as part of a commercial business.
2. The Commercial (C) zone will permit wineries outright. Other small-scale manufacturing may be allowed through a conditional use. Restrictions in Section 7.2.106.06.B.1., were modified to continue the prohibition in the slaughtering/rendering of animals but permit processing of fruits, grains, etc., as part of a commercial business or small-scale manufacturing business.
3. Chapter 7.2.4 will now include Section 7.2.405 establishing "Small-Scale Manufacturing" provisions. This will apply to limited manufacturing facilities within the Commercial Residential and Commercial zone.

4. Chapter 7.3.1 will now include Section 7.3.114 establishing "Similar Use" provisions. This will allow the Planning Commission a process in which to interpret whether a previously unidentified use may be permitted within a particular zone.

Specific language is found in Exhibit "A" of this Ordinance.

III. PUBLIC HEARING

A. Planning Commission Action

A public hearing was duly held on this application before the Dayton Planning Commission on May 8, 2007. At the hearing, Land Use Code Amendment File No. 07-01 was made a part of the record. Notice of the hearing was published pursuant to Section 3.202 of the Dayton Land Use and Development Code.

At the conclusion of the hearing, the Planning Commission deliberated on the issue and voted to recommend the City Council approve the proposed amendments to the Land Use and Development Code, finding the proposal complied with the applicable criteria. The Commission directed staff to prepare an Order of Recommendation.

B. City Council Action

A public hearing was duly held on this application before the Dayton City Council on June 25, 2007. At the hearing, Land Use Code Amendment File No. 07-01 was made a part of the record. Notice of the hearing was published pursuant to Section 3.202 of the Dayton Land Use and Development Code.

At the conclusion of the hearing, the City Council deliberated on the issue and voted to approve the proposed amendments to the Land Use and Development Code, finding the proposal complied with the applicable criteria. The Council directed staff to prepare the appropriate document.

IV. FINDINGS OF FACT-GENERAL

The Dayton City Council, after careful consideration of the testimony and evidence in the record, adopts the following general Findings of Fact:

- A. The applicant is the City of Dayton.
- B. This action affects property within the Commercial Residential (CR) and Commercial (C) zones.
- C. The action includes the following amendments to the Dayton Land Use and Development Code:

1. The Commercial Residential (CR) zone will amended to conditionally permit wineries. Restrictions in Section 7.2.105.06.A.1., were modified to continue the prohibition in the slaughtering/rendering of animals but to permit processing of fruits, grains, etc., as part of a commercial business.
2. The Commercial (C) zone will permit wineries outright. Other small-scale manufacturing may be allowed through a conditional use. Restrictions in Section 7.2.106.06.B.1., were modified to continue the prohibition in the slaughtering/rendering of animals but permit processing of fruits, grains, etc., as part of a commercial business or small-scale manufacturing business.
3. Chapter 7.2.4 will now include Section 7.2.405 establishing "Small-Scale Manufacturing" provisions. This will apply to limited manufacturing facilities within the Commercial Residential and Commercial zone.
4. Chapter 7.3.1 will now include Section 7.3.114 establishing "Similar Use" provisions. This will allow the Planning Commission a process in which to interpret whether a previously unidentified use may be permitted within a particular zone.

Specific language is found in Exhibit "A" of this Ordinance.

- D. Approval or denial of this request shall be based upon the decision criteria contained in the Dayton Land Use and Development Code; Section 7.3.112 (Text Amendments).

V. APPLICATION SUMMARY

- A. In response to a recent request to establish a winery withing the Commercial (C) zone, the Planning Commission and City Council found it necessary and appropriate to amend the current Land Use and Development Code regulations. This material is included as "Exhibit A" of this Ordinance and reviewed in the following Sections.
- B. Commercial Residential (CR) Zone - Wineries will now be a conditionally permitted use in the CR zone. The CR zone mixes residential and commercial activities, taking in many historic buildings. For this reason, it was agreed the use not be allowed outright.

The CR zone also has use restrictions on food processing (Section 7.2.105.06.A.1). The prohibition against the slaughtering/rendering of animals remain. However, the processing of grains, fruits, vegetables, or dairy products for breads, wines, jams, cheeses and similar products would be allowed as part of a permitted or conditionally permitted commercial business.

- C. Commercial (C) Zone - Consistent with the Commission's interpretation, wineries will now be permitted in the Commercial Zone. No special limits will be placed on their development, recognizing the generally small size of Commercial zoned property will by itself be a limiting factor.

The issue of wineries also brings up the issue of small-scale manufacturing within the zone. This will permit a manufacturing firm to be established without the need for retail sales. For example, a bakery that sells to the public is currently allowed. However, a bakery that sells to other businesses is effectively "manufacturing" and would be subject to the small-scale manufacturing provisions. Specific are reviewed under item "D." of this Section.

The C Zone also has use restrictions on food processing (Section 7.2.106.06.B.1). The prohibition against the slaughtering/rendering of animals remain. However, the processing of grains, fruits, vegetables, or dairy products for breads, wines, jams, cheeses and similar products would be allowed as part of a permitted or conditionally permitted commercial business, and, a small scale manufacturing operation.

- D. Small-Scale Manufacturing - This is a new Section placed in Chapter 7.2.4. The requirements are minimal but do establish an upper limit to the size of the operation and potential impacts. This Section contains two subsections which are summarized as follows:

1. Section 7.2.405.01 - The standards to establish the activity are found in this Section. No more than 4,000 square feet of floor area may be used, the building and activity must be compatible with the surrounding area, and, the activity may not be objectionable based on such factors as noise or odors.
2. Section 7.2.405.02 - Establishing a small-scale manufacturing facility will require approval of both a conditional use and site development review. Both actions require review by the Planning Commission. In addition, the use must conform to all applicable standards such as parking.

Small-scale manufacturing is limited to the Commercial zone. Its use in the Commercial Residential zone was rejected owing to the mix of commercial and residential uses and the general historic nature of the zone.

- E. Similar Use - This will be a new Section placed in Chapter 7.3.1. The purpose is to establish a process to help determine whether a particular use that is not listed in the zone may otherwise be permitted. The Similar Use section contains six subsections which are summarized as follows:

1. Section 7.3.114.01 - This is the purpose statement for the process. The "similar use" in question must be similar to other permitted uses in the zone.

A similar use may be allowed in all zones except the R-1 and Public. It is suggested these are designed as somewhat restrictive zones and the use of a "similar use" request may not be appropriate.

2. Section 7.3.114.02 - This section notes all Similar Use applications go before the Commission. This is appropriate as the "similar use" process is a policy action that effectively interprets the Development Code.
 3. Section 7.3.114.03 - This section provides the application, fee and notice requirements.
 4. Section 7.3.114.04 - This section establishes the decision criteria. Essentially, the proposed use must be similar to other activities allowed in the zone; and, not create any greater impacts than these activities. The keys to any interpretation will be similarity and impacts.
 5. Section 7.3.114.05 - This section allows the Commission to place reasonable development conditions as part of any similar use.
 6. Section 7.3.114.06 - This section requires a site development review for all similar uses. An applicant may apply for the site development application simultaneously, but this is not required.
- F. Text Amendment procedures are found in Section 7.3.112 of the Dayton Land Use and Development Code. Amending the Development Code is a legislative action (Type IV) and subject to the procedures specified in Section 7.3.201. In this case, hearings are held before the Planning Commission and City Council. The Commission provides a recommendation and the Council the final decision.

VI. CRITERIA AND FINDINGS - TEXT AMENDMENT

- A. The amendments address four separate issues which are effectively interconnected. Comments addressing all four will be incorporated in the findings.
- B. Section 7.3.112.02 establishes procedural matters for amending the Code text. These actions can only be initiated by the Commission or Council and notice must comply with provisions in Section 7.3.204.

FINDINGS: The Planning Commission initiated the proposed amendments. Notice was provided pursuant to Code requirements.

- C. The specific decision criteria are contained in Section 7.3.112.03. Subsection A., requires the City to address the impact of the proposed amendment on land use and development patterns within the city, as measured by:

1. Section 7.3.112.03.A.1 - Traffic generation and circulation patterns.

FINDINGS: The actions effectively clarify where certain uses (winery and small-scale manufacturing) may occur and under what circumstances. The provisions in Section 7.2.405 establish provisions to review small-scale manufacturing while language in Section 7.3.114 establishes provisions to assist the Commission in interpreting allowed uses. Nothing in these amendments will create activities that will increase traffic.

2. Section 7.3.112.03.A.2 - Demand for public facilities and services.

FINDINGS: All new activities are subject to a site development review, and potentially, a conditional use permit. The demand and impact on public facilities is determined at this time. The procedural language in Section 7.2.405 and 7.3.114 will not impact facility provisions.

3. Section 7.3.112.03.A.3 - Level of park and recreation facilities.

FINDINGS: The language primarily impacts the Commercial Residential and Commercial zones. Therefore, existing or identified recreational facilities are not affected by these changes.

4. Section 7.3.112.03.A.4 - Economic activities.

FINDINGS: Positive economic benefits will occur with the proposed language regarding new uses in the CR and C Zones. The language in Section 7.2.405 and 7.3.114 is generally neutral regarding this criterion.

5. Section 7.3.112.03.A.5 - Protection and use of natural resources.

FINDINGS: The language primarily impacts the Commercial Residential and Commercial zones. Therefore, existing or identified natural areas are not affected by these changes.

6. Section 7.3.112.03.A.6 - Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.

FINDINGS: The Council is not aware of any special plans or programs these changes would affect. However, the general community vision encourages the development of the downtown, noting wineries can play a prominent role in its growth.

- D. Section 7.3.112.03.B., requires the City to determine whether a demonstrated need exists for the product of the proposed amendment.

FINDINGS: Dayton is located near the center of the State's primary wine growing region. However, the lack of suitable-sized industrial parcels effectively prohibits the establishment of a winery. The proposed changes allow these facilities to be developed within the commercial zones, increasing the potential to redevelop the downtown area. The procedural language in Section 7.2.405 establishes a means to review small-scale manufacturing in the Commercial zone, an activity that also will allow utilization of undeveloped property. Language in Section 7.3.114 establishes a basis in which the Commission may interpret new uses. On balance, these proposed changes are beneficial to the community.

- E. Section 7.3.112.03.C., requires the proposed amendments to comply with all applicable Statewide Planning Goals and administrative rule requirements.

FINDING: Compliance with the Statewide Goals is noted as follows:

Goal 1, Citizen Involvement: Public hearings on the proposed amendments will be held before both the Commission and City Council. This is consistent with City procedures.

Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged Development Code.

Goal 3, Agricultural Lands: The proposal does not involve or affect farm land.

Goals 4, Forest Lands: The proposal does not involve or affect forest lands.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources: Identified historic, cultural, or natural resources are not affected by the proposed changes.

Goal 6, Air, Water and Land Resource Quality: The proposed change does not establish uses or activities which will adversely affect the environment.

Goal 7, Natural Hazards: Development requirements for activities within the flood plain or other hazard areas are unaltered by this action.

Goal 8, Recreational Needs: The proposed amendment does not alter existing adopted parks master plan or otherwise affect identified recreational land.

Goal 9, Economic Development: Allowing wineries and small-scale manufacturing will improve economic opportunities in the Commercial Residential and Commercial Zones.

Goal 10, Housing: The action does not alter the City's ability to provide needed housing.

Goal 11, Public Facilities and Services: There are no changes in use, densities or other impacts that will impact existing public facilities.

Goal 12, Transportation: As previously noted, the proposed amendments will not increase traffic or traffic impacts.

Goal 13, Energy Conservation: The proposed change neither promotes nor reduces energy conservation.

Goal 14, Urbanization: These changes will maintain urban uses within the defined urban area and will not increase the potential for conversion of resource land to urban uses.

Goals 15 to 19, Willamette River Greenway, Estuarine Resources, Coastal Shores, Beaches and Dunes, Ocean Resources: The proposals do not involve land within the Willamette Greenway or coastal areas.

In general, the proposed amendments to the Development Code do not directly affect issues addressed by the Statewide Goals.

F. Section 7.3.112.03.D., requires the City to determine whether 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.

FINDINGS: Allowing a winery in the Commercial zone implements a Planning Commission decision regarding an interpretation of use. This also extends to conditionally permitting the activity in the CR zone. Allowing small-scale manufacturing increases economic opportunities while language in Section 7.2.405 provides guidelines for these activities to occur. The language in Section 7.3.114 also provides guidelines for the Commission in making decisions regarding when unlisted activities may be permitted. On balance, these changes are deemed desirable and appropriate.

VII. CONCLUSION

Based on the previous findings, the City Council concludes the request to amend the Land Use and Development Code complies with the decision criteria.



City of Dayton

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Dayton, Oregon 97114-0339
Phone: (503) 864-2221
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E-mail: cityofdayton@ci.dayton.or.us

November 9, 2007

Plan Amendment Specialist
DLCD
635 Capitol St NE, Suite 150
Salem, Oregon 97301-2540

Plan Amendment Specialist:

Enclosed is a notice of adoption for a land use regulation amendment, local file #DEV CODE AMENDMENT 07-01. Attached are two copies of the text of the amendment plus adopted findings and supplementary information.

Sincerely,

Debra Lien
Community Development Specialist