

**AGENDA
DAYTON CITY COUNCIL
WORKING/SPECIAL SESSION**



DATE: MONDAY, OCTOBER 17, 2016
PLACE: CITY HALL ANNEX, 408 FERRY STREET
TIME: 6:30 PM

Dayton – Rich in History....Envisioning Our Future

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>PAGE #</u>
A.	CALL TO ORDER & PLEDGE OF ALLEGIANCE	
B.	ROLL CALL	
C.	APPEARANCE OF INTERESTED CITIZENS	
This time is reserved for questions or comments from persons in the audience on any topic.		
D.	CONSENT AGENDA	
	1. Special Session, September 26, 2016	1-4
	2. Regular Session, October 3, 2016	5-6
E.	ACTION ITEMS	
	1. Approval of Second Reading of Ordinance 636 Discharge of Weapons	7-8
	2. Adoption of Ordinance 636 Discharge of Weapons	9-12
	3. Approval of Intergovernmental Agreement with ODOT	13-28
	4. Urban Growth Boundary Adjustment Process Presentation and Discussion – Laura LaRoque, City Planner	29-38
	5. Noise Code Discussion	39-67
F.	CITY COUNCIL COMMENTS/CONCERNS	
G.	INFORMATION REPORTS	
	1. City Manager's Report	
H.	ADJOURN	

Posted: 10/13/16
Rochelle Roaden, City Recorder

Persons with hearing, visual or manual impairments who wish to participate in the meeting should contact the City of Dayton AT LEAST 32 WORKING HOURS (4 DAYS) prior to the meeting date in order that appropriate communication assistance can be arranged. The City Hall Annex is accessible to the disabled. Please let us know if you need any special accommodations to attend this meeting.

NEXT MEETING DATES
City Council Regular Session, Monday, November 7, 2016
City Hall Annex, 408 Ferry St, Dayton

MINUTES
DAYTON CITY COUNCIL
SPECIAL SESSION
September 26, 2016

PRESENT: Mayor Elizabeth Wytoski
Councilor John Bixler
Councilor John Collins
Councilor Trini Marquez
Councilor Darrick Price (arrived 6:33 pm)

ABSENT: Councilor Erin Taylor
Councilor Annette Frank

STAFF: Scott Pingel, City Manager
Rochelle Roaden, City Recorder
Steve Sagmiller, Public Works Director

A. CALL TO ORDER & PLEDGE OF ALLEGIANCE

Mayor Wytoski called the meeting to order at 6:30 pm and those present gave the Pledge of Allegiance.

B. ROLL CALL

Mayor Wytoski noted there was a quorum with Councilors Bixler, Collins, and Marquez. Mayor Wytoski noted the absence of Councilors Frank, Price and Taylor.

C. APPEARANCE OF INTERESTED CITIZENS

None.

D. ACTION ITEMS

1. Termination of MBR Maintenance Contract

James Riley gave an update on the current situation with the MBR and RO system including electrical requirements and his goal to acquire an investment partner to provide external funding.

Mayor Wytoski explained the purpose for calling this meeting was originally to consider immediate termination of the maintenance agreement primarily due to unrealistic cost estimates which have now been identified. James Reilly submitted a letter (Attachment A) dated September 22, 2016, stating he will be terminating the contract with the City of Dayton as of October 31, 2016. Mayor Wytoski is completely comfortable accepting the letter of termination of the maintenance agreement effective October 31, 2016, and allowing James Reilly the ability to continue testing and an opportunity to seek external funding until that date. Additionally, she would like to authorize Scott Pingel, City Manager, to work on a severance or continuing agreement dependent on whether James Reilly acquires external funding. Discussion continued.

JOHN COLLINS MOVED TO ACCEPT THE RESIGNATION OF JAMES REILLY IN TERMS OF THE MAINTENANCE AGREEMENT EFFECTIVE OCTOBER 31ST, 2016, AUTHORIZING STAFF TO NEGOTIATE AN OPERATIONAL AGREEMENT FOR THE MONTH OF OCTOBER, AND EITHER SEVERENCE OR CONTINUANCE TERMS BASED ON THE CONCLUSION OF THAT TIME PERIOD. SECONDED BY JOHN BIXLER. *Motion carried with Bixler, Collins, Marquez and Wytoski voting aye. Price recused himself. Frank and Taylor absent.*

E. CITY COUNCIL COMMENTS/CONCERNS

None.

F. ADJOURN

There being no further business, the meeting adjourned at 7:15 pm.

Respectfully submitted:

By: Rochelle Roaden
City Recorder

APPROVED BY COUNCIL on October 17, 2016.

☐ As Written ☐ As Amended

Elizabeth Wytoski, Mayor

Attachment A

September 22, 2016

Scott Pingel
City Manager,
City of Dayton OR
By Email

Dear Scott,

This is to inform you that effective October 31, 2016 I will be terminating the contract with the City of Dayton. By then I should have an investment partner that would be willing to take up this pilot and see it through to completion. If I am unable to cause an investor to commit by that timeframe then the City will not be required to take further action to terminate our contract.

During this timeframe I ask that we continue to test (including the holding tank which is now paid for) the system to further identify any potential problems. Without such continued effort it will make the process of closing an investor all but impossible.

As it stands right now the key problems from this summer other than the power issue have been addressed. The MBR has just completed nearly two full weeks running at 1/3 capacity yet producing an average of at least 45 gallons per minute for the RO system. At full capacity this translates to 135 gallons per minute which was in line with what we said several years ago.

I just spoke to Steve while he was cleaning the RO system and he indicated that the RO system would be able to last two days longer before another cleaning was necessary. At the beginning of the summer the RO had to be cleaned every 3rd or 4th day. This was due to an MBR problem. So I am well pleased that we have brought the RO cleaning issue into an economically feasible cleaning frequency of two weeks.

Furthermore the recent upgrades to the MBR system helped the RO a great deal and I was looking forward to several others that should also have added additional time onto the RO cleaning frequency requirement.

While I am now certain that both the MBR and RO systems can perform and have performed in the month of September at levels that we expected this business will only be doable if I can find an investor who is willing to fund us. Therefore it is better to resign now than to create more obstacles for investors.

With regard to everything else, other than the last two weeks which have been very painful this entire experience has been a joy. Cross fingers we will be able to continue on but if not then thank you for taking the chance to innovate a solution to this very difficult problem.

Best Regards

James Reilly

MINUTES
DAYTON CITY COUNCIL
REGULAR SESSION
October 3, 2016

PRESENT: Mayor Elizabeth Wytoski
Councilor John Bixler
Councilor John Collins
Councilor Trini Marquez

ABSENT: Councilor Annette Frank
Councilor Darrick Price
Councilor Erin Taylor

STAFF: Scott Pingel, City Manager
Rochelle Roaden, City Recorder

A. CALL TO ORDER & PLEDGE OF ALLEGIANCE

Mayor Wytoski called the meeting to order at 6:31 pm and those present gave the Pledge of Allegiance.

B. ROLL CALL

Mayor Wytoski noted there was a quorum with Councilors Bixler, Collins and Marquez. Mayor Wytoski noted the absence of Councilors Frank, Price and Taylor.

C. APPEARANCE OF INTERESTED CITIZENS

Mike Imlah, 6127 SW 161st Place, Beaverton, Oregon, 97007, on behalf of the Brookside Cemetery Association, provided an update. Goals going forward include cleaning up the cemetery as well as applying for a grant to build a fence. He is hoping to schedule a meeting in the near future.

D. CONSENT AGENDA

1. Approval of Meeting Minutes

- a. Working/Special/Executive Session, July 18, 2016
- b. Regular Session, August 1, 2016
- c. Working/Special Session, August 15, 2016
- d. Regular Session, September 6, 2016
- e. Working/Special Session, September 19, 2016

JOHN COLLINS MOVED TO APPROVE THE MINUTES OF THE WORKING/SPECIAL/EXECUTIVE SESSION OF JULY 18, THE REGULAR SESSION OF AUGUST 1, 2016, THE WORKING/SPECIAL SESSION OF AUGUST 15, 2016, THE REGULAR SESSION OF SEPTEMBER 6, 2016, AND THE WORKING/SPECIAL SESSION OF SEPTEMBER 19, 2016 AS AMENDED. SECONDED BY JOHN BIXLER. *Motion carried with Bixler, Collins, Marquez, and Wytoski voting aye. Frank, Price and Taylor absent.*

D. ACTION ITEMS

1. Approval of First Reading of Ordinance 636 Amending the Penalty for Discharge of Weapons

John Bixler performed the first reading of Ordinance 636.

JOHN COLLINS MOVED TO APPROVE THE FIRST READING OF ORDINANCE 636 AMENDING THE PENALTY FOR DISCHARGE OF WEAPONS. SECONDED BY TRINI MARQUEZ. *Motion carried with Bixler, Collins, Marquez, and Wytoski voting aye. Frank, Price and Taylor absent.*

2. Approval of Resolution 16/17-3 Amending Library Fines and Fees

JOHN BIXLER MOVED TO APPROVE RESOLUTION 16/17-3 A RESOLUTION AMENDING LIBRARY FINES AND FEES. SECONDED BY JOHN COLLINS. *Motion carried with Bixler, Collins, Marquez, and Wytoski voting aye. Frank, Price and Taylor absent.*

E. CITY COUNCIL COMMENTS AND CONCERNS

John Collins commented that the Brookside Cemetery was given to the School District in the 1850's because it was before the City was incorporated. He further stated that the City might be more appropriate to be the stewards. John Bixler stated he is in agreement.

Mayor Wytoski noted a pothole on 8th and Ash that is need of repair.

F. INFORMATION REPORTS

1. City Manager Report

Scott Pingel gave an update regarding a utility truck that ran into a pole out near our wells causing electrical issues and damage. He is still researching the incident.

Scott met with Holly Halligan at Rural Development. The City's application is complete and currently pending the easement agreement with Yamhill County.

G. ADJOURN

There being no quorum, the meeting adjourned at 7:03 pm.

Respectfully submitted:

By: Rochelle Roaden
City Recorder

APPROVED BY COUNCIL on October 17, 2016.

☐ As Written ☐ As Amended

Elizabeth Wytoski, Mayor

To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Approval of the 2nd Reading and Adoption of Ordinance 636 An Ordinance Amending Chapter 2 – Offenses, of the Dayton Municipal Code to Make Changes to Section 2.6 Discharge of Weapons.

Background and Information

As discussed at the last City Council meeting, Deputy Wilkinson, along with other Yamhill County Sheriff's Deputies, recently responded to an incident where a resident was shooting a BB gun around town. The deputies were able to take care of the situation. Afterward, however, Deputy Wilkinson let me know that they were only able to give the shooter a warning because of the way the "Penalty of Violation" language reads in the code. Currently, the penalty of violation refers to the applicable ORS. The challenge with this is that the only ORS violation code for discharge of a weapon is under the criminal code. Even if Deputy Wilkinson could cite the shooter under the criminal code, it would get thrown out because a Circuit Court judge will not hear a municipal code matter. For this reason, we need to change this section of the code and refer it to our Fee Schedule. Deputy Wilkinson suggested that discharge of a weapon become a Class A violation, which is the highest class of violation in our code and carries a maximum fine of \$500.

City Manager Recommendation: I recommend approval of the second reading and adoption of Ordinance 636.

Relevant Council Goal: Goal F – Engage in efficient and effective activities to promote community safety and wellness

Potential Motion to Approve the 2nd Reading: "I move approval of the 2nd Reading of Ordinance 636 An Ordinance Amending Chapter 2 – Offenses, of the Dayton Municipal Code to Make Changes to Section 2.6 Discharge of Weapons."

Potential Motion to Adopt: "I move to adopt Ordinance 636 An Ordinance Amending Chapter 2 – Offenses, of the Dayton Municipal Code to Make Changes to Section 2.6 Discharge of Weapons."

Council Options:

- 1 – Approve the second reading adopt Ordinance 636 as recommended.
- 2 – Approve the second reading and adopt Ordinance 636 with amendments.
- 3 – Take no action and direct staff to do further research or provide further options.

ORDINANCE 636
CITY OF DAYTON, OREGON

An Ordinance Amending Chapter 2 – Offenses, of the Dayton Municipal Code to Make Changes to Section 2.6 Discharge of Weapons.

WHEREAS, the City Council desires to amend Chapter 2 – Offenses, of the Dayton Municipal Code to make changes to section 2.6 Discharge of Weapons as attached in Exhibit A; and

WHEREAS, the City Council considered said amendments in a public meeting on October 3, 2016; and

WHEREAS, on October 3, 2016, 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 636; and

Section 2. The City Council adopts the amendments to Chapter 2 of the Dayton Municipal Code attached as Exhibit A and incorporated by reference herein.

PASSED AND ADOPTED by the City Council of the City of Dayton on this ____ day of _____, 2016.

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.

____ 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:

Opposed:

Absent:

Abstained:

Mayor

Date of Signing

ATTESTED BY:

Rochelle Roaden
City Recorder

Date of Enactment

Exhibit A

(additions in italics and deletions in strikethrough)

2.6 Discharge of Weapons.

2.6.1 **Discharge Prohibited.** No person, other than a peace officer, may fire or discharge within the City any air gun, pellet gun, BB gun, bow and arrow, cross bow or any device defined as a weapon under Oregon Revised Statutes, except in defense of human life.

2.6.2 **Penalty of Violation.** A violation of any provision of section 2.6 of the Dayton Municipal Code is punishable as ~~stated in the applicable Oregon Revised Statute.~~ *a Class A violation under the City's Fee Schedule.*

To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Approval of Resolution 16/17-4 ODOT IGA

Background and Information

City staff have been working with ODOT for some time now on completing 3rd Street ADA Improvements as a part of the larger ODOT overlay project of Highway 221. The IGA included with this memo is a working draft IGA. The current draft IGA has been reviewed by the City Attorney. Her only concern was to make sure a budget is agreed upon before signing the IGA. I am calling it a draft because City Staff have requested a few very minor changes that would be nice to have but not deal breakers. The City's main concern at this point is the budget estimate. ODOT has thrown \$50,000 in the agreement with the caveat that if the amount exceeds \$50,000, we are to meet and come to agreement on the how to cover the additional costs. With just the ballpark estimates we have done so far, we think we will be in the \$90,000 to \$100,000 range for total project costs. I would rather hold off signing the IGA until we have a more solid budget estimate and treat the \$50,000 number as a placeholder. Since the City Council is likely to only have 2 more meetings prior to 2017, and City staff needs to move on this project as quickly as ODOT will allow, I am asking the City Council to approve the IGA and authorize me to sign it with the understanding that the \$50,000 budget in the agreement is a placeholder for a more accurate budget estimate and authorize me to approve the minor changes that City staff has requested prior to signing the agreement. I will walk through the changes we have requested during City Council meeting.

City Manager Recommendation: I recommend approval of the IGA with the understanding that we have suggested a few minor changes, and that the \$50,000 budget is a placeholder for a more accurate budget estimate once the budget has been determined.

Relevant Council Goal: Goal A – Develop and maintain infrastructure to improve livability and support operations and growth, and Goal F – Engage in efficient and effective activities to promote community safety and wellness

Potential Motion to Approve: “I move approval of the IGA with ODOT for 3rd Street ADA Improvements and authorize the City Manager to sign the agreement when he deems it agreeable with the understanding that the \$50,000 budget estimate is a placeholder for a more detailed and accurate budget estimate, and authorize the City Manager to negotiate minor changes in the agreement, and to negotiate a final budget number for the agreement.”

Council Options:

- 1 – Approve the IGA as recommended.
- 2 – Approve the IGA with amendments.
- 3 – Take no action and direct staff to do further research or provide further options.

RESOLUTION No. 16/17-4
City of Dayton, Oregon

TITLE: *A Resolution Approving an Intergovernmental Agreement with the Oregon Department of Transportation to Reimburse the City for 3rd Street Sidewalk Improvements for Americans with Disabilities Act Compliance.*

WHEREAS, the Oregon Department of Transportation (ODOT) desires to make overlay improvements to State Highway 221, which is 3rd Street in Dayton; and

WHEREAS, the Americans with Disabilities Act (ADA) along with recently updated Public Right-of-Way Accessibility Guidelines require ADA compliance when street improvements are made that affect pedestrian crossings; and

WHEREAS, ODOT has requested the City's help in completing ADA Sidewalk improvements along 3rd Street in preparation for said Highway 221 overlay improvements; and

WHEREAS, the City of Dayton agrees to complete the design, engineering, bidding and construction of the required ADA improvements; and

WHEREAS, ODOT agrees to reimburse the City of Dayton for all design, engineering, bidding, and construction costs for the required ADA improvements.

The City of Dayton resolves as follows:

- 1) **THAT** the Intergovernmental Agreement (attached hereto as Exhibit A and by this reference made a part hereof) with the Oregon Department of Transportation is approved.
- 2) **THAT** the City Manager is authorized to execute the Intergovernmental Agreement on behalf of the City, which will be bound by its terms;
- 3) **THAT** the City Manager is authorized to make and approve minor changes to the Intergovernmental Agreement, and approve the final budget estimate in the Intergovernmental Agreement prior to executing the agreement.
- 4) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 17th day of October 2016.

In Favor:

Opposed:

Absent:

Abstained:

Elizabeth Wytoski, Mayor

Date Signed

ATTEST:

Rochelle Roaden
City Recorder

Date of Enactment

Attachments: Exhibit A Intergovernmental Agreement

COOPERATIVE IMPROVEMENT AGREEMENT

Oregon Route 221 Americans with Disabilities Act (ADA) Improvements
Mile Point 0.33 to Mile Point 0.68
City of Dayton

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF DAYTON, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Oregon Route 221 (Salem-Dayton Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC) and is routed through the corporate limits of the City of Dayton. OR 221 is known within the limits of this project as 3rd Street.
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree that Agency shall design and construct Americans with Disabilities Act of 1990 (ADA) accommodations at various locations on 3rd Street, hereinafter referred to as "Project". The locations of the Project are listed on "Exhibit A," attached hereto and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$50,000 in state funds. The estimate for the total Project cost is subject to change. The Parties agree that should

the estimated Project cost exceed \$50,000, they will meet to determine how to pay for the additional costs or to reduce the scope of work.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed by April 15, 2017, unless extended by a fully executed Amendment.
4. The Parties agree that the Project will be constructed within existing state right of way.

AGENCY OBLIGATIONS

1. Agency shall conduct the preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection (other than inspections provided by State under State Obligations), project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. Agency understands the Project shall be designed and constructed to ODOT standards and approved by State prior to advertisement for bid.
3. Agency shall, prior to its advertisement for construction bid proposals, provide the Project preliminary and final plans and specifications to State's Project Manager for coordination of review and if approved, written concurrence by State.
4. Agency shall not award a construction contract until State's Project Manager has reviewed and approved the low bidder's proposal and cost.
5. If ADA features, including sidewalk, curb ramp, and certain signal improvements are on or along a State highway, Agency shall:
 - a. Ensure Project meets current ODOT Highway Design Manual design standards.
 - b. Follow ODOT's processes in addressing ADA features, including using the ODOT Highway Design Manual, Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.
 - c. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb

ramp constructed, modified, or improved as part of the Project. The completed form is the documentation required from the Agency showing that each curb ramp is constructed to ODOT's standards and is ADA compliant.

State's fillable Curb Ramp Inspection Form and instructions are available at the following address;

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- d. Promptly notify State of Project completion and allow State to inspect Project ADA features located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
6. Agency shall submit the following items to State's Project Manager, at Project completion and prior to final payment:
 - a. Final Project Completion Inspection Form No. 734-5063 (completed with State's Project Manager);
 - b. Final Cost; and
 - c. As-Constructed Drawings.
 7. Agency shall keep accurate cost accounting records. Agency shall prepare and submit invoices directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$50,000, including all expenses. Travel expenses will not be reimbursed.
 8. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
 9. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
 10. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent

to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request.

11. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
12. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
13. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations.
14. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.

15. If Agency chooses to assign its contracting responsibilities to a contractor, Agency shall inform the contractor of the requirements of ORS 276.071 to ensure that the public contracting laws within ORS 279A, 279B, and 279C are followed.
16. Agency shall obtain a permit to “Occupy or Perform Operations upon a State Highway” from assigned State District 3 Office. Agency agrees to comply with all provisions of said permit(s) and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
17. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with

respect to the Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
18. Agency shall obtain a miscellaneous permit to occupy State right of way through the State District 3 Office prior to the commencement of construction.
 19. Agency shall, within ninety (90) calendar days of completion or termination without completion of the Project, provide to State permanent mylar "as constructed" plans for work on state highways. If Agency or its consultant redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" <http://egov.oregon.gov/ODOT/HWY/ENGSERVICES/cpdg.shtml>, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
 20. Agency shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.
 21. Agency shall, at its own expense, periodically inspect the Project upon completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. Maintenance responsibilities shall survive termination of the Agreement.
 22. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
 23. Agency's Project Manager for this Project is Scott Pingel, City Manager, City of Dayton, PO Box 339, Dayton, Oregon 97114; phone: (503) 864-2221; email: spingel@ci.dayton.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of the Project invoice a maximum amount of \$50,000. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
2. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 3 Office.
3. State's District 3 Office shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract and prior to award of a construction contract.
4. Upon notification from Agency, State shall conduct or assist Agency with final technical inspection of the completed Project.
5. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
6. State's Project Manager for this Project is Dave Kubishta, Transportation Maintenance Manager, ODOT, District 3, 885 Airport Road SE, Building P, Salem, Oregon 97301; phone: (503) 510-5066; email: david.a.kubishta@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its

reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations.

The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

CITY OF DAYTON, by and through its
designated officials

By _____
City Manager

Date _____

APPROVED AS TO LEGAL FORM

By _____
City Legal Counsel

Date _____

Agency Contact:

Scott Pingel, City Manager
City of Dayton
PO Box 339
Dayton, OR 97114
Phone: (503) 864-2221
Email: spingel@ci.dayton.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic-Roadway Engineer

Date _____

By _____
Region 2 Maintenance and Operations
Manager

Date _____

By _____
District 3 Manager

Date _____

State Contact:

Dave Kubishta, Transp. Maint. Manager
ODOT, District 3
885 Airport Road SE, Building P
Salem, OR 97301
Phone: (503) 510-5066
Email: david.a.kubishta@odot.state.or.us

EXHIBIT A – Project Locations
3rd Street (OR 221, Salem-Dayton Highway)

Intersection	Work Description
3 rd and Church Streets	Three (3) curb ramps (on both sides)
3 rd and Main Streets	Three (3) curb ramps (on east side)
3 rd and Ferry Streets	Bulb out, sidewalks, curb ramps, storm/catch basin work, and relay brick work.
3 rd and Ferry Streets (east side)	Two (2) curb ramps, storm pipe under ramp and repaving for grades.
3 rd and Alder Streets	One (1) curb ramp (on east side)

To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Urban Growth Boundary Adjustment Presentation and Discussion

Background and Information

The City Council and staff have discussed potential UGB changes from time to time since the City purchased the Fisher Farms property, but really only in concept and never with much thought of the process. I have had a few phone discussions with the Department of Land Conservation and Development as well as with the City Planner regarding the process and possibilities of a UGB Adjustment. I have invited our City Planner, Laura LaRoque, to talk to the City Council about the UGB Adjustment process and likely costs, so that the City Council has more detailed information on which to make decisions about moving forward or not with efforts to change the City's UGB. Included with this memo is a memo from Ms. LaRoque, a UGB Process Flowchart, as well as a couple of preliminary maps showing potential UGB adjustments.



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TO: DAYTON CITY COUNCIL
FROM: LAURA LAROQUE, CITY PLANNER
MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS
SUBJECT: URBAN GROWTH BOUNDARY ADJUSTMENT PROCESS
DATE: OCTOBER 12, 2016

Background

The 1973 Oregon Legislature passed Senate Bill 100 which created Oregon's land use planning program. Senate Bill 100 requires each city and county to adopt a comprehensive land use plan and implement the plan with regulations such as zoning and development codes. The State's program includes 19 Statewide Planning Goals and Goal 14, Urbanization, addresses urban growth boundaries (UGB). Urban growth boundaries are a salient element of the program. Each city is required to adopt a UGB, which separates urbanizable land from rural land and expand it as necessary to provide sufficient land to accommodate 20-years of growth.

UGB Expansion or Adjustment Methods

There are now two methods for amending a UGB. Cities may use the traditional UGB amendment process delineated in Oregon Administrative Rule (OAR) 660, Division 24 or a new, streamlined process established in OAR 660, Division 38.

Traditional Method (Division 24)

The traditional method requires cities to adopt findings based on analysis of a city's future need to accommodate population growth and results in a 20-year land supply. The traditional method was amended, effective January 1, 2016, to provide a new process for determining which lands a city must study when seeking a UGB expansion.

Streamlined Method (Division 38)

A new, prescriptive, streamlined process was created by the Legislature in 2013, and the rules for using the process are effective as of January 1, 2016. This process provides a 14-year land supply.

The Department of Land Conservation and Development has broken the new rule into six steps to assist in understanding the framework of the new system. These steps fit into two primary categories: determining if a UGB needs to be expanded; and determining where to expand a UGB to satisfy the land need. Attached is a flowchart outlining six steps.

Summary of UGB Adjustment Process

OAR 660-024 states that a local government may adjust a UGB by adding or removing land from the UGB, or by exchange land inside the UGB for land outside the UGB. The UGB adjustment process can be accomplished by utilizing either the tradition or streamlined method. A general overview of the steps involved in the process is provided in the next section.

The UGB Amendment Process

In step one, population forecasts are utilized in determining the number of dwelling units that will be needed in either a 20-year (traditional method) or 14-year period (streamlined method). The streamlined method provides an exact process for determining how to convert the forecasted population into a number dwelling unit. The traditional method allows increased flexibility but must use findings to support why a particular method was used.

Both the traditional and streamlined method will now use coordinated population forecasts proved by the Population Research Center at Portland State University instead of coordinated population forecasts provided by the county as in previous years. The first round of forecasting began in 2013. The last region (region three) in which Yamhill County is located is just commencing and is expected to be completed in July 2017.

In step two, a buildable land inventory (BLI) is conducted. A BLI determines how much buildable land is in the current UGB and how many dwellings it can accommodate. The streamlined method again lays out clear steps for determining if land is considered vacant or partially vacant. Land that is constrained by physical impediments such as flood plains and steep slopes are discounted.

In step three, a comparison is conducted between findings from step one and step two to determine if a UGB expansion or adjustment is necessary. Sometimes, it is found that increasing density of land that is currently located in the UGB can accommodate needed dwelling units in a 20-year or 14-year period.

If it is found that an expansion or adjustment is necessary then a study area around the current UGB is established. In this step, all of the land around the current UGB is inventoried to determine which areas and properties are the most suitable to accommodate future urban development. Exception areas are added first. Exception areas include urban reserves and non-resource land. Other factors that are taken into considered, include natural elements such as steep slopes and flood plains, the existing transportation system and the suitability of providing public sewer and water systems to the area.

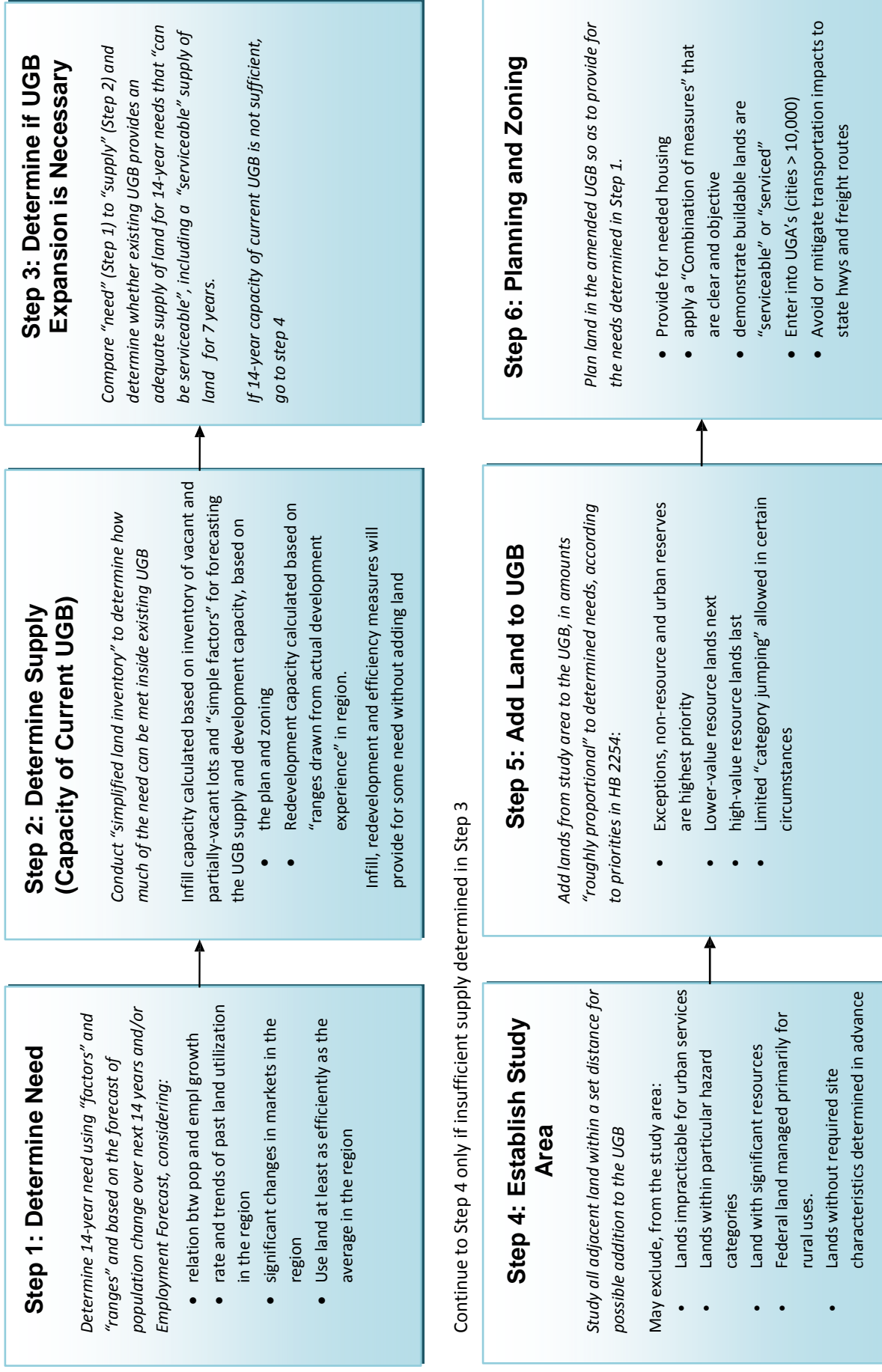
The State's land use planning program calls for coordination between the city and county to ensure the lands added are the best balance between protecting agricultural and forest lands and ensuring the city can grow. Both the city and county governing bodies must adopt the UGB expansion proposal.

If a UGB adjustment or expansion is adopted by both the city and the county then land selected to be added must be zoned at the density that is consistent with the determined land need. When utilizing the streamlined method the city must demonstrate that services can be provided to the land within seven to fourteen years. Also, the zoning of the land must remain the same for 20 years from the adoption of the UGB.

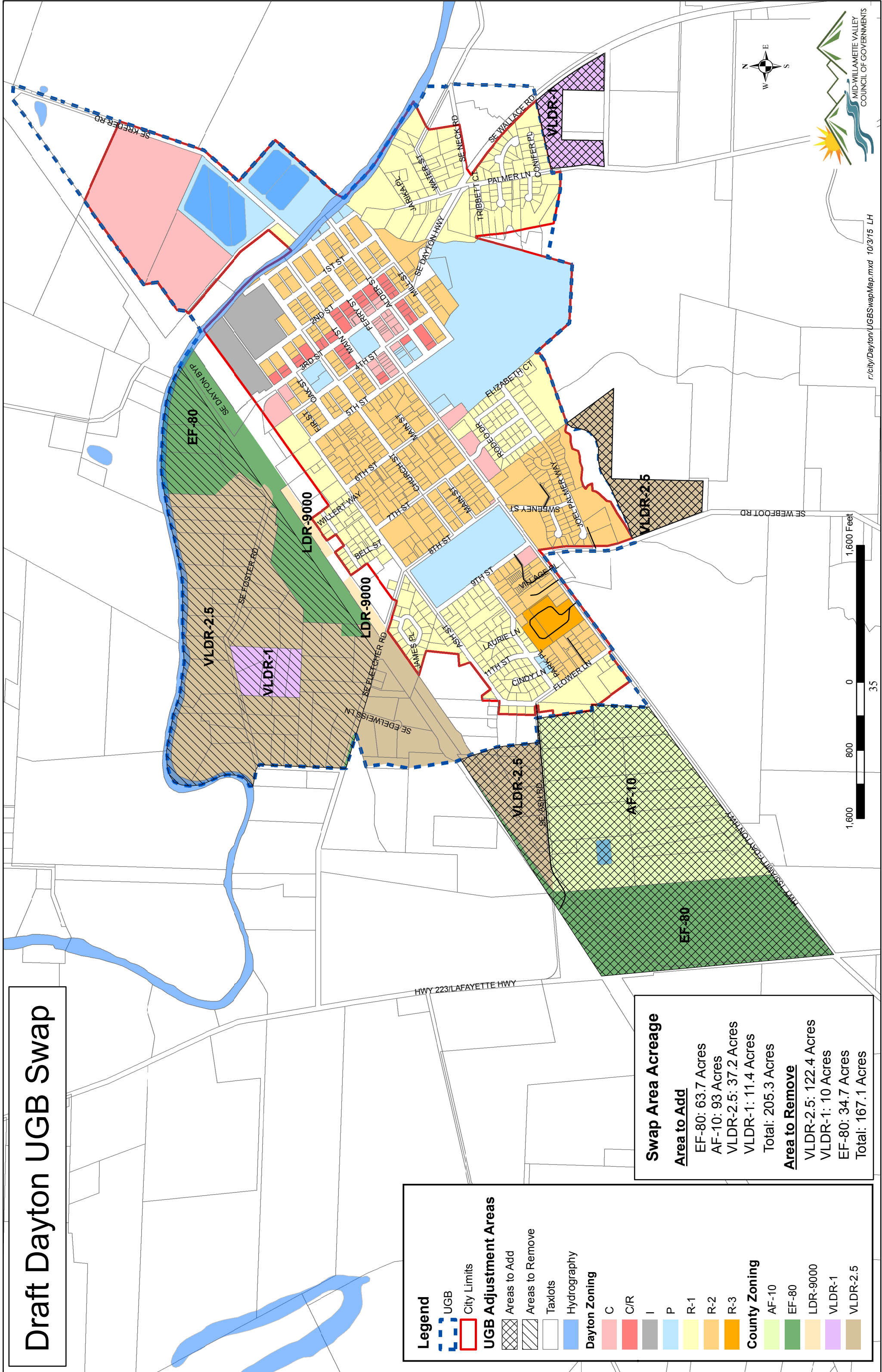
Public Engagement

Informing and involving the public during the UGB expansion or adjustment decision process is an essential. A public engagement plan should be developed to ensure that the public has the opportunity to be involved throughout the process, should Council decide to move forward with the process.

Steps in Streamlined UGB Process



Draft Dayton UGB Swap



Draft Dayton UGB Swap (Alternative)

The map displays the Dayton UGB Swap (Alternative) with various zoning areas and their acreage. The map includes a legend, a scale bar, and a north arrow.

Legend

- UGB
- City Limits
- UGB Adjustment Areas
- Add
- Remove
- Taxlots
- Hydrography
- Dayton Zoning
- County Zoning

Dayton Zoning

- C
- C/R
- I
- P
- R-1
- R-2
- R-3

County Zoning

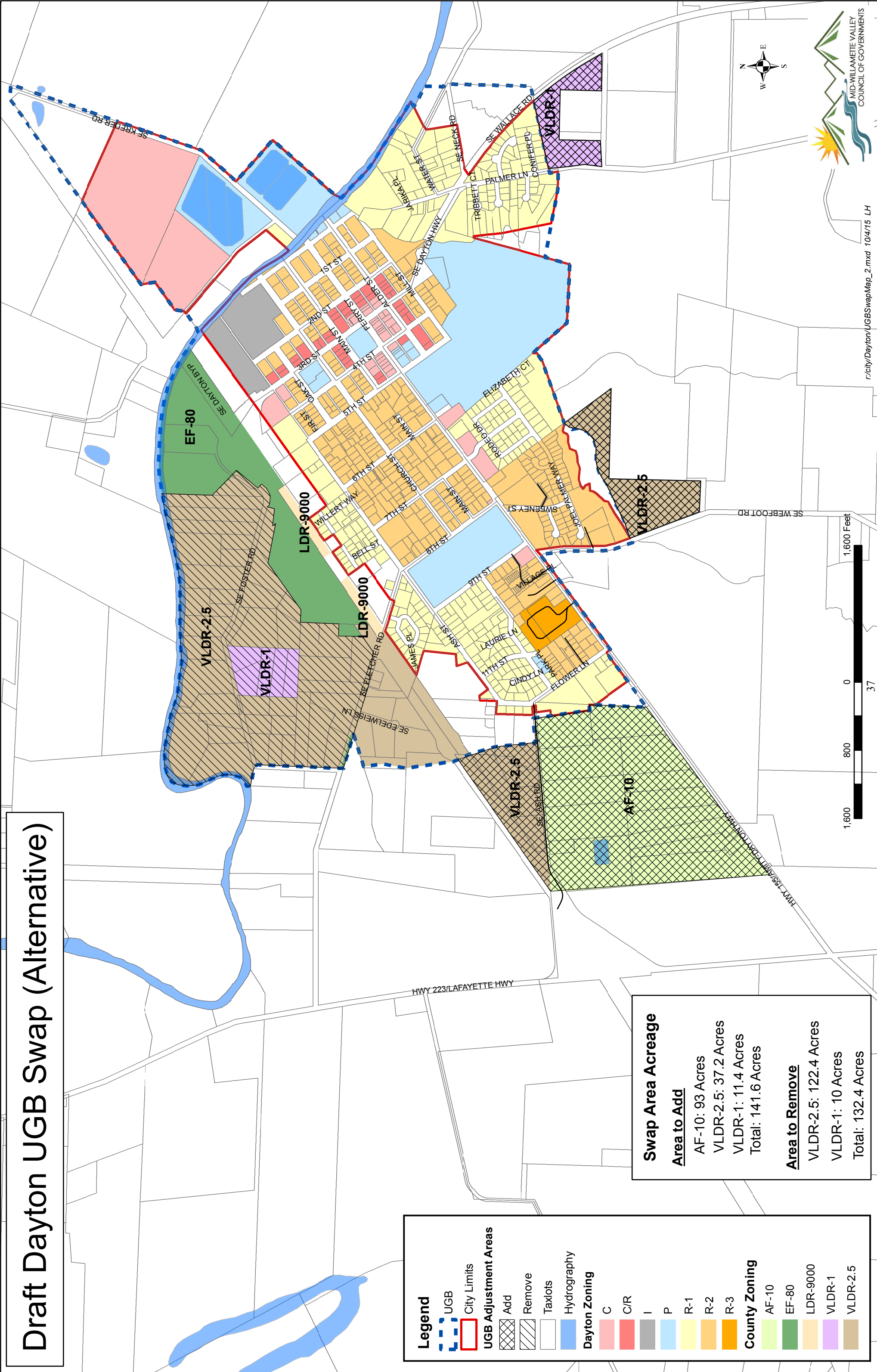
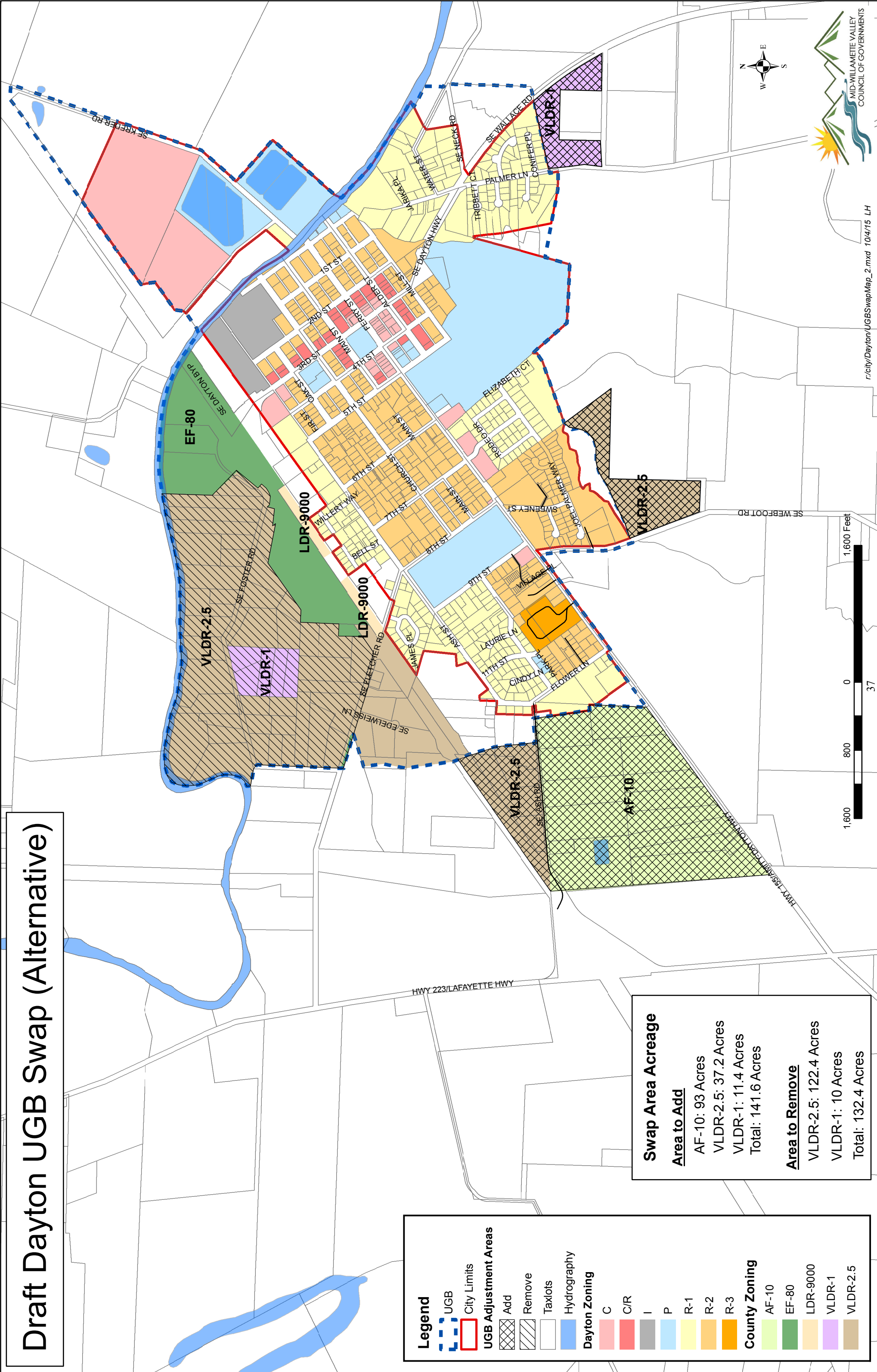
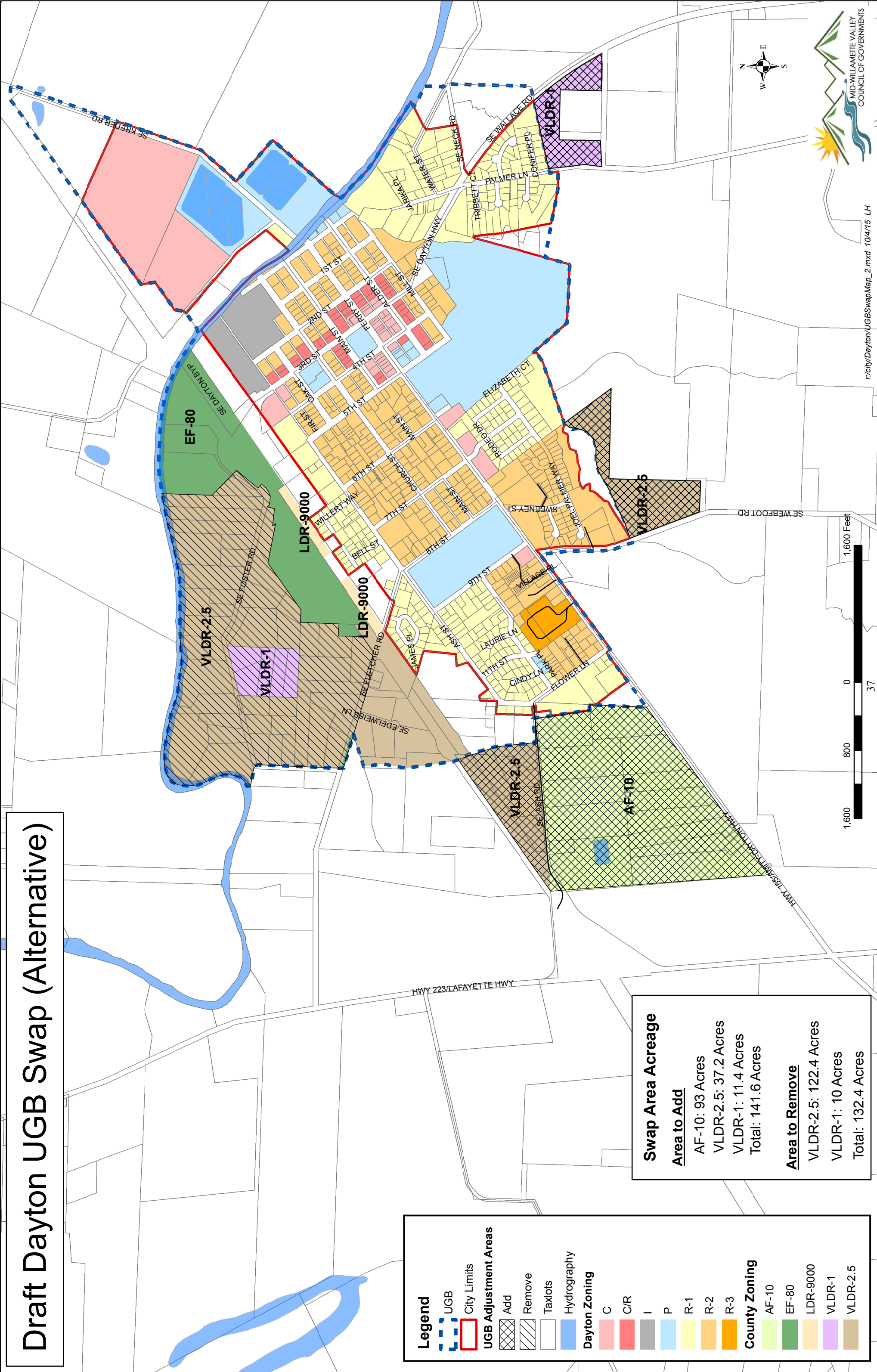
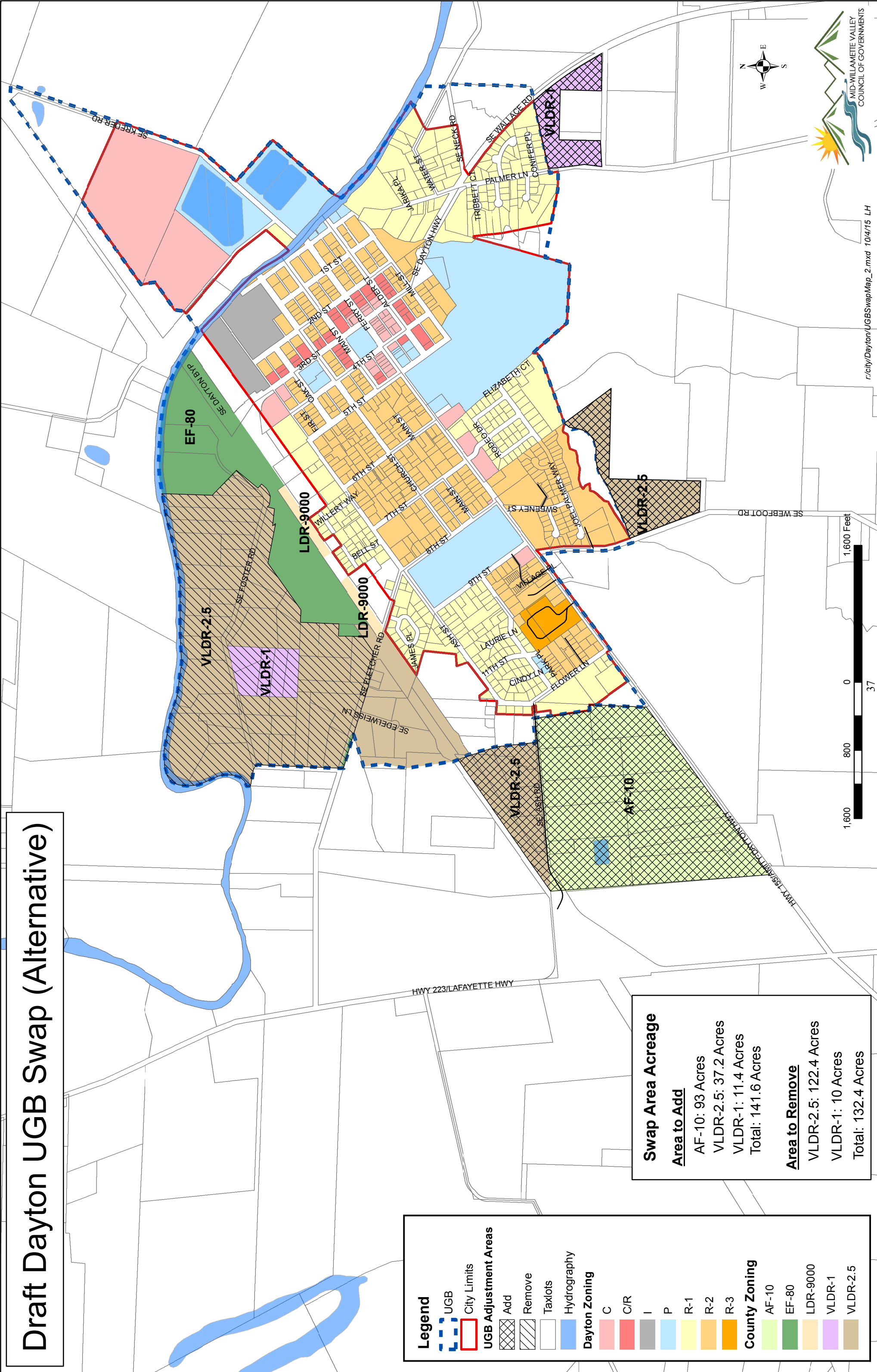
- AF-10
- EF-80
- LDR-9000
- VLDR-1
- VLDR-2.5

Swap Area Acreage

Area to Add	Area to Remove
AF-10: 93 Acres	VLDR-2.5: 122.4 Acres
VLDR-2.5: 37.2 Acres	VLDR-1: 10 Acres
VLDR-1: 11.4 Acres	Total: 132.4 Acres
Total: 141.6 Acres	

Scale: 0 to 1,600 Feet

North Arrow



To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Noise Code Discussion

Background and Information

In making a few of the Noise Code changes earlier this year, the City Council also expressed an interest in reviewing the Noise Code overall and updating the language in the code since the Noise Code has some dated language. Attached you will find the City's current Noise Code as well as the Noise Code from Carlton, Lafayette, Newberg, Eugene, Medford, Hillsboro, and Ashland. These City's provide a wide range of examples from very succinct noise provisions to more detailed code. Some are as old as ours though they may not have the dated language our does. Unless it is the desire of the City Council to get much more detailed than our code is currently, I think our noise code mostly needs some tweaking and updating. As a starting point, it may be prudent to review the City's current Noise Code and point out the things that you don't like or that seem outdated and look to the sample codes guidance on better language.

I like how succinct the Medford Code is (though I don't think we can or should be quite so short in our own code) as well as the frame of reference they provide with each provision. For several of the provisions, the frame of reference is whether the noise can be heard within a dwelling unit. Whether that is a direction we would like to go or not is up to the Council, but I like that they provide a specific frame of reference. We have several provisions where we give a distance as the frame of reference for excessive noise, but feedback from several City Councilors is that this may be less effective.

Paragraph (h) in our code needs updated language, and this is probably a section that could be stated more briefly.

Something else to consider is whether there should be a difference between noise allowed in the downtown area as opposed to noise allowed in the broader residential areas of the City.

While there is a range of noise issues to be discussed, I would like to also revisit the recent provisions adopted by the City Council, namely section 2.8.2(j)(3)(A), which states,

“The standard for judging loud, disturbing and unnecessary noises shall be that of **an average, reasonable person with ordinary sensibilities** after taking into consideration: the proximity of the sound to sleeping facilities, whether residential or commercial; the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived; the time of day or night the sound occurs; the duration of the sound; and whether the sound is recurrent, intermittent, or constant.”

While on the surface this method of judging excessive noise seems prudent (it was drafted by the City Attorney and I recommended it to the City Council), our experience at City Hall has been different. When people get noise complaints, they generally want to understand what they ARE allowed to do so that either the complaints go away, or they at least know they are living within

the confines of the code. We need to be able to give them a frame of reference, and that is difficult to do with the current language. I don't know that the language needs to be changed, but staff would like a little more specific direction from council as far as how to advise people regarding the "reasonable person" test.

City staff will prepare changes to the Noise Code based on the direction from the City Council during this discussion.

2.8 Noise.

2.8.1 **Excessive Noise Prohibited.** No person shall cause excessive noise within the City.

2.8.2 **Excessive Noise Defined (Residential & Commercial Zones).** Excessive noise in a Residential or Commercial Zone in violation of this section includes, but is not limited to:

- (a) The keeping of any bird or animal which by causing frequent or long-continued noise shall disturb the comfort and repose of any person in the vicinity.
- (b) The use of vehicle or engine, either stationary or moving, so out of repair, loaded, or operated as to create any loud or unnecessary grating, grinding, rattling, or other noise.
- (c) The sounding of a horn or signaling device on a street, public place, or private place, except as a necessary warning of danger.
- (d) The use of mechanical device operated by compressed air, steam or otherwise, unless the noise thereby created is effectively muffled.
- (e) The erection, including excavation, demolition, alteration, or repair of a building in residential districts, other than between the hours of 7:00 am and 6:00 pm, except in case of urgent necessity in the interest of the public welfare and safety and then only with a permit granted by the City Manager for a period not to exceed ten (10) days. Such permit may be renewed for periods of five (5) days while such emergency continues to exist. The actual owner of property may do work on property actually occupied by him between the hours of 6:00 pm and 10:30 pm without obtaining a permit as herein required.
- (f) The use of gong or siren upon a vehicle, other than police, fire, or other emergency vehicle.
- (g) The discharge in the open air of the exhaust of steam engine, internal combustion engine, motorboat, or motor vehicle except through an operational muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke.
- (h) The use or operation of an automatic or electric piano, phonograph, gramophone, Victrola, radio, television, loudspeaker, or any instrument for sound-producing or any sound-amplifying device so loudly as to be heard more than 150 feet from the source during the hours of 7:00 am and 10:30 pm; or 50 feet from the source from 10:30 pm to 7:00 am.
- (i) The conducting, operating or maintaining of a commercial garage within 100 feet of a private residence, apartment, rooming house, or hotel in such manner as to cause loud or disturbing noises to be emitted there from between the hours of 10:30 pm and 7:00 am.
- (j) No person shall make, continue, assist in making, or allow: *(Added ORD 635-Effective 08/01/16)*

- (1) Any unreasonably loud, disturbing, or raucous noise;
- (2) Any noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, safety, or peace of reasonable persons of ordinary sensitivity; or
- (3) Any noise which is so harsh, prolonged, unnatural in time or place as to occasion unreasonable discomfort to any persons, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business; or
 - A) The standard for judging loud, disturbing and unnecessary noises shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration: the proximity of the sound to sleeping facilities, whether residential or commercial; the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived; the time of day or night the sound occurs; the duration of the sound; and whether the sound is recurrent, intermittent, or constant.

2.8.3 **Excessive Noise Defined (Industrial Zone).** Excessive noise in an Industrial Zone includes, but is not limited to, sounds discernable outdoors by the human ear more than 150 feet from the source of the sound.

2.8.4 **Excessive Noise Defined (Sound Amplification from a Vehicle).** A person commits the offense of causing unreasonable sound amplification from a vehicle if the person operates, or permits the operation of any sound amplification system which is plainly audible outside of a vehicle from 50 or more feet when the vehicle is on a public highway or on premises open to the public, unless that system is being operated to request assistance or warn of a hazardous situation. *(Added ORD 508 – Effective 11/02/98)*

2.8.4.1 **Definition.** As used in Section 2.8.4, “plainly audible” means any sound for which the information content of that sound is unambiguously communicated to the listener including, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal or comprehensive musical rhythms or vocal sounds.

2.8.4.2 **Exceptions.** Section 2.8.4 does not apply to:

- a) Emergency vehicles as defined in ORS 801.260;
- b) Vehicles operated by utilities defined under ORS 757.005, 758.505 or 759.005;
- c) Audio alarm systems installed in vehicles; or
- d) Federal communications Commission licensed two-way radio communication systems.

2.8.5 Penalty for Violation. A violation of any provision of Section 2.8 of the Dayton Municipal Code is a Class B violation. *(Renumbered ORD 508 – Effective 11/2/98)*

2.8.6 Remedy. If, after proper notification of a violation of Section 2.8 of the Code, the nuisance is not abated, the City Manager or designee may proceed to abate the nuisance pursuant to the provisions in Section 5.13, Uniform Nuisance Abatement Procedure, or this Code. In addition to the remedies provided by Section 5.13, the City shall have all remedies available to it by law. *(Added ORD 635-Effective 08/01/16)*

NOISE CODE SAMPLES

City of Carlton

- **9.02.063 - Noises, unnecessary.**

It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuance of any loud, disturbing, or unnecessary noise in the city of Carlton. The following acts are declared to be in violation of this section, but such enumeration shall not be deemed to be exclusive:

- A. The keeping of any animal which by frequent noise shall disturb the comfort and repose of any person in the vicinity.
- B. The use of any automobile, motorcycle, street car, of other vehicle, any engine, stationary or moving instrument, device, or thing so out of repair, so loaded, or operated in such a manner as to create loud or unnecessary grating, grinding, rattling, or other noise.
- C. The sounding of any horn or signal device on any automobile, motorcycle, streetcar, or other vehicle on any street or public place of the city, except as a necessary warning of danger to property or person.
- D. The use of any mechanical device operated by compressed air, steam, or otherwise, unless the noise created thereby is effectively muffled.
- E. The erection, including excavation, demolition, alteration, or repair of any building, other than between the hours of seven a.m. and six p.m., except upon special permit granted by the city council.
- F. The use of any gong or siren upon any vehicle other than police, fire, or other emergency vehicle.
- G. The operation of any gasoline engine without having the same equipped with and using thereupon a muffler.
- H. The use of a "muffler cutout" on any motor vehicle upon any street.
- I. The use or operation of any automatic or electric piano, phonograph, radio, loudspeaker, or any sound-amplification device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the same a public nuisance; provided, however, that upon application to the common council permits may be granted to responsible persons or organizations to broadcast programs of music, news, speeches, or general entertainment.
- J. The conducting, operating, or maintaining of any garage within one hundred (100) feet of any building used as a private residence, apartment house, rooming house, or hotel in such a manner as to cause loud or offensive noises to be emitted there from between the hours of eleven p.m. and seven a.m.

The foregoing acts are declared nuisances and any person violating any of the provisions of this section shall be deemed guilty of an offense.

City of Newberg

8.15.150 Unnecessary noise – Permitted exceptions.

A. Unreasonable Noise and Exceptions.

1. No person shall make, continue, or cause to be made or continued:
 - a. Any unreasonably loud, raucous, disturbing, or injurious noise; or
 - b. Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the city; or
 - c. Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
2. Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
 - a. The proximity of the sound to sleeping facilities, whether residential or commercial;
 - b. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
 - c. The time of day or night the sound occurs;
 - d. The duration of the sound; and
 - e. Whether the sound is recurrent, intermittent, or constant.
3. The following acts are declared to be per se violations of this section. This enumeration does not constitute an exclusive list:
 - a. Unreasonable Noises. The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably

disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

b. Vehicle Horns, Signaling Devices, and Similar Devices. The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the city, for more than 10 consecutive seconds. The sounding of any horn, signaling device, or other similar device as a danger warning is exempt from this prohibition.

c. Nonemergency Signaling Devices. Sounding or permitting sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes, from any place for more than 10 consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the city for traffic control purposes are exempt from the operation of this provision.

d. Emergency Signaling Devices. The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (A)(3)(d)(i) and (ii) of this section.

i. Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

ii. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm shall terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this section.

e. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the

peace, quiet, and comfort of neighbors in residential or noise-sensitive areas, including multifamily or single-family dwellings.

f. **Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices.** The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:

- i. Within or adjacent to residential or noise-sensitive areas;
- ii. Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the city.

g. **Yelling, Shouting, and Similar Activities.** Yelling, shouting, hooting, whistling, or singing in residential or noise-sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing or other factors not based on content.

h. **Animals and Birds.** Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird.

i. **Loading or Unloading Merchandise, Materials, and Equipment.** The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

j. **Construction or Repair of Buildings, or Excavation of Streets and Highways.** The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 7:00 p.m. on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In nonemergency situations, the city may issue a permit, upon application, if the city determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the city further determines that loss or inconvenience would otherwise result. The permit shall grant permission in nonemergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

k. Noise-Sensitive Areas – Schools, Courts, Churches, Hospitals, and Similar Institutions. The creation of any unreasonably loud and raucous noise adjacent to any noise-sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided, that conspicuous signs delineating the boundaries of the noise-sensitive area are displayed in the streets surrounding the noise-sensitive area.

l. Blowers and Similar Devices. In residential or noise-sensitive areas, between the hours of 7:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids; provided, that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.

m. Commercial Establishments Adjacent to Residential Property. Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from any residential property.

n. Train Whistles. No provision regarding train whistles is proposed at this time due to preemption by the federal government. See “Use of Locomotive Horns at Highway-Rail Grade,” 49 CFR Parts 222 and 229; Federal Register, Vol. 71, No. 159, Thursday, August 17, 2006, page 47,614.

B. No person shall make, assist in making, continue or cause to be made any unreasonably loud, raucous, disturbing, or injurious noise, which either annoys, disturbs or endangers the comfort, repose, health, safety or peace of others.

C. Permitted Exceptions.

1. Upon application to the city, a permit may be granted by the city for events held during the Old Fashioned Festival. Such permit may be exempt from the noise requirements of this chapter and any or all official event activities, provided they do not disrupt emergency service communications. **“Disruption of emergency service communications”** is defined as any noise so loud as to be audible from within the public safety answering point (PSAP), and which is distracting or disrupting to emergency communications personnel. Further, all noise shall be restricted between the hours of 11:00 p.m. and 7:00 a.m. if such noise disturbs adjacent occupants in a residential area.

2. Upon application to the city council, permits may be granted by the city council to responsible persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals, or outstanding events of a commercial or noncommercial nature, provided they do not disrupt emergency service communications. **“Disruption of emergency service communications”** is defined as any noise so

loud as to be audible from within the public safety answering point (PSAP) and which is distracting or disrupting to emergency communications personnel. Further, all noise shall be restricted between the hours of 10:00 p.m. and 7:00 a.m. if such noise disturbs adjacent occupants in a residential area.

3. Upon application to the city, permits may be granted by the city to responsible persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals, or outstanding events of a noncommercial nature. The broadcast or amplification shall not be audible for a distance of more than 200 feet from the instrument, speaker or amplifier; and in no event shall a permit be granted where an obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result. Further, such amplification or broadcast shall be restricted between the hours of 10:00 p.m. and 7:00 a.m. if such noise disturbs adjacent occupants in a residential area.

4. The city council may grant a variance of limited duration from the particular requirements of this chapter for a specific event or activity if the city council determines that not granting the variance would produce hardship without equal or greater benefit to the public. Any person requesting a variance shall make the request in writing to the city manager or designee and state in a concise manner the facts to show why such variance should be granted. The city manager or designee will place the application on the city council's agenda for the next regular meeting after the date the city manager or designee receives the application. A variance granted may be revoked by the city manager or designee in the case of an emergency or safety hazard, or if the conditions of the variance granted are violated. The person whose variance is revoked may appeal the revocation to the city council. Nothing in this chapter affects the city's ability to protect the public against harmful effects of noise under remedies supplied in other sections of this code or other applicable provisions of law.

5. Permits for use of the Newberg cultural district festival street are issued pursuant to NMC [12.05.245](#).

D. Noise Measurement. For the purpose of determining and classifying any noise as unreasonably loud, raucous, disturbing, or injurious as declared to be unlawful and prohibited by this section, the following test measurements and requirements may be applied; provided, however, that a violation of this section may occur without the following measurements being made:

1. Noise occurring within the jurisdiction of the city shall be measured at least 25 feet from a noise source located within a public right-of-way, and if the noise source is located on private property or property other than a public right-of-way, at least 25 feet from the property line of the property on which the noise source is located. When the location or distance prescribed for the measurement of noise is impractical or would provide misleading or inaccurate results, measurements may be taken at other locations and distances using any appropriate correction factors.

2. Measurements shall be made with a calibrated sound level meter of standard design and quality that meets specifications established by the American National Standards Institute (ANSI).

3. In all sound measurements consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

E. Permissible Noise Levels.

1. A noise measured as provided above from any source, other than as provided in this section, which is equal to or in excess of the dBA established for the time period and zones listed below is declared to be unlawful:

Zone	7:00 a.m. to	7:00 p.m. to
	7:00 p.m.	7:00 a.m.
Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Light industrial	70 dBA	65 dBA
Industrial	80 dBA	75 dBA

2. For the purposes of this section, “**residential**” means an area of single-family or multifamily dwellings where businesses may or may not be conducted in such dwellings and may include areas containing accommodations for transients such as motels, hotels and residential areas with limited office development. It may also include educational facilities, hospitals, nursing homes, churches and similar institutions.

3. When a noise source can be measured from more than one zone, the permissible sound level of the more restrictive zone shall govern in the more restrictive zone.

4. Periodic, impulsive or shrill noises are declared unlawful when such noises are at a sound level of five dBA less than those listed above.

F. Exemptions. The following sounds or noise-producing actions are deemed to be of such importance to the community as to be exempted from the provisions of this section within the limits established below:

1. Sounds produced at sporting events authorized by the appropriate responsible agency that are held within the boundaries of the city.

2. The use of domestic power tools for lawn care, landscaping and leaf removal and/or collection, and gardening between the hours of 8:00 a.m. and dusk.

3. The use of power tools engaged in hobby craft and light household maintenance between the hours of 8:00 a.m. and dusk.

4. Sounds produced by the performance of emergency work, vehicles or equipment, including police, fire and ambulance.
5. Sounds made by warning devices operating continuously for three minutes or less.
6. Sounds caused by parades, fireworks displays and other special events for which a permit has been obtained from the city.
7. Sounds produced by the loading, unloading, opening or otherwise handling of garbage cans or containers by an authorized garbage collection and/or recycling operator.
8. Sounds produced by a public utility, its agents or contractors, in the act of construction, repair, or maintenance of a public improvement or utility.

G. Enforcement. Enforcement of the provisions of this section shall be carried out by officers of the city who have received training in the techniques of sound measurement and the operating of sound-measuring instruments and are authorized by the city to issue citations for violations of this section.

[Ord. 2779 § 2, 2-17-15; Ord. 2773, 7-7-14; Ord. 2672, 6-4-07; Ord. 2486, 10-6-97; Ord. 2470, 4-7-97; Ord. 2392, 10-6-94; Ord. 1690, 3-19-73. Code 2001 § 95.39.]

Penalty: See NMC 8.15.260.

City of Eugene

4.080 Noise Disturbance - Prohibited.

- (1) For purposes of this section, and sections 4.081, 4.083 and 4.084 of this code:
 - (a) Noise disturbance means any sound which:
 - 1. Injures or endangers the safety or health of a human;
 - 2. Annoys or disturbs a reasonable person of normal sensitivities; or
 - 3. Endangers or injures personal or real property.
 - (b) Plainly audible means where the listener clearly can hear the content of the sound produced by the noise source. Sounds which may be clearly audible include, but are not limited to, musical rhythms, spoken words, vocal sounds, and engine noises.
- (2) It shall be unlawful for any person to intentionally or recklessly create or continue any noise disturbance.

4.081 Noise Disturbance - Repetition and Failure to Cease. It shall be unlawful for any person responsible for a noise disturbance caused by electronically amplified sound or a gathering of five or more people to:

- (a) Fail within 30 minutes to eliminate or cease such noise disturbance after receiving a citation or other notice of a violation of this section or section 4.080 of this code, or
- (b) Intentionally or recklessly create the same or a similar noise disturbance within six months of having received a citation or other notice of a violation of this section or section 4.080 of this code.

4.083 Noise Disturbance - Specific Prohibitions. Unless exempted by section 4.084 of this code, the following acts are declared to be noise disturbances; however this enumeration shall not be deemed an exclusive list of the violations of section 4.080(2) or section 4.081 of this code, nor shall the recitation of specific prohibitions below be deemed the exclusive and entire listing of unlawful noise disturbances for each subcategory:

- (a) Sound producing, amplifying or reproducing equipment. Operating or permitting the use or operation of any device designed for sound production, amplification, or reproduction, including but not limited to a radio, drums and other musical instruments, phonograph, television set, tape recorder, loud speaker, or other similar device:
 - 1. Between the hours of 10 p.m. and 7 a.m. the following day so as to be plainly audible within any dwelling unit which is not the source of the sound; or
 - 2. On public property or on a public right-of-way so as to be plainly audible fifty feet or more from such device, except as specifically authorized in writing by the city, county, state or federal government.
- (b) Animals. Keeping, or permitting the keeping of any animal or fowl otherwise permitted to be kept which, by any sound, cry or behavior causes vocal or

other sounds on a sustained basis during a 15-minute period shall constitute a noise disturbance.

- 4.084** **Noise Disturbance – Exemptions.** The following sounds are exempted from the provisions of sections 4.080, 4.081 and 4.083 of this code:
- (a) Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that burglar or fire alarms shall not operate continuously for more than fifteen minutes.
 - (b) Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when in pursuit of an actual or suspected violator of the law.
 - (c) Sounds produced pursuant to a specific variance granted by the Oregon Environmental Quality Commission, or by the city manager or hearings official under subsection (2) of section 6.755 of this code.
 - (d) Sounds caused by sources regulated as to sound production by federal law or sounds caused by sources the regulation of which is preempted by state law.
 - (e) Sounds not electronically amplified, created by athletic and entertainment events other than motor vehicle racing events or fireworks displays.
 - (f) Electronically amplified announcements at athletic events other than motor vehicle racing events.
 - (g) The sounding of any horn or signaling device on an automobile, motorcycle, or other vehicle reasonably required by the exigencies of vehicular or pedestrian traffic.
 - (h) Sounds specifically authorized under a permit or license issued by the city.

City of Medford

5.225 Unnecessary Noise

(1) No person shall make, continue, cause, or permit to be made or continued any noise disturbance. The following are declared to be noise disturbances in violation of this section, but this enumeration is not exclusive:

- (a) Barking dogs or other noisy animals which disturb the comfort and repose of any person in the vicinity.
- (b) Use of sound producing or reproducing equipment that is plainly audible within a dwelling unit that is not the source of the sound, or use of such equipment on public property or on a public right-of-way so as to be plainly audible 50 feet or more from the source of the sound. The city manager or his designee may grant an exemption from this subsection to allow a person reasonable use of public property or the right-of-way to broadcast music or speech.
- (c) Parking a motor vehicle of 10,000 pounds GVW (gross vehicle weight) or more with the motor or auxiliary equipment in operation on a public right-of-way or on private property between the hours of 10 p.m. and 7 a.m., if the noise so produced is plainly audible within a dwelling unit. This subsection shall not apply to commercial construction equipment, to the normal operation of vehicles designed and used for commercial transportation of passengers, or to other vehicles being loaded or unloaded.
- (d) Alteration, demolition, erection, or repair of any structure between the hours of 6 p.m. and 7 a.m. The City Manager or his designee may grant an exception to a person from this subsection if the manager or his designee determines that the public interest requires it or that there are no persons in the area who would be disturbed by the work.
- (e) Operation of mechanically powered lawn equipment, garden tools, chainsaws, blowers or similar devices in a residentially zoned neighborhood between the hours of 10:00 p.m. and 7:00 a.m.
- (f) Operation of any motor vehicle in excess of 10,000 pounds GCWR (Gross Combination Weight Rating) in any residential zone of the city or within 300 feet of any dwelling unit, school, hospital, library, or business with an engine braking device engaged; except in an emergency situation to avoid imminent danger to a person or to property.

(2) Violation of this section constitutes a violation. Every day in which a noise disturbance as defined in this section is made, continued, caused, or permitted to be made or continued constitutes a separate violation.

City of Hillsboro

Subchapter 6.24 NOISE

6.24.010 Unnecessary noise

It is unlawful for any person to make, assist in making, allow or perpetuate the continuance of any unauthorized, disturbing or unnecessary noise.

6.24.020 Sound measurement

A. Sound measurements are not required for the enforcement of this subchapter. Should measurements be made they must be made with a sound level meter that:

1. Is in good operating condition, meeting the requirements of a Type I or Type II meter;
 2. Contains at least an A-weighted scale and both fast and slow meter response capability;
- and
3. Is located at or within the boundaries of property on which a noise sensitive building that is not the source of the sound is located.

B. If sound measurements are made, the person making those measurements must have completed training using the sound level meter and use procedures consistent with the training.

6.24.030 Noise limits

Unless authorized by the manager, it is unlawful for any person to produce or allow to be produced, with or from a sound-producing source, sound that:

- A. Exceeds:
1. 50 decibels A-weighting (dBA) at any time between 9 p.m. and 6 a.m. the following day,
- or
2. 60 dBA at any time between 6 a.m. and 9 p.m.; or
- B. Is plainly audible at any time between 9 p.m. and 6 a.m. the following day:
1. Within a noise-sensitive building which is not the source of sound, or
 2. On a public right-of-way from a distance of at least 100 feet from the source of the sound.

6.24.040 Specific noises

The following acts are a violation of this subchapter when the noise level exceeds those specified in HMC 6.24.030 unless exempt under HMC 6.24.050:

A. Sounding of any horn, signal or other device on a motor vehicle, while in motion, except as a danger signal. Exhaust brakes may only be applied to stop or slow during an emergency;

B. Use of sound-producing devices including musical instruments, loudspeakers, amplifying devices, public address systems, radios, television sets, computers and any other electronic devices that play back audio or audio video recordings;

C. Operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades;

D. Use of any motor vehicle in such a condition or manner so as to create loud or unnecessary sounds, grating, grinding, rattling or other noise;

E. Erection, excavation, demolition, alteration or repair of any building in or on property adjacent to a residential or business district between 9 p.m. and 6 a.m. the next day, except in the case of urgent necessity in the interest of public safety with the appropriate permit from the manager. Such permit may be for no longer than three days or while the emergency continues, whichever is less; and

F. Issuing of amplified sound in an outdoor facility except under all of the following conditions:

1. Sound levels at the perimeter of the facility do not exceed the maximum levels under this subchapter;

2. If the manager authorizes noise to exceed the limits under HMC 6.24.030, continued amplified sound may not be transmitted more than:

a. 50 minutes of each hour;

b. four hours of any eight-hour block of time during weekends; and

c. three hours between 4 p.m. and 9 p.m. on weekdays; and

3. The manager may authorize community groups and activities to exceed the limitations of HMC 6.24.040(F)(2)(b) and (c) if it is determined that it would serve the good of the community. Such authorization may be revoked for cause and without notice.

6.24.050 Exceptions

The following are exceptions to this subchapter:

A. Sounds created by organized athletic or other group activities, when such activities are approved by a government entity and conducted on its property, such as stadiums, parks, streets, public plazas, schools, fair grounds, airports and athletic fields. These exceptions do not prohibit the manager from declaring a specific event or activity in violation of local, state or federal law;

B. Sounds caused by emergency work, or by ordinary and accepted use of emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property;

C. Sounds caused by bona fide use of emergency warning devices and alarm systems;

D. Sounds regulated by federal law, including but not limited to sounds caused by railroads or aircraft;

E. Sounds caused by demolition activities when performed under a permit issued by the appropriate governmental authorities;

F. Sounds caused by industrial, agricultural or construction activities between 6 a.m. and 9 p.m., other than sounds regulated under HMC 6.24.050(E) and that do not violate HMC 6.24.040(E);

G. Sounds caused by regular vehicular traffic upon premises open to the public;

H. Sounds caused by air-, electric- or gas-driven domestic tools, including lawn mowers and edgers, radial arm, circular and table saws, and other similar lawn or construction tools, excluding tools used for vehicle repair, between 6 a.m. and 9 p.m., Monday through Friday and between 8 a.m. and 6 p.m., Saturday and Sunday;

I. Sounds caused by chainsaws, when used for pruning, trimming or cutting of live trees or private wood cutting, between 8 a.m. and 6 p.m., and not exceeding two hours in any 24 hour period; and

J. Sounds caused by non-amplified human voices.

6.24.060 Interference in reception

A. Operation or use by any person of any electrical, mechanical or other device that causes interference with radio or television receivers of good engineering design is prohibited.

B. This section does not prohibit the use or operation of any such device when necessary for the protection of life or property, for the care or treatment of sick or injured persons, or for the operation of a public utility.

9.08.170 Unnecessary Noise

A. Definitions. For the purposes of this section only, the following words shall have the meaning provided in this paragraph.

1. Emergency: any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.
2. Emergency Work: any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.
3. City Administrator: the City Administrator of City or the City Administrator's designee.
4. Noise Sensitive Area: includes, but is not limited to, real property normally used for sleeping, or normally used as a school, church, hospital or public library.
5. Plainly audible: any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.
6. Public right-of-way: any street, sidewalk, or similar place normally accessible to the public which is owned or controlled by a government entity.
7. Public space: any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.
8. Residential property: any real property located in a residentially zoned district pursuant to the local land use code.

B. General Prohibition. No person shall make, continue, or assist in making:

1. Any unreasonably loud, disturbing, or raucous noise; or
2. Any noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, safety, or peace of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City;
3. any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

C. The standard for judging loud, disturbing and unnecessary noises shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration:

1. The character of the neighborhood in which the noise is made and the noise is heard;
2. The proximity of the sound to sleeping facilities, whether residential or commercial;
3. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
4. The time of day or night the sound occurs;
5. The duration of the sound; and
6. Whether the sound is recurrent, intermittent, or constant.

D. Noises Prohibited. The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

1. Unreasonable Noises. The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.
2. Animals and Birds. Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns controls or otherwise cares for the animal or bird.
3. Vehicle Horns, Signaling Devices, and Similar Devices. The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.
4. Non-Emergency Signaling Devices. Sounding or permitting sounding of any amplified signal from any bell, chime, siren, whistle or similar device,

intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the City for traffic control purposes are exempt from the operation of this provision.

5. Emergency Signaling Devices. The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (a) and (b), below.

a. Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

b. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this Ordinance.

6. Construction or Repair of Buildings, Excavation of Streets and Highways. The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 7:00 p.m., on weekdays, and 8:00 a.m. and 6:00 p.m. on weekends and holidays, except in the case of an emergency in the interest of the public welfare and safety. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the City Administrator may issue a permit, upon application, if the City Administrator determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the City Administrator further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than five days. The permit may be renewed once for a period of five days or less. The actual owner of property may do work on property which is owner occupied between the hours of 6:00 p.m. and 10:00 p.m. without obtaining a permit under this paragraph.

7. Radios, Televisions, Boomboxes, Stereos, Musical Instruments and Similar Devices. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily

listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas, including multi-family or single-family dwellings.

8. Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices. The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound is prohibited without a permit from the City Administrator. The City Administrator may grant a permit to responsible persons or organizations for the broadcast or amplification of sound as a part of a national, state, or city event, public festival, or special events of a noncommercial nature. If the City Administrator does not grant the permit, the matter may be appealed to an outside hearings officer pursuant to AMC 2.30. This permit shall not be required for any public performance, gathering, or parade for which a permit authorizing the event has been obtained from the City.

9. Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing or other factors not based on content.

10. Noise Sensitive Areas - Schools, Courts, Churches, Hospitals, and Similar Institutions. The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.

11. Blowers, and Similar Devices. In residential or noise sensitive areas, between the hours of 9:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, power tools or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and

raucous and can be heard across the property line of the property from which it emanates.

12. Commercial Establishments Adjacent to Residential Property. Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 11:00 p.m. and 7:00 a.m., which is plainly audible at from the property line of any residential property.

The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled

E. Generally sound measurements are not required for enforcement of this chapter; however, sound measurements are required for enforcement pursuant to this section. If sound measurements are taken, they shall be taken with a sound level meter in good operating condition. Any source of noise which exceeds the following standards is considered a public nuisance:

1. Decibel Noise Standards

Allowable Statistical Noise Levels in any One Hour:

7 a.m. to 9 p.m. 9 p.m. to 7 a.m.

L50--50 DBA L50--45 DBA

L10--55 DBA L10--50 DBA

L1--60 DBA L1--55 DBA

where:

L50 = noise level exceeded 50% of the time

L10 = noise level exceeded 10% of the time

L1 = noise level exceeded 1% of the time

2. Where measured. Measurement of a noise source shall be made from the closest property line of a residential property.

3. Heat Pumps or Mechanical Devices.

a. No person shall operate a commercial or residential heat pump, air-conditioning unit, or similar mechanical device if noise levels from its operation exceed forty-five (45) DBA from the closest property line of a residential property on an adjacent parcel of land characterized as a noise sensitive area.

b. No person shall operate a commercial or residential heat pump, air-conditioning unit, or similar mechanical device that was installed prior to 1981 if noise levels from its operation exceed fifty (50) DBA from the closest property line of a residential property on an adjacent parcel of land characterized as a noise sensitive area.

c. Heat Pumps or Mechanical Devices is a Class II violation.

4. Variances. The Council may grant variance to the Decibel Noise Standards when it finds that strict compliance with the ordinance would cause an unusual and unreasonable hardship to a commercial or industrial use.

a. The Council shall notify all adjacent residential structures within 200 ft. of the proposed variance and shall hold the public hearing on the variance prior to making any decisions on the request for a variance.

b. The variance shall be the minimum necessary to alleviate the unreasonable hardship.

F. Exemptions.

1. Sounds caused by the following are exempt from the prohibitions set out in paragraph D and are in addition to the exemptions specifically set forth in paragraph D:

a. Sounds of regular vehicular traffic upon premises open to the public, provided that the prohibition of paragraph D.3 continues to apply.

b. Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in paragraph D.5 continues to apply.

c. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

d. Sounds regulated by federal law, including, but not limited to, sounds caused by railroads or airports.

e. Bell tower chimes.

f. Temporary Construction activities. Noise from temporary construction activities that take place between 7:00 a.m. to 9 p.m.

g. Outdoor School and Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.

h. Other Outdoor Events. Athletic events, outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that any required permits have been obtained from the appropriate permitting authority.

G. Penalty. Unless otherwise specified in this section, unnecessary noise is a Class I Violation.

City of Lafayette

5.485 Unnecessary Noise.

(1) No person may make, assist in making, continue or cause to be made any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others.

(2) Loud, disturbing and unnecessary noises in violation of this section include but are not limited to the following:

(a) The keeping of any bird or animal which by causing frequent or long-continued noise shall disturb the comfort and repose of any person in the vicinity;

(b) The attaching of a bell to an animal or allowing a bell to remain on an animal;

(c) The use of a motor vehicle, motorcycle, or motorized vehicle, whether or not designated for use on public roads at any time or under any conditions of grade, load, acceleration, deceleration, movement, at rest, whether or not in repair or operated in such a manner as to create loud or unnecessary grating, grinding, rattling, motor winding, squealing, screeching, or other tire noise or any other unnecessary noise;

(d) The sounding of a horn or signaling device on a vehicle on a street, public place or private place, except as a necessary warning of danger;

(e) The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled;

(f) Any excavation or the construction, erection, repair alteration or demolition of a building or structure other than between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, or between the hours of 9 a.m. and 6 p.m. on Saturday and Sunday. Exceptions may be granted by the city administrator in cases of urgent necessity in the interest of the public welfare and safety, by permit for a period not to exceed 10 days. Such permit may be renewed for periods of five days while such emergency continues to exist. Exceptions may also be granted by the city council, by application before or during the progress of the work, upon a determination by the council that the public health, safety and welfare will not be impaired and that loss or inconvenience would result to any person unless such exception were granted.

(g) The use of a gong or siren upon a vehicle, other than police, fire or other emergency vehicle;

(h) The creation of excessive noise on a street adjacent to a school, institution of learning, church or court of justice, while the same are in use, or on a street adjacent to a hospital, nursing home or other institution for the care of the sick or infirm, which unreasonably interferes with the operation of such institution or disturbs or unduly annoys patients;

(i) The discharge in the open air of the exhaust of a steam engine, internal combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke;

(j) The use or operation of an automatic or electric piano, phonograph, radio, television, loudspeaker, or any instrument for sound producing or any sound-amplifying device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance.

i. Upon application to the council, permits may be granted to responsible persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals, or outstanding events of a noncommercial nature. The broadcast or amplification shall not be audible for a distance of more than 1,000 feet from the instrument, speaker or amplifier, and in no event shall a permit be granted where any obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result;

(k) i. The making of a noise by mechanical, electric or electronic device for the purpose of advertising goods or attracting patronage is allowed on public rights-of-way when:

(aa) The seller possesses a valid city business license;

(bb) The seller is operating within the hours of 9:00 AM and 8:00 PM;

(cc) The seller is operating on residential streets in such a fashion as to not place persons at risk of injury when responding to his/her vehicle.

ii. The sound produced by the device must not duplicate or otherwise simulate any vehicle warning device such as a horn, alarm or back-up alarm. The sound level must be regulated such that it does not become a nuisance to the community.

(l) The conducting, operating or maintaining of a garage within 100 feet of a private residence, apartment, rooming house or hotel, in such manner as to cause loud or disturbing noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m.