

By MR. Mims

No. 31426-15

AN ORDINANCE

Amending Sections 150.120.3, 150.120.10(H), 150.130.5(B), 150.130.9(A), 150.135.7, 150.135.8(B), 150.140.4(D)(8), 150.150.4(L), 150.200.1, 150.200.2, 150.300.1(D), 150.340.2, 150.363, 150.430.2(L), 150.565.56, and 150.600.3(E) of the Revised Code of General Ordinances; Enacting Sections 150.120.10(A)(1) and 150.120.10(D)(3) of the Revised Code of General Ordinances; and, Repealing Existing Sections 150.120.3, 150.120.10(H), 150.130.5(B), 150.130.9(A), 150.135.7, 150.135.8(B), 150.140.4(D)(8), 150.150.4(L), 150.200.1, 150.200.2, 150.300.1(D), 150.340.2, 150.363, 150.430.2(L), 150.565.56, and 150.600.3(E) of the Revised Code of General Ordinances Relating to Source Water Protection, and Declaring an Emergency.

WHEREAS, Effective, expeditious, and responsible regulation of land requires that the City Commission review and amend certain sections of the Revised Code of General Ordinances relating to the Zoning Code to update regulations to reflect new terminology, experience to date and best practices; and,

WHEREAS, The City Plan Board, at its April 14, 2015, meeting, in Case Z-007-2015, recommended approval of amendments to various sections of the Revised Code of General Ordinances related to the Source Water Protection Program provisions of the Zoning Code; and,

WHEREAS, It is necessary for the immediate preservation of the public peace, property, health and safety that this ordinance take effect immediately upon passage: now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Section 150.120.3, Appeals and Variances, Public Hearing by the BZA (Appeals or Variances), of the Revised Code of General Ordinances, is amended as follows:

Except as described in Section 150.120.10, when an application for appeal or variance has been filed in proper form and the application fee has been paid, the Secretary of the Board of Zoning Appeals shall immediately place the request upon the calendar for public hearing before the Board of Zoning Appeals. Except as described in Section 150.120.10, the Board of Zoning Appeals shall hold such public hearing within sixty (60) days after the receipt of an application for an appeal or variance from the Zoning Administrator or applicant, unless the applicant agrees to a later date for the public hearing. The BZA may recess such hearings from time to time, and, if the time and

place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. Any person in interest may appear at the public hearing in person, by agent, or by attorney.

Section 2. That Section 150.120.10(A)(1), Appeals and Variances, Variances by the Board of Zoning Appeals, Application for Variance to Increase Established Total Maximum Daily Inventory (TMDI), of the Revised Code of General Ordinances, is enacted as follows:

- (1) Application for Variance to Increase Established Total Maximum Daily Inventory (TMDI). An application for a variance to increase established TMDI within the Water Protection Overlay (WP) District may be obtained in the Department of Planning and Community Development. The applicant shall file an application for a variance with the Secretary of the Board of Zoning Appeals or his designated agent. The applicant shall provide all information requested on the application as well as the application fee, as set forth in the schedule of fees adopted by the City Commission. The Secretary of the BZA or his designee may require a pre-application meeting with the applicant prior to receiving the application. However, no opinions, suggestions, or recommendations discussed may be relied upon by the applicant as a guarantee of subsequent approval or disapproval of the application.

Within five (5) days of receiving an application in the proper form and payment of the application fee, the Secretary of the BZA shall provide copies of the application to the Director of Water, the Director/Chief of Fire, and the Zoning Administrator.

The BZA shall hold a public hearing within sixty (60) days of receiving the completed application, unless the applicant agrees to a later date for the public hearing. The BZA may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. Any person in interest may appear at the public hearing in person, by agent, or by attorney.

In addition to the requirements found in Section 150.120.4, written notice of such BZA hearing shall be sent at least fourteen (14) days prior to the hearing by first class mail to the chair of the Northeast Priority Land Use Board, the chair of the Environmental Advisory Board, and to Montgomery County, Huber Heights, Vandalia, Harrison Township, Riverside, Public Health Dayton and Montgomery County, and Wright Patterson Air Force Base. The notice of such hearing shall state the time, place, date, and subject of the hearing. Failure of delivery of such notices shall not invalidate action taken on such application.

Section 3. That Section 150.120.10(D)(3), Appeals and Variances, Variances by the Board of Zoning Appeals, Variances to Increase Established Total Maximum Daily Inventory (TMDI), of the Revised Code of General Ordinances, is enacted as follows:

- (3) Variances to Increase Established Total Maximum Daily Inventory (TMDI). Variances to increase established TMDI and/or the established Facility Hazard Potential Rating (FHPR) within the Well Head Operation (WO) District and/or the Miami Well Field shall be prohibited. Variances to increase TMDI in connection with a prohibited use as enumerated in Section 150.363.2(E) or a use explicitly prohibited in the definition of Manufacturing, heavy shall be prohibited. No variance to increase established TMDI within the WP Overlay District shall be granted unless the BZA determines that the variance will not pose a substantial risk to the contamination of groundwater. In order to obtain such a variance, the applicant must prove all of the following by clear and convincing evidence:
- (a) The granting of the variance will not adversely affect the City's well fields or the ability of government water services to be safely delivered and thereby adversely affect the public health, safety or general welfare;
 - (b) Risk to the Source Water Protection Area posed by the requested variance is negated through proper engineering controls and a Spill Prevention and Response Plan;
 - (c) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
 - (d) The variance will be consistent with the general spirit and intent of the Zoning Code and the Source Water Protection Program; and,
 - (e) The variance sought is the minimum that will afford relief to the applicant.

Section 4. That Section 150.120.10(H), Appeals and Variances, Variances by the Board of Zoning Appeals, Term and Extension of Variance, of the Revised Code of General Ordinances, is amended as follows:

- (H) Term and Extension of Variance. Variances, except those to increase established TMDI, shall expire one (1) year from the date of their being granted unless, prior thereto, the applicant commences actual construction in accordance with the granted variance or an extension of time has been granted by the Board of Zoning Appeals. There shall be no modification of variances except by further action of the BZA. Once the time limit

pursuant to this sub-section has expired, a request for a variance shall be considered to be a new application for a variance and shall meet all requirements for application and review pursuant to this Section.

- (1) Variances to Increase Established TMDI. Any increase in TMDI shall not be effective until an occupancy certificate has been issued by the Zoning Administrator. An occupancy certificate for an increase in TMDI shall not be issued unless all conditions imposed by the Board of Appeals as a condition of approval have been met to the satisfaction of the Zoning Administrator, Director of Water, and Director/Chief of Fire.

If an occupancy certificate is not issued within twelve (12) months of the decision by the Board of Zoning Appeals, the variance to increase TMDI shall expire unless an extension of time has been granted by the BZA. There shall be no modification of variances to increase TMDI except by further action of the BZA.

Once the time limit pursuant to sub-section (H)(1) has expired, a request for a variance to increase TMDI shall be considered to be a new application for a variance and shall meet all requirements for application and review pursuant to this Section.

Section 5. That Section 150.130.5(B), Fees, Penalties and Enforcement, Notice of Violation, of the Revised Code of General Ordinances is amended as follows:

- (B) Except for violations of Section 150.363, each notice of violation issued pursuant to this section shall contain the following warning:

FAILURE TO TIMELY COMPLY WITH THIS NOTICE OF VIOLATION SUBJECTS YOU TO A FINE NOT TO EXCEED \$500.00 AND/OR INCARCERATION NOT TO EXCEED 60 DAYS UPON CONVICTION, OR A CIVIL PENALTY NOT TO EXCEED \$50.00 PER DAY OR \$500.00 TOTAL, OR BOTH A CIVIL PENALTY AND CRIMINAL PROSECUTION.

For violations of Section 150.363, each notice of violation issued pursuant to this section shall contain the following warning:

FAILURE TO TIMELY COMPLY WITH THIS NOTICE OF VIOLATION SUBJECTS YOU TO A FINE NOT TO EXCEED \$500.00 AND/OR INCARCERATION NOT TO EXCEED 60 DAYS UPON CONVICTION, OR A CIVIL PENALTY NOT TO EXCEED \$1,000.00 PER DAY OR \$50,000.00 TOTAL, OR BOTH A CIVIL PENALTY AND CRIMINAL PROSECUTION.

Section 6. That Section 150.130.9(A), Fees, Penalties and Enforcement, Civil Penalties, of the Revised Code of General Ordinances is amended as follows:

- (A) Subject to Section 150.130.4, the Zoning Administrator may assess a civil penalty against any person who fails to comply with a notice of violation issued pursuant to Section 150.130.5 of this Zoning Code. The purpose of the civil penalty is to fairly and efficiently effect a remediation of the violation. To accomplish this purpose, the Zoning Administrator shall establish and promulgate a schedule of assessed penalties based on the severity of the violation; provided, however, that the maximum civil penalty assessed by the Zoning Administrator pursuant to this section shall not exceed Fifty Dollars (\$50.00) per day or Five Hundred Dollars (\$500.00) total. For violations of Section 150.363, the maximum civil penalty assessed by the Zoning Administrator pursuant to Section 150.130.5 shall not exceed One Thousand Dollars (\$1,000.00) per day or Fifty Thousand Dollars (\$50,000.00) total.

Section 7. That Section 150.135.7, Certificates, Application for Occupancy Certificates, of the Revised Code of General Ordinances, is amended as follows:

Every application for a zoning certificate shall be deemed to be an application for an occupancy certificate also. Every application for an occupancy certificate for a new or changed use of land, building, increase in TMDI, or structures where no zoning certificate is required shall be filed with the Zoning Administrator and be in such form and contain such information as the Zoning Administrator may require.

Section 8. That Section 150.135.8(B), Certificates, Issuance of Occupancy Certificates, Occupancy Certificate for an Increase in the Total Maximum Daily Inventory of a Zoning Lot, of the Revised Code of General Ordinances, is amended as follows:

- (B) Occupancy Certificate for a New Use. No occupancy certificate for a new use of any building, structure or land shall be issued until the premises have been inspected and certified by the Zoning Administrator to be in full and complete compliance with all the applicable regulations for the zoning district in which it is located. However, the Zoning Administrator may issue an occupancy certificate to an applicant who has not, or whose predecessor or predecessors in interest has not obtained an occupancy certificate for a change in use of any land, building, or structure as required by law at the time such change in use occurred, provided the Zoning Administrator determines that such applicant, or his predecessor or predecessors in interest, would have been entitled to the issuance of an occupancy certificate if the application then required by law would have been made.

Occupancy Certificate for an Increase in the Total Maximum Daily Inventory (TMDI) of a Zoning Lot. An occupancy certificate for an increase in TMDI shall not be issued unless the premises have been

inspected and certified by the Zoning Administrator, Department of Water and the Director/Chief of Fire to be in full and complete compliance with all conditions imposed by the BZA and/or the Zoning Administrator as well as with all applicable regulations for the applicable zoning district.

Section 9. That Section 150.140.4(D)(8), Non-Conforming Uses, Buildings, Structures, and Lots, Non-Conforming Use of Buildings and Land, Expanding Non-conforming Uses within Structures, of the Revised Code of General Ordinances, is amended as follows:

- (8) For uses in the WO or WP Districts, Total Maximum Daily Inventory, Facility Hazard Potential Rating, and requirements found in Section 150.120.

Section 10. That Section 150.140.4(L), Non-Conforming Uses, Buildings, Structures, and Lots, Non-Conforming Use of Buildings and Land, Exclusion for Certain Non-conforming Uses in the WO or WP Districts, of the Revised Code of General Ordinances, is amended as follows:

- (L) Exclusion for Certain Non-conforming Uses in the WO or WP Districts. In the WO or WP Districts, uses that are non-conforming solely because their Total Maximum Daily Inventory exceeds the limits established by Section 150.363 shall be excluded from the provisions of sub-sections 150.140.4(B), (C), (E), and (J).

Section 11. That Section 150.200.1, Definitions, Interpretation, of the Revised Code of General Ordinances, is amended as follows:

For the purpose of this Zoning Code, terms or words used herein shall be interpreted according to this Section. In the case of a discrepancy in meaning or implication between the text of this Code and any illustration or caption, the text shall control.

- (A) The word "shall" signifies a mandatory requirement, one that is not discretionary; the word "may" signifies a permissive or discretionary requirement; and the word "should" is a preferred requirement.
- (B) The word "building" includes the word "structure."
- (C) The word "person" includes a firm, association, organization, partnership, trust, company, corporation, or similar entity, as well as an individual.
- (D) The words "used" and "occupied" include the words "arranged, designed, constructed, altered, or intended to be used."
- (E) The word "lot" includes the words "plot" and "parcel."

- (F) BZA shall mean Board of Zoning Appeals.
- (G) The words “the Board” or “Plan Board” shall mean the City of Dayton Plan Board.
- (H) The words Landmarks Commission shall mean the City of Dayton Landmarks Commission.
- (I) The word “Dayton” shall mean the City of Dayton, Ohio.
- (J) The word “City” shall mean the City of Dayton, Ohio.
- (K) R.C.G.O. shall mean the Revised Code of General Ordinances for the City of Dayton.
- (L) OAC shall mean the Ohio Administrative Code. This Zoning Code cites specific code sections from the OAC, and while these code sections may change after the adoption of this Zoning Code, the intent of these referenced sections shall remain.
- (M) ORC shall mean the Ohio Revised Code. This Zoning Code cites specific code sections from the ORC, and while these code sections may change after the adoption of this Zoning Code, the intent of these referenced sections shall remain.
- (N) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- (O) Whenever a number of days are specified, days shall mean calendar days unless specifically noted otherwise.
- (P) The words “Zoning Occupancy Certificate” shall mean Occupancy Certificate as regulated in Section 150.135.

Section 12. That Section 150.200.2, Definitions, Definitions (113), (189), (203), and (257), are amended as follows, and Definitions (29A), (36A), (37A), (37B), (42A), (59AA), (69A), (71A), (96A), (98AA), (98B), (98C), (100A), (134A), (136A), (137AA), (166A), (169A), (170A), (188A), (201A), (225A), (225B), (235A), and (255A) of the Revised Code of General Ordinances, are enacted as follows:

- (29A) **Bulk fuels storage facility.** Includes but is not limited to bulk chemical plants, oil terminals, refineries, vapor recovery and vapor-processing systems and as further defined in OAC Chapter 1301.
- (36A) **Chlorinated compounds.** Synthetic substances containing carbon, hydrogen, and chlorine atoms, such as chlorinated fluorocarbons (CFSs), chlorinated hydrocarbons (CHCs), and carbon tetrachloride.

- (37A) **Class I, II, III, IV, and V underground injection wells.** A well into which fluids are being injected as defined in OAC § 3745-34.
- (37B) **Class VI underground injection well.** A well used for the injection of carbon dioxide (CO₂) into underground subsurface rock formations for long-term storage, or geologic sequestration as detailed in 40 C.F.R. § 146 Subpart H.
- (42A) **Concentrated animal feeding facility.** An animal feedlot, including animal manure management facilities as detailed in ORC Chapter 903 and including land application areas for managing and disposal of animal manure.
- (59AA) **Dry well.** A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so its bottom and sides are typically dry except when receiving fluids (see OAC § 3745-34); designed to drain surface fluids, primarily storm water runoff, into a subsurface formation.
- (69A) **Environmental Advisory Board (EAB).** The Board established pursuant to R.C.G.O. § 44.40.
- (71A) **Facility Hazard Potential Rating (FHPR).** A value from 1-9 which reflects the overall threat to occupational health and safety and potential adverse impacts to groundwater presented by the chemical activity of uses on a zoning lot, with 9 representing the highest threat and 1 representing the lowest threat, that is established as the maximum value permitted for the zoning lot.
- (96A) **Globally Harmonized System of classification and labeling chemicals (GHS).** System for standardizing and harmonizing the labeling of chemicals as implemented under 29 C.F.R. §1910.1200.
- (98AA) **Handle.** To place, deposit, store, process, use, produce, dispose of, transport, or release Regulated Substances; or permit Regulated Substances to be placed, deposited, stored, processed, used, produced, disposed of, transported or released.
- (98B) **Hazardous liquid.** Any liquid defined in the Hazardous Liquid Pipeline Safety Act of 1979 which includes: (A) petroleum or a petroleum product; and/or (B) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas). This term also includes any material that is subject to the Hazardous Waste Manifest requirements of the EPA referenced in 40 C.F.R. Part 262, and material listed under the U.S. DOT Hazardous Materials Regulations 49 C.F.R. Parts 100 to 185.

- (98C) **Hazardous liquid pipeline facility.** A pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.
- (100A) **Health hazard.** Posing any of the following hazardous effects: acute toxicity (any route of exposure); skin corrosion or irritation; serious eye damage or eye irritation; respiratory or skin sensitization; germ cell mutagenicity; carcinogenicity; reproductive toxicity; specific target organ toxicity (single or repeated exposure); or aspiration hazard. The criteria for determining whether a substance or mixture of substances may pose a health hazard are detailed in Appendix A to 40 C.F.R. § 1910.1200—Health Hazard Criteria.
- (113) **Junkyard.** The use of any land, property, building, structure or combination thereof, to store, dump, sell, exchange, disassemble, crush, or otherwise handle partly dismantled, obsolete, or wrecked vehicles or their parts, second hand building materials, waste, debris, or other salvaged material which, unaltered or unchanged and without further reconditioning, cannot be used for its original purpose as readily as when new. This term includes, but is not limited to, an auto wrecker primarily engaged in dismantling motor vehicles for the purpose of wholesaling scrap. This term does not include salvaged materials incidental to manufacturing operations.
- (134A) **Manufacturing, chemical.** The manufacture of organic or inorganic chemicals.
- (136A) **Manure storage and/or treatment facility.** Any area or facilities used for the collection, storage, handling and/or treatment of animal excreta and/or handling or composting of products resulting from animal mortality as detailed in ORC Chapter 903.
- (137AA) **Miami Well Field.** The Miami Well Field is located in the City of Dayton, County of Montgomery, State of Ohio, with said boundary identified by the following description:

The point of beginning being the intersection of the west bank of the Great Miami River and the east right-of-way line of the CSX railroad, also being the southwest corner of City Lot# 76667;

Thence northwardly along the west bank of the Great Miami River approximately 2.25 miles or 11,880 feet to the northeast corner of City Lot# 76652;

Thence westwardly along the north lot line of City Lot# 76652 approximately 0.119 miles or 630 feet to the east lot line of City Lot# 76651;

Thence northwardly 0.131 miles or 691 feet to the north lot line of City Lot# 76651;

Thence westwardly approximately 0.493 miles or 2,605 feet along the north lot lines of City Lot#s 76651 and 76627 to the east right-of-way line of Wagner Ford Road;

Thence southwardly approximately 0.926 miles or 4,889 feet along the east right-of-way line of Wagner Ford Road to the east right-of-way line of the CSX railroad;

Thence southwardly approximately 0.658 miles or 3,475 feet along the east right-of-way line of the CSX railroad to the west bank of the Great Miami River to the point of beginning containing 805 acres more or less.

- (166A) **Perfluorinated compounds.** Manufactured (organofluorine) chemicals used to make everyday products more resistant to stains, grease and water.
- (169A) **Pharmaceuticals and Personal Care Products (PPCP).** Any product used by individuals for personal health or cosmetic reasons or used by agribusiness to enhance growth or health of livestock.
- (170A) **Plating.** Metal or plastic finishing operations including but not limited to electroplating, electroless plating, anodizing, coating (chromating, phosphating, and coloring), chemical etching and milling, printed circuit board manufacture, and "ancillary" process operations listed at 40 C.F.R. § 433.10(a).
- (188A) **Regulated Substance Activity Inventory Report (RSAIR).** A report submitted for a zoning lot in the Source Water Protection Area that includes the Owner and/or Operator's contact information and provides details on the types and amounts of Regulated Substances handled on the zoning lot.
- (189) **Regulated substances.** Substances that pose health hazards. Regulated Substances include, but are not limited to, the following:
- (a) Hazardous substances as defined in § 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, and in any regulations issued under such Act;
 - (b) Any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act, 42 U.S.C. § 2011 *et seq.*, and in any regulations issued under such Act;

- (c) Substances listed by the U.S. Environmental Protection Agency as “extremely hazardous substances,” “hazardous chemicals,” or “toxic chemicals” pursuant to the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 *et seq.* or pursuant to any regulations issued under such Act;
 - (d) Chemical substances and mixtures for which the U.S. Environmental Protection Agency has concluded, pursuant to § 5 Toxic Substances Control Act, 15 U.S.C. § 2605 (or regulations issued under said Act), that the manufacture, processing, distribution, use, or disposal thereof presents or will present an unreasonable risk of injury to health or the environment;
 - (e) Substances that are active ingredients in any pesticide regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*;
 - (f) Petroleum (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel;
 - (g) Substances promulgated under the of the 1996 Safe Drinking Water Act Amendments Unregulated Contaminant Monitoring Program and/or the Contaminants Candidate List;
 - (h) Substances for which the manufacturer or importer has prepared a Safety Data Sheet (SDS) or Globally Harmonized System of Classification and Labeling Chemicals (GHS) pursuant to 29 C.F.R. § 1910.1200; and,
 - (i) Mixtures containing any of the foregoing at a concentration greater than one percent (1%) of the mixture, or where the total of all carcinogenic ingredients constitute one tenth of one percent (0.1%) of the mixture.
- (201A) **Safety Data Sheet (SDS)**. Document containing information about the characteristics and actual or potential hazards of a substance as required pursuant to 29 C.F.R. §1910.1200.
- (203) **Sand, limestone, shale, clay, dirt and gravel operations**. A surface mine or excavation used for the removal of sand, limestone, shale, clay, gravel, or fill dirt for sale or for use off-site.
- (225A) **Source Water Protection Area (SWPA)**. The Source Water Protection Area (SWPA) is comprised of two Source Water Protection Districts: the Well Head Operation (WO) District, and the Water Protection Overlay (WP) District.

- (225B) **Spill Prevention and Response Plan.** A plan that describes how Regulated Substances will be handled at the site. In addition to a site diagram, the plan includes but is not limited to a description of the storage, use, employee training, engineering controls, spill response equipment, emergency response plan, spill cleanup, disposal and reporting for the Regulated Substances.
- (235A) **Total Maximum Daily Inventory (TMDI).** A value, in pounds, that is established as the largest quantity of Regulated Substances that a zoning lot is permitted to handle at any one time, not including Regulated Substances that are excluded or exempted pursuant to Chapter 53 of the R.C.G.O. and/or the Zoning Code.
- (255A) **Well, dry.** See dry well.
- (257) **Well, underground injection.** See Class I, II, III, IV, and VI underground injection wells.

Section 13. That Section 150.300.1(D), Districts Established: Maps and Boundaries, Districts Established, Other Districts, of the Revised Code of General Ordinances, is amended as follows:

- (D) Other Districts
- CI Campus-Institutional District
- AP Airport District
- GO-1 Graphics Overlay District
GO-2 Graphics Overlay District
- HD-1 Historic Overlay District
HD-2 Historic Overlay District
HD-3 Historic Overlay District
- PD Planned Development
- UP Urban Preservation Overlay District
- WO Well Head Operation District
WP Water Protection Overlay District

Section 14. That Schedule 150.340.2, Industrial Districts, Permitted Uses, Permitted Uses in Industrial Districts, of the Revised Code of General Ordinances, is amended as shown in Exhibit A, attached hereto and incorporated herein.

Section 15. That Section 150.363, Well Field Protection Districts, of the Revised Code of General Ordinances, is amended as shown in Exhibit B, attached hereto and incorporated herein.

Section 16. That Section 150.430.2(L), Supplemental District Regulations, Permitted Temporary Uses, of the Revised Code of General Ordinances, is amended as follows:

- (L) Temporary Uses in the Source Water Protection Districts are further regulated by sub-section 150.363.2(F), Temporary Uses in the Source Water Protection Districts.

Section 17. That Section 150.565.56, Conditional Use and Specific Use Regulations, Sand and Gravel Operations, of the Revised Code of General Ordinances, is amended as follows:

150.565.56 Sand, Limestone, Shale, Clay, Dirt, and Gravel Operations
The specific regulations for sand, limestone, shale, clay, dirt, and gravel operations shall be as follows:

- (A) The minimum lot size shall be fifty (50) acres, and the minimum lot width shall be two hundred fifty (250) feet.
- (B) A distance of no less than two hundred (200) feet shall be maintained at all times from the nearest edge of the excavation area or quarry to any residential zoning district boundary. All other aspects of operations shall maintain a minimum setback of one hundred fifty (150) feet from residential zoning district boundaries and seventy-five (75) feet from all other lot lines.
- (C) Truck routes shall be established for movement into and out of the development in such a way that it will minimize the wear on public streets and prevent hazards and damage to other properties in the community.
- (D) Truck parking areas, maneuvering lanes, and access ways to public streets shall be designed to cause no interference with the safe and convenient movement of automobile and pedestrian traffic on, and adjacent to, the site and shall be built or treated to prevent the creation of dust and drainage problems.
- (E) The owner of the facility shall be responsible for the cost of routine maintenance and cleaning of access routes and other off-site facilities and improvements required to bring access routes and facilities up to City standards.
- (F) Processing equipment shall be located at the site in such a way that will minimize adverse noise impact on surrounding land uses.

- (G) Existing natural or manmade barriers at the site shall be provided as protection and screening against noise, dust and visual protection for all operations. At a minimum a fifty (50) foot buffer yard shall be provided adjacent to any public street and all site boundaries. It shall be planted with large and small evergreen trees and one row of evergreen shrubs. The large evergreen trees shall be at least six (6) feet in height when planted and allowed to grow to a minimum of ten (10) feet. The small evergreen trees shall be at least four (4) feet in height when planted and permitted to grow to a minimum of six (6) feet.
- (H) Stakes of one (1) color shall be set and maintained along the perimeter of the area designated for mineral removal at one hundred (100) foot intervals or less.
- (I) All facilities, structures, and activities shall meet all applicable State of Ohio codes.
- (J) Any area being excavated shall be enclosed by a fence having a minimum height of seven (7) feet for the entire periphery of the excavated area. Fences shall be adequate to prevent trespass and shall be placed no closer than fifty (50) feet to the top or bottom of any slope. No excavated materials shall be removed or stored, or overburden stored within one hundred (100) feet of any lot line not owned or controlled by the operator of said business.

Section 18. That Section 150.600.3(E), Regulations for Wireless Telecommunications Facilities, Permitted Locations, of the Revised Code of General Ordinances, is amended as follows:

- (E) Every wireless telecommunication facility in the Source Water Protection Districts shall file a Regulated Substance Activity Inventory Report. No wireless telecommunication facility shall be permitted which would result in the sum of the Regulated Substances being handled by all of the uses on the zoning lot to exceed the zoning lot's Total Maximum Daily Inventory, and/or to be of a type and quantity of Regulated Substances of such hazard that the Facility Hazard Potential Rating assigned to the zoning lot is exceeded.

Section 19. That existing Sections 150.120.3; 150.120(H); 150.130.5(B); 150.130.9(A); 150.135.7; 150.353.8(B), 150.140.4(D)(8); 150.140.4(L); 150.200.1; 150.200.2, Definitions (113), (189), (203), and (257); 150.300.1(D); Schedule 150.340.2; Sections 150.363; 150.430.2(L); 150.565.56; and 150.600.3(E) of the Revised Code of General Ordinances, as previously enacted, are repealed.

Section 20. That for the reasons stated in the preamble hereof, the Commission declares this ordinance to be an emergency measure that shall be effective upon passage.

Passed by the Commission July 29 2015

Signed by the Mayor July 29 2015

Mar Whaley
Mayor of the City of Dayton, Ohio

Attest:

Rashella Lavender
Clerk of the Commission

Approved as to form:

Robert R. Donaldson
City Attorney

Exhibit A

Schedule 150.340.2 PERMITTED USES IN INDUSTRIAL DISTRICTS			
	I-1	I-2	BP
	Light Industrial	General Industrial	Business Park
(1) Residential/Work			
(a) Single-family dwelling, detached	P ⁶	P ⁶	
(b) Multi-family dwelling	P ⁶	P ⁶	
(c) Two-family dwelling	P ⁶	P ⁶	
(d) Work-live unit	P		
(2) Community Facilities/Institutions			
(a) Cultural institution	P	P	P*
(b) Protective care facility	C		
(c) Public safety facility	P	P	P*
(d) Transitional Housing	C ³		
(e) Utility substation/distribution facility, indoor	P	P	P
(f) Utility substation/distribution facility, outdoor	P*	P*	C
(3) Educational Uses			
(a) Day care center, child and adult	P** ²		P** ²
(b) School (public/private), college/university	P*	P*	P*
(c) School (public/private), elementary/secondary	C	C	P*
(d) School, specialty/personal instruction	P	P	P*
(4) Recreation/Open Space			
(a) Health club	P	P	P
(b) Model airplane flying facility	C	C	
(c) Recreation facility, indoor	P		
(d) Recreation facility, outdoor	C		
(e) Theater, drive-in/outdoor	C		
(5) Office/Professional Services			
(a) Financial institution/bank			P ²
(b) Office – administrative/professional	P	P	P
(c) Office – medical/dental/health services			P*
(d) Research/development facility, laboratory	P	P	P
(6) Retail/Personal Services			
(a) Animal hospital/clinic	P	P	
(b) Animal boarding facility (no outside run/kennel)	P	P	
(c) Animal boarding facility (with outside run/kennel)	C	C	
(d) Restaurant, indoor dining	P ²	P ²	P ²

Exhibit A

Schedule 150.340.2 PERMITTED USES IN INDUSTRIAL DISTRICTS			
	I-1	I-2	BP
	Light Industrial	General Industrial	Business Park
(e) Restaurant, outdoor dining			P* ²
(f) Retail establishment	P ²	P ²	P ²
(g) Service establishment, business	P	P	P
(h) Service establishment, personal			P ²
(7) Motor Vehicle/Transportation			
(a) Auto Service Station	P	P	
(b) Car wash	P	P	
(c) Equipment sales/rental/service (includes agricultural implements)	P	P	
(d) Motor vehicle body shop	P	P	
(e) Motor vehicle sales/rental (including boats)	P	P	
(f) Motor vehicle repair (including boats)	C	P	
(g) Parking lot, restricted	C		
(h) Parking structure	C	C	C
(i) Railroad yard		P	
(j) Transit garage	P	P	
(k) Transit station	C	C	C
(l) Transit turnaround	P	P	C
(m) Vehicle fueling station	C	C	
(8) Storage and Distribution			
(a) Outdoor storage, equipment/vehicles	C	P	C
(b) Outdoor storage, general materials	C	P	C
(c) Self-storage facility, indoor	P	P	P
(d) Trucking/motor freight terminal	C	P	
(e) Warehouse storage, indoor	P	P	P
(f) Wholesale sales and/or distribution, indoor	P	P	P
(g) Wholesale sales and/or distribution, outdoor	C	P	C
(9) Industrial			
(a) Construction & Demolition Waste Facility		C	
(b) Crematorium		C	
(c) Incinerator		C	
(d) Junkyard		C	
(e) Manufacturing, heavy		P ⁴	C ^{1,4}
(f) Manufacturing, light	P	P	P ¹
(g) Microbottler	P*	P*	P*

Exhibit A

Schedule 150.340.2			
PERMITTED USES IN INDUSTRIAL DISTRICTS			
	I-1	I-2	BP
	Light Industrial	General Industrial	Business Park
(h) Recycling collection facility, large		P	
(i) Recycling collection facility, small	P	P	
(j) Recycling processing facility, indoor	P	P	
(k) Recycling processing facility, outdoor		P	
(l) Sand, limestone, shale, clay, dirt & gravel operations		C	
(m) Sewage/liquid waste treatment facility		C	
(n) Sanitary Waste Facility		C ⁵	
(o) Water supply/treatment facility	C	C	C
(10) Other			
(a) Adult entertainment	C	C	
(b) Community garden	P*	P*	P*
(c) Harvesting	P*	P*	P*
(d) Plant nursery/greenhouse	C	P	
(e) Solar energy structure	C	C	C
(f) Solar panel, building	P*	P*	P*
(g) Telecommunication facility	See Section 150.600	See Section 150.600	See Section 150.600
(h) Utility box	P*	P*	P*
(i) Wall mural	P*	P*	P*
(j) Wind turbine	C	C	C
(k) Windmill, micro	P*	P*	P*
(11) Accessory Uses			
(a) Accessory Buildings	A	A	A
(b) Fences and walls	A	A	A
(c) Helicopter landing facility See § 150.565	A	A	A
(d) Off-street parking areas and loading facilities	A	A	A
(e) Outdoor merchandise sales/display	A	A	A
(f) Signs	A	A	A

Exhibit A

Schedule 150.340.2 PERMITTED USES IN INDUSTRIAL DISTRICTS			
	I-1	I-2	BP
	Light Industrial	General Industrial	Business Park
<p>Notes to Schedule 150.340.2:</p> <p>¹ All operations, including storage, shall take place in a principal and/or an accessory building.</p> <p>² This use shall be permitted by-right when part of a multi-establishment building and it is not the principal use of a building. If the use is proposed to be the principal use in any building (i.e. occupying the majority of gross floor area), then the use is a conditional use.</p> <p>³ Transitional housing shelters shall not be located within 1000-feet of an emergency housing shelter or another transitional housing shelter. Separation distances are measured from property line to property line by the shortest distance.</p> <p>⁴ See Section 150.340.2 (C), Heavy Manufacturing Uses</p> <p>⁵ Subject to Section 184 of the City Charter</p> <p>⁶ Shall be permitted by right in a residentially constructed building existing prior to August 1, 2006.</p> <p>P = Use permitted by right; P* = Use permitted by right as further regulated by Section 150.500, Conditional Use and Specific Use Regulations; C = Conditional use; A = Accessory use Blank cell = Use not permitted in district</p>			

Exhibit B

Section 150.363 Source Water Protection Districts

§150.363.1	Purposes
§150.363.1.5	R.C.G.O. Chapter 53
§150.363.2	Permitted and Prohibited Uses
§150.363.3	Lot and Setback Requirements
§150.363.4	Height Regulations
§150.363.5	Groundwater Protection Standards in the Well Head Operation District
§150.363.6	Groundwater Protection Standards in the Water Protection Overlay District
§150.363.7	Outdoor Activities
§150.363.8	Variances to Increase Established TMDI in the Source Water Protection Districts

150.363.1 Purposes.

The regulated Source Water Protection Area (SWPA) is comprised of two Source Water Protection Districts: the Well Head Operation (**WO**) District, and the Water Protection Overlay (**WP**) District. The **WO** and **WP** Overlay Districts are designed to safeguard the public health, safety, and welfare of citizens and institutions that are customers of the City of Dayton's Department of Water by regulating the land use and the storage, handling, use and/or production of Regulated Substances within the Source Water Protection Area. The intent of this designation is to protect the region's potable water supply against contamination.

- (A) The Well Head Operation (**WO**) District is mapped on property owned by the City at the location of any presently city-owned and operated or designated future or proposed public water supply well, recharge lagoon, or other related water facility. Accordingly, the Total Maximum Daily Inventory of Regulated Substances (TMDI) shall not be increased in the **WO** District.
- (B) The Water Protection Overlay (**WP**) District is mapped on land within the Source Water Protection Area, adjacent to the existing and proposed municipal water well fields within the City, not included within the **WO** District.

150.363.1.5 R.C.G.O. Chapter 53

Provisions, regulations, and requirements found in R.C.G.O. Chapter 53 shall also apply to all uses and/or zoning lots in the Source Water Protection Area.

150.363.2 Permitted and Prohibited Uses.

- (A) Permitted Uses. See sub-section 150.300.2, Use Regulations.
- (B) Schedule 150.363.2 of Permitted Uses in the Well Head Operation District.

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Schedule 150.363.2 PERMITTED USES IN WELL HEAD OPERATION DISTRICT	
	WO
	Well Head Operation¹
(1) Community Facilities/Institutions	I
(a) Community center	P
(b) Cultural institution	P
(c) Library	P
(d) Public safety facility	C
(e) Utility substation/ distribution facility, indoor	C
(f) Utility substation/ distribution facility, outdoor	C
(2) Recreation/Open Space	I
(a) Arboretum/botanical garden	P
(b) Band shell	P
(c) Boat launch	P
(d) Dog park	P
(e) Golf course	P
(f) Greenhouse/conservatory	P
(g) Park/playground	P
(h) Recreation facility, indoor	P
(i) Recreation facility, outdoor	P
(j) Skate park	P
(k) Theater, outdoor	P
(3) Office/Retail	I
(4) Other	I
(a) Telecommunication facility	See Section 150.600
(b) Water supply/treatment facility	P
(5) Accessory Uses	I
(a) Outdoor storage, equipment/vehicles	P
(b) Outdoor storage, general materials	P
<p>Notes to Schedule 150.363.2:</p> <p>¹ Uses in the WO District also require approval from the Director of the Water Department or his/her designee to insure conformance with the Water Department's standards.</p> <p>P = Use permitted by right ; C = Conditional use; A = Accessory use; Blank cell = Use is prohibited</p>	

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- (C) Uses Permitted by Right in the Water Protection Overlay (WP) District. Uses permitted by right within the WP Overlay District shall be those of the underlying district.
- (D) Conditional Uses in the Water Protection Overlay (WP) District. The conditional uses within the WP Overlay District shall be those of the underlying zoning district.
- (E) Prohibited Uses. The following uses are prohibited in the Source Water Protection Districts:
 - (1) Any use of chlorinated compounds and/or perfluorinated compounds.
 - (2) Any prohibited uses as identified in state or federal law.
 - (3) Bulk fuels storage facility.
 - (4) Class I, II, III, IV, and VI underground injection wells.
 - (5) Concentrated animal feeding facility.
 - (6) Dry well.
 - (7) Grade and fill sites.
 - (8) Hazardous liquid pipeline facility.
 - (9) Junkyards, including vehicle crushing.
 - (10) Manufacturing, chemical.
 - (11) Manufacturing, extraction, mixing or warehousing of Pharmaceuticals and Personal Care Products (PPCP).
 - (12) Manure storage and/or treatment facility.
 - (13) Plating.
 - (14) Recycling collection facility – both Large and Small Collection Facilities.
 - (15) Recycling processing facility, indoor.
 - (16) Recycling processing facility, outdoor.
 - (17) Salt piles unless stored inside structures with an impermeable floor.
 - (18) Sand, limestone, shale, clay, dirt, and gravel operations.
 - (19) Self-storage facility, indoor.

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- (20) Underground storage tank.
- (21) Vehicle fueling station.
- (22) Waste facility, construction and demolition.
- (23) Waste facility, hazardous.
- (24) Waste facility, sanitary.

(F) Temporary Uses in the Source Water Protection Districts. No temporary uses shall be permitted in the Source Water Protection Districts that would result in the sum of the Regulated Substances being handled by all of the uses on the zoning lot to exceed the zoning lot's Total Maximum Daily Inventory, and/or to be of a type and quantity of Regulated Substances of such hazard that the Facility Hazard Potential Rating assigned to the zoning lot is exceeded.

150.363.3 Lot and Setback Requirements

- (A) Lot Requirements. The minimum lot requirements for permitted, conditional, and accessory uses in the Source Water Protection Districts are specified in Schedule 150.363.3 for the district in which the lot is located except as otherwise regulated in Section 150.500 for conditional uses.
- (B) Setback Requirements. Every permitted use of land and all buildings and structures shall be located on a lot in a manner that maintains the required front, side, and rear setbacks set forth in Schedule 150.363.3, measured from the appropriate lot line, except as otherwise regulated in Section 150.500 for conditional uses. The area within each setback shall remain unobstructed by structures except as otherwise permitted in this Code.
- (C) Schedule 150.363.3. Development Standards in the Source Water Protection Districts

Schedule 150.363.3		
Development Standards in the Source Water Protection Districts		
	WO	WP
	Well Head Operation	Water Protection Overlay
(I) Lot Requirements	1	
(a) Minimum lot width	0	Shall be the same as underlying zoning district
(b) Minimum lot depth	0	Shall be the same as underlying zoning district
(c) Maximum lot coverage	60%	Shall be the same as underlying zoning district

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Schedule 150.363.3		
Development Standards in the Source Water Protection Districts		
	WO	WP
	Well Head Operation	Water Protection Overlay
(2) Minimum Setback	1	
(a) Front setback	10 feet	Shall be the same as underlying zoning district
(b) Side setback (unless specified below)	0	Shall be the same as underlying zoning district
(i) Adjacent to a Residential District	20 feet	
(c) Rear setback (unless specified below)	0	Shall be the same as underlying zoning district
(i) Adjacent to a Residential District	20 feet	
Notes to Schedule 150.363.3: ¹ Municipal Water Department activities shall have no maximum lot coverage and no minimum setback requirements.		

150.363.4 Height Regulations.

- (A) In the **WO** District, the maximum permitted height shall be forty (40) feet, except that Municipal Water Department structures and buildings shall have no maximum height.
- (B) In the **WP** Overlay District, the maximum height shall be the maximum height permitted in the underlying zoning district.

150.363.5 Groundwater Protection Standards in the Well Head Operation District

In the **WO** District, all uses of land, structures, and buildings shall comply with the standards set forth below:

- (A) Use and storage of Regulated Substances in conjunction with municipal water department activities shall not be restricted by this Section.
- (B) Unless a greater TMDI has been established for the zoning lot or as provided in sub-section 150.363.5 (A), the use of Regulated Substances in conjunction with permitted and conditional uses in this district shall be limited so that the aggregate of Regulated Substances handled shall not exceed one hundred and sixty (160) pounds at any one time.
- (C) A limited exclusion from the provisions of 150.363.5 (B) is authorized for Regulated Substances that are excluded from reporting in R.C.G.O. Section 53.22 or exempted by the Environmental Advisory Board (EAB) pursuant to R.C.G.O. Section 53.23.

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- (D) The Zoning Administrator shall determine the TMDI and Facility Hazard Potential Rating of each zoning lot within this district in accordance with R.C.G.O. Section 53.21.

No zoning lot shall handle an amount of Regulated Substances in excess of its Total Daily Maximum Inventory and/or a type and quantity of Regulated Substances of such hazard that its Facility Hazard Potential Rating is exceeded.

- (E) The Zoning Administrator, as permitted under sub-section 150.110.2 (B) Powers and Duties of the Zoning Administrator, shall not permit substitution of a non-conforming use that results in an increase in the Total Maximum Daily Inventory and/or in an increase in the Facility Hazard Potential Rating assigned to the zoning lot. The Zoning Administrator shall not permit the substitution of a prohibited use as enumerated in Section 150.363.2 (E) or a use explicitly prohibited in the definition of Manufacturing, heavy.
- (F) All uses within this district shall be connected to the public wastewater disposal system.

150.363.6 Groundwater Protection Standards in the Water Protection Overlay District

In the **WP** Overlay District, all uses of land, structures, and buildings shall comply with the standards set forth below:

- (A) Use of Regulated Substances in conjunction with permitted and conditional uses in this district shall be limited so that the aggregate of Regulated Substances handled shall not exceed the TMDI established for the zoning lot or one hundred and sixty (160) pounds, whichever is applicable, at any one time.
- (B) A limited exclusion from the provisions of 150.363.6 (A) is authorized for Regulated Substances that are excluded from reporting in R.C.G.O. Section 53.22 or exempted by the Environmental Advisory Board (EAB) pursuant to R.C.G.O. Section 53.23.
- (C) The Zoning Administrator shall determine the TMDI and FHPR of each zoning lot within this district in accordance with R.C.G.O. Section 53.21.

No zoning lot shall handle an amount of Regulated Substances in excess of the zoning lot's Total Maximum Daily Inventory and/or a type and quantity of Regulated Substances of such hazard that its Facility Hazard Potential Rating is exceeded.

- (D) The Zoning Administrator, as permitted under sub-section 150.110.2 (B) Powers and Duties of the Zoning Administrator, shall not permit substitution of a non-conforming use that results in an increase in the Total Maximum Daily Inventory and/or in an increase in the Facility Hazard Potential Rating assigned to the zoning lot unless a variance is granted as provided for in Section 150.120 Appeals and Variances. The Zoning Administrator shall not permit substitution of a prohibited use as enumerated in Section 150.363.2 (E) or a use explicitly prohibited in the definition of Manufacturing, heavy.

Exhibit B

- (E) A limited exclusion from the provisions of sub-section 150.363.6 (A) is authorized for on-site storage of a maximum one-year supply of Regulated Substances which are agricultural chemicals to be used for routine on-site agricultural operations, provided such substances are stored in standard approved packaging and such substances are applied to cropland under Best Management Practices as indicated by soil tests, the OSU Cooperative Extension Service, the Soil and Water Conservation District and label directions approved by the United States Environmental Protection Agency and the Ohio Department of Agriculture. This limited exclusion also applies to the application of agricultural chemicals to cropland where such chemicals are brought in from locations outside the **WP** Overlay District. The on-site storage of Regulated Substances which are agricultural chemicals to be used for routine on-site agricultural operations as described above in excess of a one-year supply constitutes the use to be a storage facility. This provision does not exempt such agricultural chemicals either stored on-site or brought in from other locations from the inventory reporting, spill reporting and underground storage tank protection requirements of the **WP** Overlay District.

150.363.7 Outdoor Activities

Outdoor activities in the **WP** Overlay District shall be governed by the regulations contained in the underlying zoning district. Outdoor activities in the **WO** District shall be permitted only when associated with a principal use and in compliance with the regulations set forth below:

- (A) Outdoor Storage. Areas devoted to outdoor storage shall be designed to store materials in compliance with all City Fire Codes and shall be accessible to fire fighting equipment at all times.
- (B) Setback. All areas devoted to outdoor storage of goods and materials shall be setback fifteen (15) feet from all lot lines.
- (C) Fences and Walls. Fences and walls may be erected in the **WO** District. Chain link or barbed wire fences may be permitted, when the Plan Board concurs with the Director of Water that chain link or barbed wire fences are necessary to protect and provide adequate security for the City's water system. (Ord. 30515-05, passed 12-28-05)

150.363.8 Variances to Increase Established TMDI in the Source Water Protection Districts.

- (A) Variances to increase established TMDI shall be regulated pursuant to Section 150.120.
- (B) A reduction in TMDI shall not require a variance.
- (C) Due to the greatest potential for contamination of the region's potable water supply, variances to increase established TMDI within the Well Head Operation (**WO**) District and/or the Miami Well Field shall be prohibited.

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- (D) Variances to increase TMDI or FHPR in connection with a prohibited use as enumerated in Section 150.363.2 (E) or a use explicitly prohibited in the definition of Manufacturing, heavy shall be prohibited.