

**ORDINANCE NS-2245**

**AN ORDINANCE AMENDING BEND DEVELOPMENT CODE CHAPTER 5.40 CIVIL EXCLUSION ZONES**

- A. Bend Code Chapter 5.40 Civil Exclusion Zones has been an effective tool in reducing criminal activity and code violations in the areas subject to the exclusion. The code amendments adopted by this ordinance will expand the civil exclusion zone to include more of Bend's downtown area.
- B. The number of calls for police service in the proposed expanded area is significantly higher than the number of calls in similar area with high pedestrian activity on private property, such as the Old Mill area. See Exhibit B. The higher concentration of pedestrians on public property increases the opportunity for crimes of the types that trigger exclusion. Many of the calls for police services are the result of criminal activity by repeat offenders.
- C. Expanding the civil exclusion area to include additional parts of the Bend downtown area is intended to reduce criminal activity and code violations in the expanded exclusion area while protecting the rights of citizens to exercise constitutional rights in the area.
- D. The amendments also update statutory references and add two additional violations to the list of violations on which exclusion can be based: violation of state marijuana restrictions and violations related to uncontrolled or dangerous animals.
- E. Chapter 5.40 already provides procedural safeguards and variances to protect the rights of persons accused of violations. The proposed amendments expand the bases for allowing a variance and to provide an appeal process if a variance is denied.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Code Chapter 5.40 Civil Exclusion Zones is amended to read as shown on Exhibit A.

First Reading: June 3, 2015.

Second reading and adoption by roll call vote: June 20, 2015

Yes: Jim Clinton, Mayor  
Victor Chudowsky  
Doug Knight  
Sally Russell  
Casey Roats

No: Nathan Boddie  
Barb Campbell

  
\_\_\_\_\_  
Jim Clinton, Mayor

Attest:   
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:  
  
\_\_\_\_\_  
Mary A. Winters, City Attorney

## EXHIBIT A TO ORDINANCE

### **5.40.010 Civil Exclusion Zones.**

---

Civil exclusion zones are designated to protect the public from those whose illegal conduct poses a threat to safety and welfare.

A. Civil exclusion zones include the following places:

1. **Public Places.** The Breezeway between the western terminus of Minnesota Street to and through the Riverfront Plaza; and all publicly owned property from the eastern side of Brooks Alley to Drake Park between Franklin Avenue and Oregon Avenues.
2. **Public Parks.** All public parks, including parks owned and/or managed by the Bend Metropolitan Park and Recreation District.
3. **Downtown District.** The Downtown District described as follows:

Beginning at the northeast side of Newport/Greenwood Avenue and the Deschutes River, thence southwest along the Deschutes River to the boundary of Drake Park, then southeast and then southwest along the Drake Park boundary to Franklin Avenue, then northwest along Franklin Avenue to the Northwest corner of Franklin Avenue and Broadway Street, then southwest on the northwest side of Broadway Street to the southwest side of Idaho Avenue, thence southeast on Idaho Avenue to the southeast side of Bond Street, thence northeast on Bond Street to the southwest side of Kansas Avenue, then southeast on Kansas Avenue to the southeast side of Lava Road, thence northeast on Lava Road to the south side of Franklin Avenue, thence east to the west side of Harriman Street, thence north on the east side of Harriman Street to the north side of Greenwood Avenue, thence west on Greenwood Avenue to the Point of Beginning (as shown on Map A).

### **5.40.015 Civil Exclusion.**

A person is subject to exclusion for a period of 90 days from entering or remaining within a civil exclusion zone if that person has been cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for:

- A. Any assault, as defined by ORS 163.160 through 163.185 and 163.208;
- B. Strangulation as defined by ORS 163.187;
- C. Menacing, as defined by ORS 163.190;
- D. Harassment, as defined by ORS 166.065 and 166.070;
- E. Disorderly conduct, as defined by ORS 166.023 and 166.025;

- F. Recklessly endangering, as defined by ORS 163.195;
- G. Coercion, as defined by ORS 163.275;
- H. Any sexual offense, as defined by ORS 163.355 through 163.465;
- I. Endangering the welfare of a minor, as defined by ORS 163.575;
- J. Any offense under State law governing the possession, distribution, sale or manufacture of a controlled substance;
- K. Any offense under State law governing the possession, use, distribution or sale of alcoholic beverages;
- L. Possession or using a weapon in violation of ORS 166.180, 166.190, 166.220, 166.240, 166.250 or 166.272 or BC 5.40.040;
- M. Any degree of criminal mischief, as defined by ORS 164.305 through 164.365;
- N. Graffiti as defined in ORS 164.381 through 164.386;
- O. Arson or reckless burning as defined in ORS 164.305 through 164.335;
- P. Theft as defined in ORS 164.015 through 164.095;
- Q. Littering as defined in ORS 164.775 through 164.805;
- R. Possession of tobacco by a minor in violation of ORS 167.400;
- S. Two or more citations for drinking at an unlicensed premises within 12 months.
- T. Violation of Section 47, 49, 54, 56, 57 or 73 of 2014 Oregon Ballot Measure 91.
- U. Two or more violations of Bend Code Sections 5.20.025, 5.20.035 or 5.29.040 within 12 months.

#### **5.40.020 Exclusion Enforcement.**

If a person excluded from a civil exclusion zone is found within the perimeter of the civil exclusion zone during the exclusion period, that person may be arrested for trespass in the second degree, as defined by ORS 164.245. A person is not considered to be within the civil exclusion area if the person is within a vehicle that is passing through the exclusion area.

#### **5.40.025 Issuance of Exclusion Notices.**

The Chief of Police is designated as the person in charge of civil exclusion zones for the purpose of issuing exclusion notices in accordance with this chapter. The Chief of Police may authorize employees of the Police Department to issue exclusion notices in accordance with this chapter.

#### **5.40.030 Procedure for Exclusion.**

A. At the time a person is cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for any of the offenses specified in Bend Code 5.40.015, the officer making such arrest may deliver to that person a written notice excluding that person from the civil exclusion zone. Any exclusion notice shall not take effect until the sixth day after the notice is issued.

B. The notice shall specify the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area and contain information concerning the right to appeal the exclusion to the Judge of the Municipal Court.

C. The person to whom the exclusion is issued shall sign a written acknowledgement of receipt of the notice. If that person refuses to sign the acknowledgement, the arresting officer shall make a written record of the refusal.

#### **5.40.035 Appeal and Variance.**

A. The person to whom an exclusion notice is issued shall have the right to an appeal from the issuance of the notice. The exclusion notice will notify the person of the right to appeal and process for appeal.

1. An appeal of the exclusion must be filed, in writing, within five calendar days of the issuance of the notice. The appeal must be filed with the Municipal Court. If the fifth day is a day on which the Municipal Court is not open, the appeal may be filed on the first day the Municipal Court is open for business, and the exclusion shall not take effect until the close of business on that day. A hearing on the appeal shall be held before the Judge of the Municipal Court within 20 calendar days of the appeal. The exclusion shall be stayed during the pendency of the appeal.

2. The City shall have the burden to show by a preponderance of evidence that the exclusion was based upon the conduct proscribed by BC 5.40.015. Copies of documents in its control and which are intended to be used by the City at the hearing shall be made available to the appellant at least two days prior to the hearing.

3. A determination by a court having jurisdiction of the matter that the officer who issued the exclusion notice at the time had probable cause to arrest the person to whom the exclusion notice was issued for the conduct described in BC 5.40.015 shall be prima facie evidence that the exclusion was based on conduct prohibited by those statutes.

B. Variances from the exclusion may be granted at any time during the exclusion period by the Chief of Police, or by the Municipal Court.

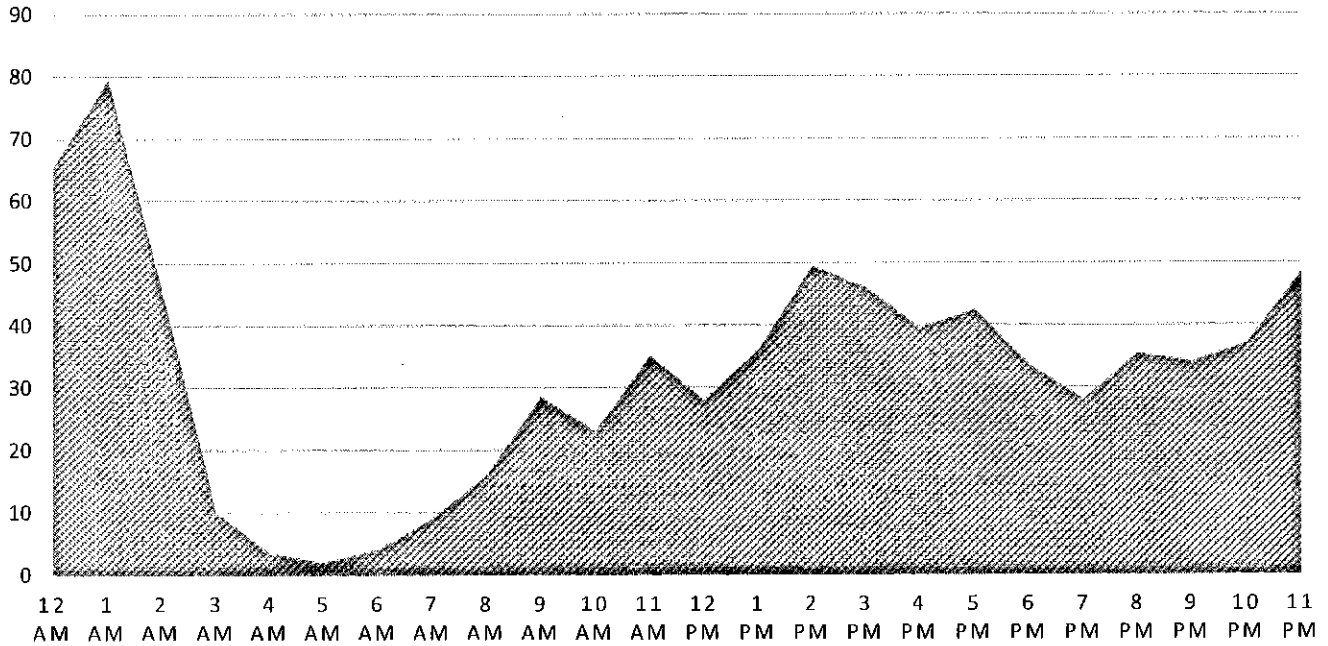
C. The Chief of Police or the Municipal Court shall grant a variance to any person who can establish that he or she is a resident of the exclusion zone, is employed within the exclusion zone, or will use the waiver to visit the residence of a family member, to consult with an attorney, to attend religious services or otherwise exercise a constitutional right. A variance may also be granted when, in the discretion of the Chief of Police or the Municipal Court, the exclusion order is no longer necessary to preserve public safety. The denial of a variance may be appealed within 5 days to the Municipal Court using the same procedures as for an appeal of the imposition of the exclusion.

D. All variances shall be in writing, for a specific period of time and only to accommodate a specific purpose, all of which shall be stated on the variance.

E. The person shall keep the variance on his or her person at all times the person is within the exclusion area.

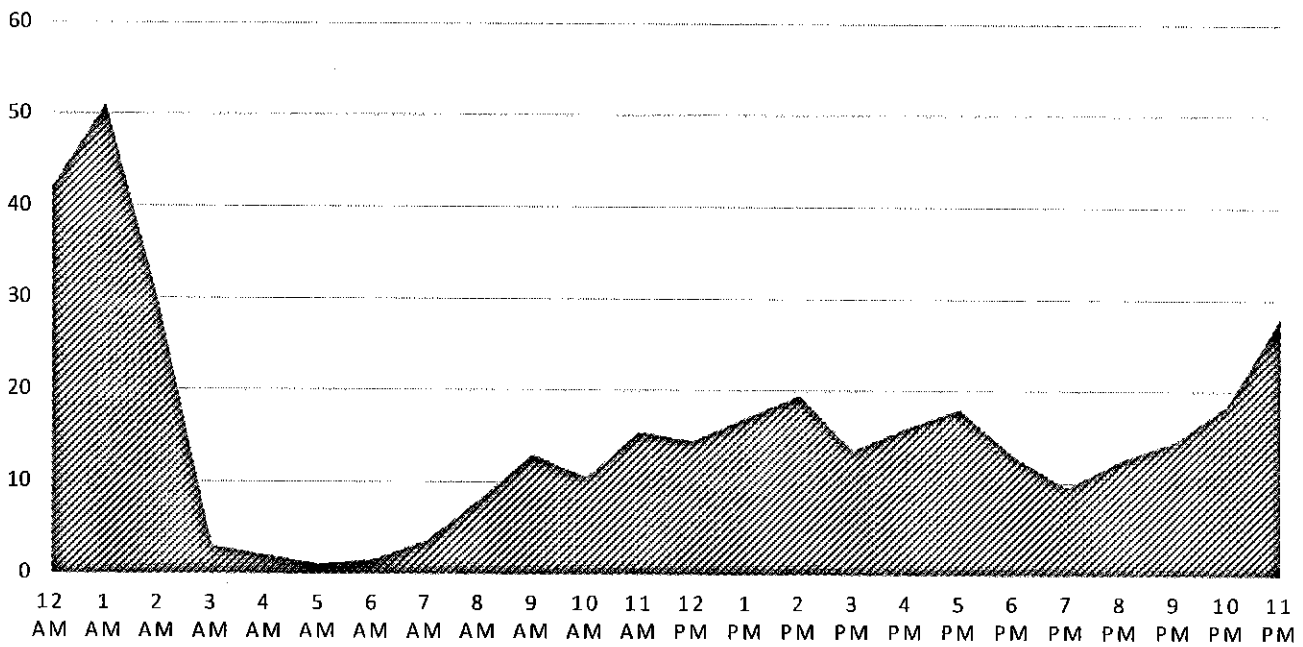
EXHIBIT B

AVERAGE NUMBER OF ANNUALLY DISPATCHED CALLS\* BY HOUR  
2013-2014 - EXPANDED EXCLUSION ZONE



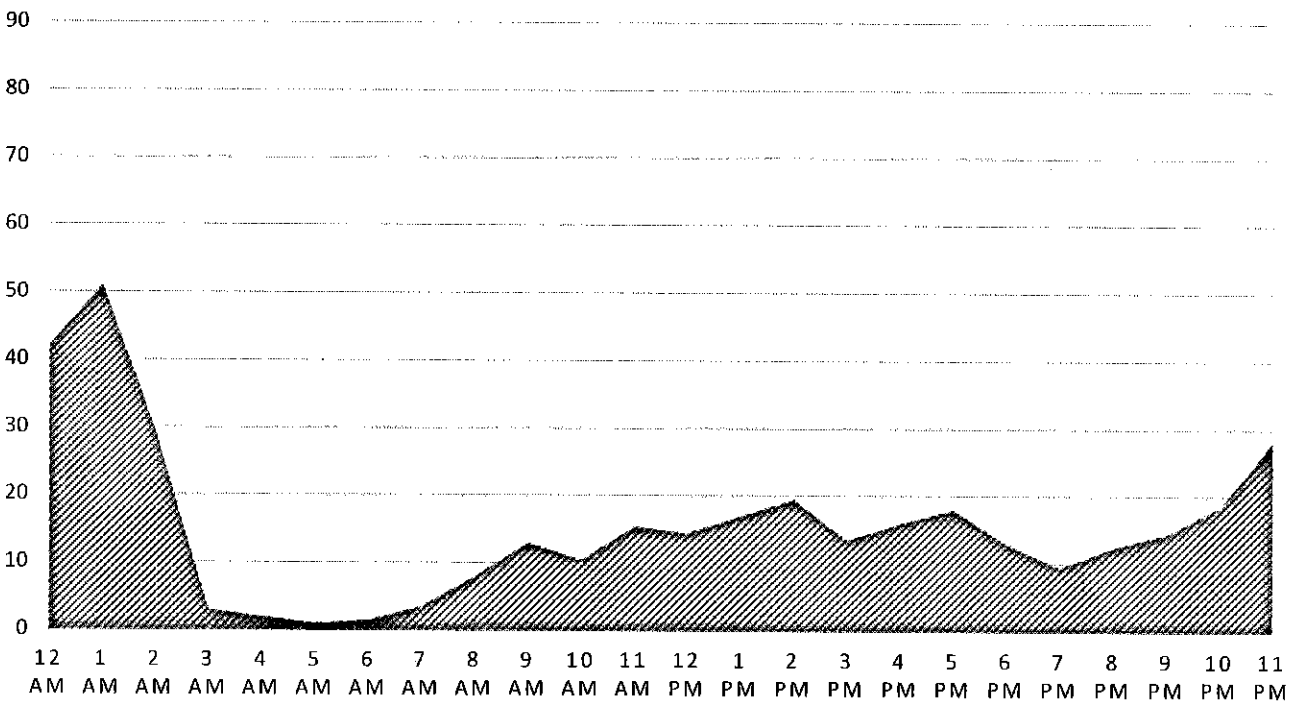
*\*Armed Subject, Arson Investigation, Assault, Code/Ordinance Violation, Criminal Mischief, Dispute, Domestic Dispute, Drug Offense, Harassment, Intoxicated Subject, Juvenile Problem, Minors in Possession, Sex Crime Offense, Suspicious Circs, Theft, UEMV, Weapons Offense/Menacing*

**AVERAGE NUMBER OF ANNUALLY DISPATCHED CALLS\* BY HOUR  
2013-2014 - EXPANDED EXCLUSION ZONE**



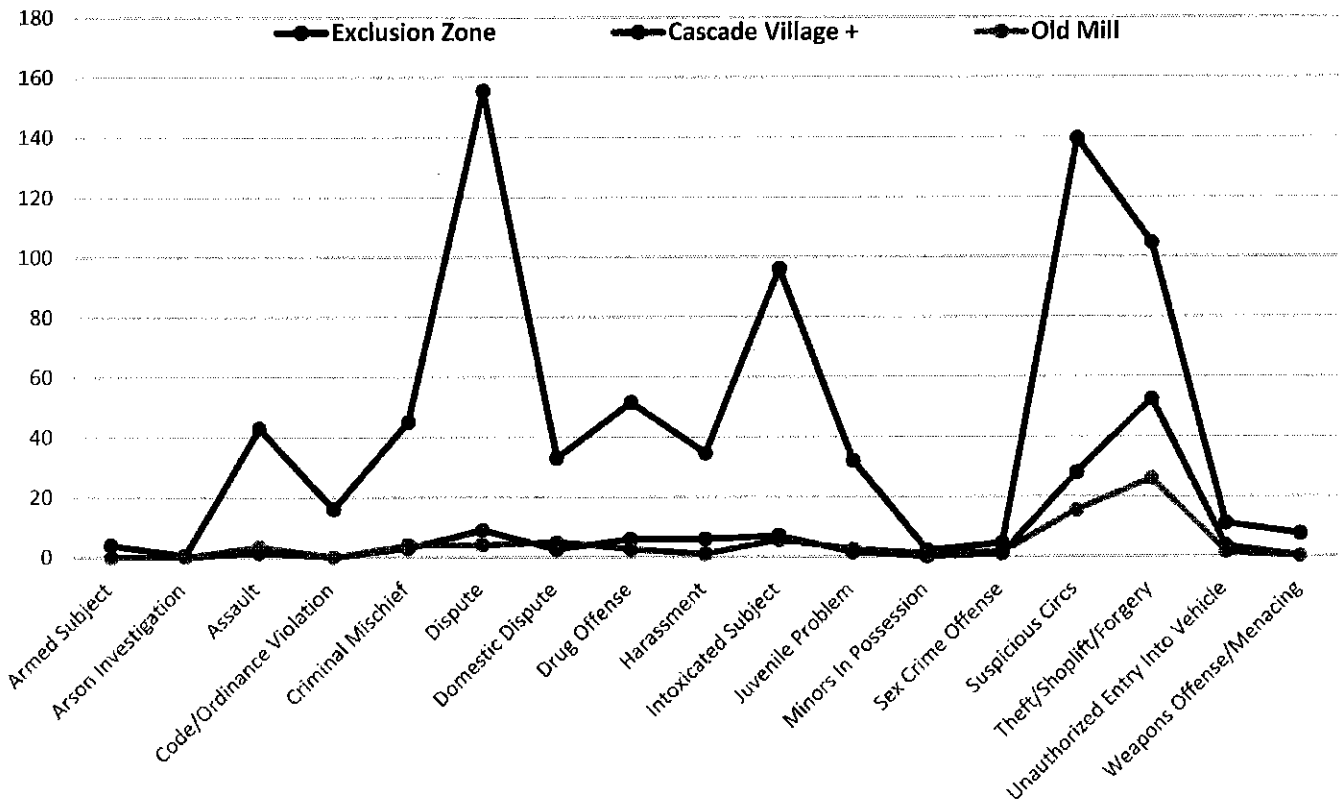
*\*Armed Subject, Assault, Criminal Mischief, Dispute, Domestic Dispute, Drug Offense, Harassment, Weapons Offense/Menacing*

**AVERAGE NUMBER OF ANNUALLY DISPATCHED CALLS\* BY HOUR  
2013-2014 - EXPANDED EXCLUSION ZONE**

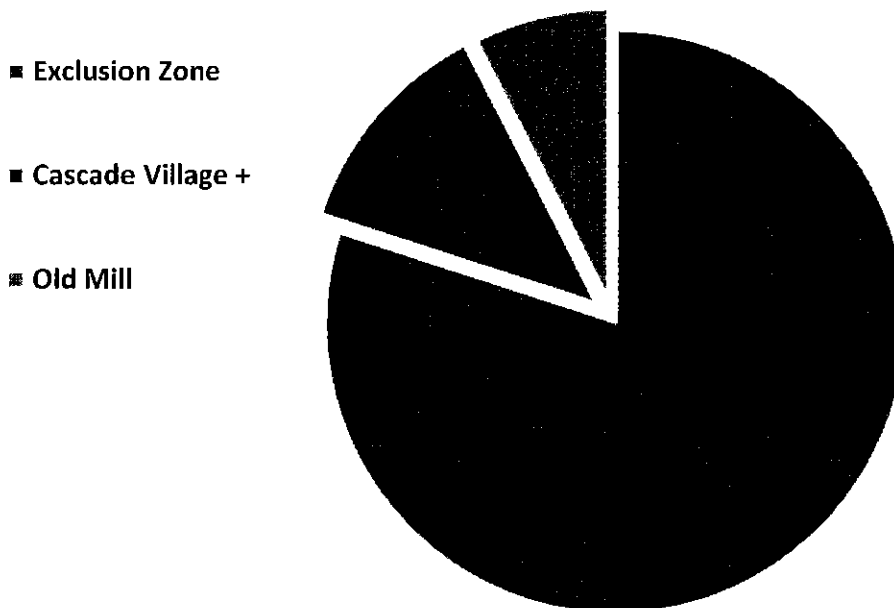


These two graphs are the same, the second just has the call count axis to match the same as the blue graph (max of 90)

### Average Number of Dispatched Calls\* by Type - 2013-2014



### Total Dispatched Calls\* 2013-2014



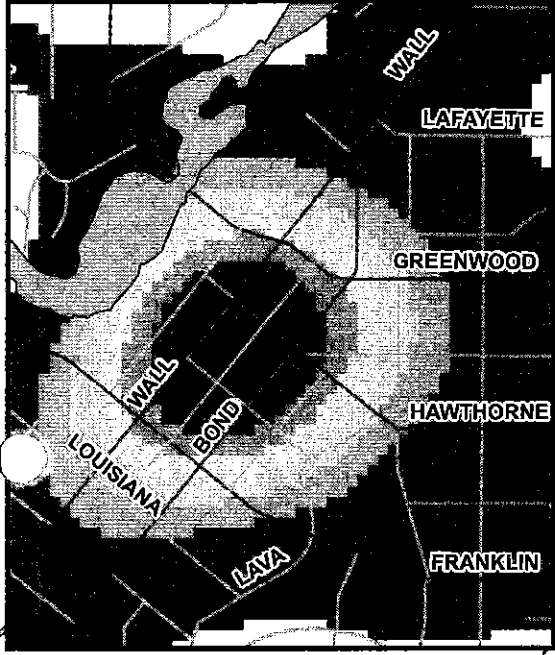
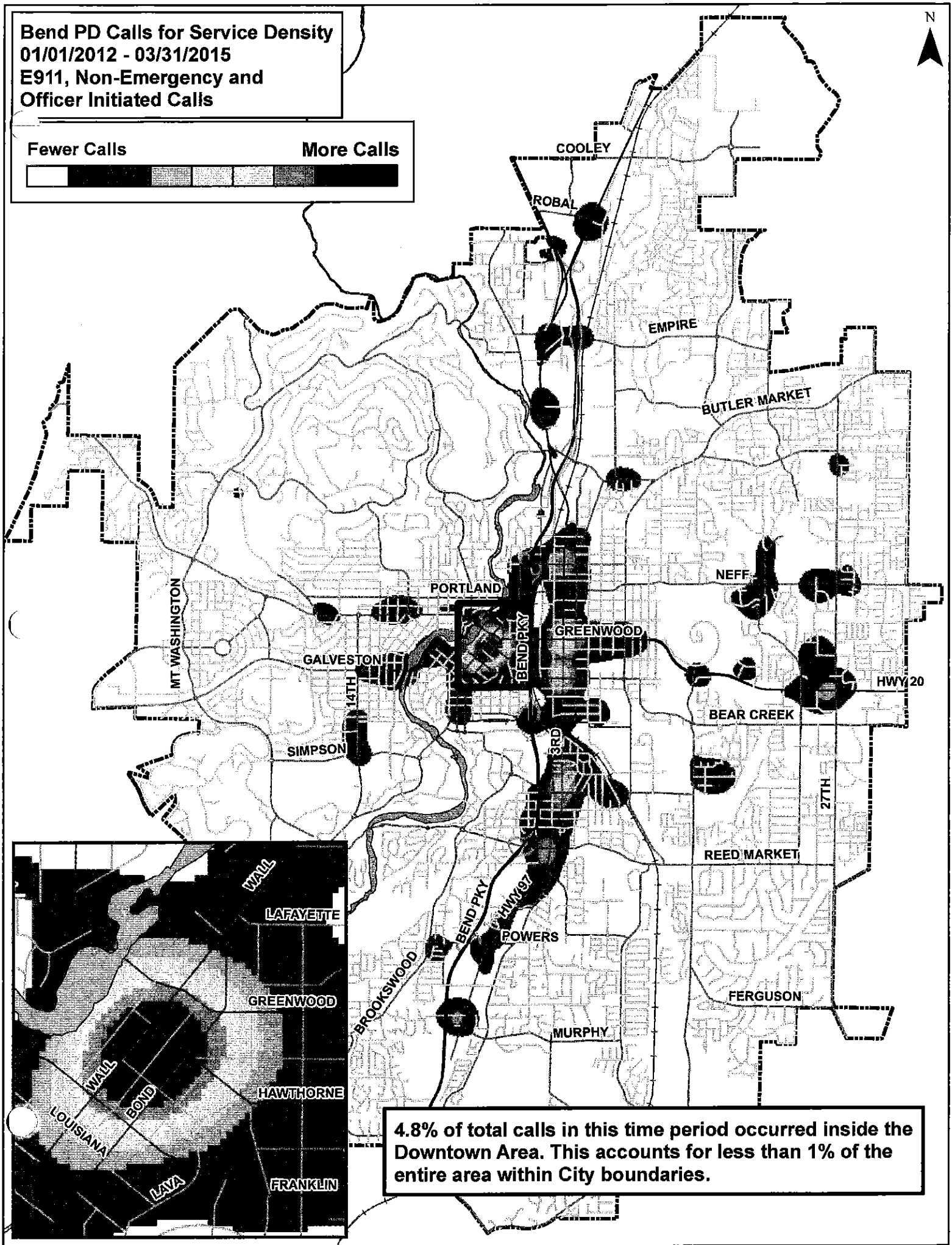
\*Armed Subject, Arson Investigation, Assault, Code/Ordinance Violation, Criminal Mischief, Dispute, Domestic Dispute, Drug Offense, Harassment, Intoxicated Subject, Juvenile Problem, Minors in Possession, Sex Crime Offense, Suspicious Circs, Theft, UEMV, Weapons Offense/Menacing



Call Type	Exclusion Zone		Cascade Village +		Old Mill	
	2013	2014	2013	2014	2013	2014
Armed Subject	1	7	0	0	0	0
Arson Investigation	1	0	0	0	0	0
Assault	51	35	2	1	4	3
Code/Ordinance Violation	17	15	0	0	0	0
Criminal Mischief	64	26	4	2	4	4
Dispute	168	143	12	6	4	4
Domestic Dispute	24	42	2	3	5	5
Drug Offense	62	41	7	5	3	2
Harassment	46	23	8	4	1	1
Intoxicated Subject	87	105	7	7	5	6
Juvenile Problem	35	29	0	3	4	1
Minors In Possession	1	3	0	0	1	1
Sex Crime Offense	4	5	0	2	0	3
Suspicious Circs	151	128	40	16	18	13
Theft/Shoplift/Forgery	90	119	54	51	28	24
Unauthorized Entry Into Vehicle	9	13	4	3	1	2
Weapons Offense/Menacing	4	11	0	0	0	0
	<b>815</b>	<b>745</b>	<b>140</b>	<b>103</b>	<b>78</b>	<b>69</b>

**Bend PD Calls for Service Density  
01/01/2012 - 03/31/2015  
E911, Non-Emergency and  
Officer Initiated Calls**

Fewer Calls More Calls



**4.8% of total calls in this time period occurred inside the Downtown Area. This accounts for less than 1% of the entire area within City boundaries.**