

# City of Detroit

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February 19, 2019


HONORABLE CITY COUNCIL

**Re: CPC/LPD comments on proposed Chapter 4 Sign Ordinance (UPDATED REVIEW)**

As per Your Honorable Body's request at the Planning and Economic Development standing committee meeting of February 7, 2019, City Planning Commission/Legislative Policy Division staff have reviewed the draft ordinance and compiled a series of comments, concerns, and observations as a basis for further discussion.

This report updates the CPC/LPD write-up of February 14, 2019 and is attached for your consideration. Since the original report was submitted, CPC/LPD staff has been able to meet with the Law Department and the Buildings, Safety Engineering and Environmental Department, and the Planning and Development Department staff. The updated review reflects clarifications reached in those meetings. Additional meetings will be scheduled with the administration to advance this dialogue.

A public discussion on signage, including the proposed Chapter 4 Sign Ordinance, is scheduled for the February 21, 2019 meeting of the City Planning Commission in advance of Council's March 7<sup>th</sup> continued review of the matter.

Respectfully submitted,  
  
Marcell R. Todd, Jr., Director

Attachment

## CPC/LPD Staff Comments

### Proposed Ordinance to Amend Chapter 4 of the 2018 Detroit City Code *Advertising and Signs*

- The proposed ordinance presumes that the 1984 Detroit City Code has already been recodified as the 2018 Detroit City Code. The proposed ordinance is premature until recodification is complete. *The Law Department anticipates that the current Chapter 3 of the 1984 Detroit City Code will have been recodified into Chapter 4 of the 2018 Code. Staff continues its review of changes between earlier and final versions of the recodified Chapter 4.*
- The proposed ordinance contradicts current provisions of “Zoning” (Chapter 61 of the 1984 Detroit City Code) and “Streets, Sidewalks, and Other Public Places” (Chapter 50 of the 1984 Detroit City Code) without amending/repealing any text within Chapters 50 and 61. The proposed ordinance is incomplete. The sign ordinance will need to consist of three tie-barred chapters. *The Law Department has chosen to defer revisions to Chapters 50 and 61 pending direction from City Council as to the desired parameters of the proposed Chapter 4 amendment.*
- Because of the US Supreme Court decision, *Reed v. Gilbert*, the Law Department has retained an outside First Amendment attorney, Brian Connolly—a national expert on sign law, who is also author of the “Michigan Sign Guidebook.” The proposed ordinance lacks the anticipated outside review to ensure, among other things, the proper content neutrality in definitions, regulations, and exceptions to regulations. *The Law Department confirms it is coordinating with Mr. Connolly and awaits his report.*
- By removing the regulation of advertising-signs-outside-the-CBD from Zoning and placing that regulation in a standard Police power chapter of the City Code, hundreds of currently legal billboards on city and county streets and MDOT roadways would apparently be stripped of their nonconforming use rights. *The Law Department indicates it will investigate and clarify the status of nonconforming use rights under a Chapter 4 scenario.*
  - Because proposed height, area, and setback standards are (appropriately) more restrictive, those legal billboards that exceed proposed standards are compelled to shrink height/area and increase setbacks in order to remain legal.
  - BSEED will face significant enforcement challenges to compel compliance with new standards for old billboards.
  - Law may be faced with numerous challenges of “partial regulatory taking” from outdoor advertisers forced to shrink their signs.

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- Clarification is needed from the Law Department as to the nonconforming use rights related to existing billboard advertising signs outside the CBD.
- While CPC/LPD staff sees merit in removing the regulation of CBD advertising signs from zoning, the removal of all other signs—on-premises and off-premises-outside-the-CBD—is problematic:
  - The proposed ordinance deprives the public of notification of certain proposed signs—on-premises animated signs within the CBD and advertising signs outside the CBD on land zoned B2, B3, B4, M1, M2, and W1. *The Law Department indicates it will explore notification possibilities within a Chapter 4 framework.*
  - The proposed ordinance removes the public voice from certain sign decisions. Rather than basing a decision whether to permit or deny a sign application on the results of an adversarial hearing (conditional use public hearing), authority is solely vested in BSEED to determine a sign’s appropriateness at a given location, making the ordinance vulnerable to claims of conferring unbridled discretion to BSEED. *The Law Department indicates it will take “public voice” concerns into consideration.*
  - BSEED decisions are appealable to the Department of Hearings but no provision is made to notify the public of such a decision having been made. *The Law Department will take this concern into consideration as the ordinance goes forward.*
  - Rather than requiring review and action by the Board of Zoning Appeals in a public hearing where a sign is proposed to exceed proposed area, height, and/or setback standards, authority is ceded to BSEED to allow such variances/adjustments without hearing from the affected nearby public. *The Law Department will take public participation concerns into consideration.*
  - The ordinance provides no criteria to BSEED for determining the appropriateness of a requested variance/adjustment. *The Law Department refers to the various findings that must be reached prior to a variance/adjustment being granted.*
  - Instead of regulating signs by zoning district classification (R1, R2, B2, B4, M4, SD1, SD2, etc.), the proposed ordinance regulates signage based on the density of the actual usage of a given property (High-density nonresidential property; High-density residential/mixed use property; Low-density residential property; Medium-density residential/mixed use property). Problematic results include:
    - Advertising signs could now be permitted on non-CBD land zoned residential wherever a 17-unit apartment building stands—the R6-zoned Gold Coast along East Jefferson would newly be eligible for billboards.

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*The Law Department notes the concern.*

- City Council's sign review/approval authority over high-density residential Planned Developments (PD) would be ceded to BSEED, as would its authority on land zoned PC, PCA, larger SD4 sites, and SD5 casinos. *The Law Department notes the concern.*
  - Retail development outside the CBD that is not part of a mixed-use development appears to be ineligible for any sign application. *CPC/LPD notes that signs for stand-alone retail developments are allowed but under a section heading for mixed-use. Clarification is needed as to the eligibility for signage of public/civic/institutional uses, such as schools and churches. P&DD indicates the matter will be addressed.*
  - Vacant land appears to be ineligible for any sign application. *Law and P&DD note the concern and will work toward appropriate language.*
  - Land zoned PR (Parks and Recreation) like Rouge Park and Belle Isle continue to fall between the cracks since park land/open space has no density of development. *Law and P&DD note the concern.*
- The definition of Central Business District is incorrect; it omits the entire north-of-Fisher-Freeway addition to the CBD. *CPC/LPD notes that the definition and boundaries are, in fact, correct.*
  - While the petitions to Council have urged the allowance of advertising signs in the Central Business District (approx. 1.49 sq miles), the proposed ordinance abolishes the entire Grand Boulevard Overlay Area (15.5 sq miles) advertising sign prohibition. The proposed ordinance is over-reaching by a factor of 10. *The Law Department maintains the removal of the Grand Boulevard prohibition is appropriate.*

CPC/LPD staff initially suggests that, should they be permitted, CBD advertising wall graphics be regulated in the proposed Chapter 4 so that the limitation on the total number of new signs be capped and so the duration of the signs be time-limited—restrictions that are problematic under zoning.

CBD advertising wall graphics, should they be permitted, should be part of a formal City initiative that includes and promotes public art display, thus meriting unique treatment outside of Zoning.

All other signs, both on-premises and off-premises, should continue to be regulated by Zoning subject to established notice, hearing, and appeals procedures. The proposed Chapter 4 draft needs to be vetted by outside already-contracted First Amendment counsel.