

Lauren Hood, MCD
Chairperson
Donovan Smith
Vice Chair/Secretary

Marcell R. Todd, Jr.
Director

City of Detroit
CITY PLANNING COMMISSION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-6225 Fax: (313) 224-4336
e-mail: cpc@detroitmi.gov

Brenda Goss Andrews
Kenneth R. Daniels
Damion W. Ellis
David Esparza, AIA, LEED
Gwen Lewis
Frederick E. Russell, Jr.

TO: City Planning Commission

FROM: M. Rory Bolger, Staff

RE: **Zoning Ordinance text amendment, Chapter 50 of the 2019 Detroit City Code—Bulk solid materials facilities, including “pet coke,” and miscellaneous unrelated revisions and updates (Traditional Main Street Overlay Area standards; SD2 District height limitation; and definitions of brewery, brewpub, and microbrewery for consistency with state of Michigan definitions)**

DATE: July 1, 2021

At the July 8, 2021 meeting of the City Planning Commission (CPC), a statutory public hearing will be held to consider a text amendment to Chapter 50 of the 2019 Detroit City Code, *Zoning*. The proposed ordinance (see attachment) provides definitions and zoning district specifications relative to the outdoor storage of bulk solid material and relative to carbonaceous bulk solid material facilities (including “pet coke”). The ordinance cross-references related and governing provisions that were adopted in 2017, as requested by Council Member Raquel Castaneda-Lopez (District 6). Those 2017 provisions are recited in Chapter 42 of the 2019 Detroit City Code.

The proposed text amendment also includes provisions unrelated to bulk solid material, discussed below, that update and correct recently adopted amendments to the Zoning Ordinance.

MEANING OF TERMS

Bulk solid material

When the proposed ordinance and this report refer to “bulk solid material” it means the following:

[1] Any solid substance or material that can be used as a fuel or as an ingredient or component in a manufacturing process, that may create **fugitive dust**, and that is accumulated in an amount of 50 cubic yards or more at any one time, including, but not limited to, asphalt millings, ores, iron and steel slag, gravel, sand, and limestone, but does not mean salt, grains, commercial solid waste, or garbage; and

[2] Any carbonaceous material regardless of the amount but does not mean material stored in nurseries, garden centers, and farm supply stores.

Carbonaceous material

References to “carbonaceous material” mean the following:

A solid substance that occurs naturally or exists as a result of a human-made process that is rich in **carbon**, and includes, but is not limited to, coal, and coke in its various forms, including but not limited to, nut coke, coke breeze, petroleum coke, and metallurgical coke, but excluding asphalt millings.

Carbonaceous bulk solid material facility

The land use, “carbonaceous bulk solid material facility” is:

A source, site, or facility where carbonaceous bulk solid material is stored, loaded, unloaded, stockpiled, handled on-site, blended, processed, or otherwise managed.

All of these terms are copied from Ordinance No. 32-17—the non-zoning ordinance from 2017 which defined and regulated the storage and transport of bulk solid material, including petroleum coke (or “pet coke”).

SCOPE OF THE ZONING TEXT AMENDMENT

In recent years, significant complaints, related to fugitive dust and material from riverside stockpiles of petroleum coke (or “pet coke”), have been before City Council and in the media. “Pet coke” is a bi-product of petroleum refining at the recently expanded petroleum refinery in southwest Detroit.

The Detroit Zoning Ordinance has long regulated the land use, “coal or coke yard.” In the current Zoning Ordinance, “coal or coke yards” are found within the use category, “Manufacturing and Production,” and grouped together with thirty-nine (39) other uses classified as “Very High-Impact Manufacturing or Processing.” These “Very High-Impact” uses have been prohibited everywhere except on land zoned M4 (Intensive Industrial District), M5 (Special Industrial District), W1 (Waterfront Industrial District), and in those Planned Development (PD) Districts where the city’s Master Plan identifies an area’s future land use as “Industrial.”

This text amendment contains five important provisions:

- Modifies and expands the land use label, “Coal or coke yard,” to specify “Coal yard; bulk solid material storage, outdoor; carbonaceous bulk solid material facility.” The land use remains classified as a “very high-impact manufacturing or processing use,” permissible only on a conditional basis on land zoned M4, Intensive Industrial District and M5, Special Industrial District (*Sec. 50-16-441*).
- Requires review of the land use by the inter-departmental Industrial Review Committee (*Sec. 50-2-104*).
- Removes the land use from the list of permitted uses in the W1 District (*Sec. 50-11-183*). (The only land currently zoned W1 in the City is Waterworks Park on East Jefferson.)
- Provides or amends definitions for ten terms, consistent with Chapter 42:
 - Asphalt millings (*Sec. 50-16-113*);
 - Bulk solid material (*Sec. 50-16-132*);
 - Bulk solid material storage, outdoor (*Sec. 50-16-132*);
 - Carbonaceous bulk solid material (*Sec. 50-16-151*);
 - Carbonaceous bulk solid material facility (*Sec. 50-16-151*);

- Carbonaceous material (*Sec. 50-16-151*);
 - Coal (*Sec. 50-16-153*);
 - Coke (*Sec. 50-16-153*);
 - Petroleum coke, or petcoke (*Sec. 50-16-341*);
 - Very high-impact manufacturing or processing (*Sec. 50-16-341*).
- Cross-references the applicable non-zoning provisions of Chapter 42 of the 2019 Detroit City Code (*Secs. 50-12-82, 50-12-365*).

CHAPTER 42 PROVISIONS

Chapter 42 of the 2019 Detroit City Code, now titled “Solid Waste and Illegal Dumping,” was amended by Ordinance No. 32-17, effective December 6, 2017. As currently codified, Article II, Division 5, Subdivision B of Chapter 42 addresses “bulk solid materials.” In addition to the definitions of pertinent terms, Chapter 42 provides for the regulations and administrative processes, many of which typically would appear in a zoning ordinance:

- For bulk solid material facilities, Chapter 42 already addresses some 22 issues:
 - Operating and maintenance practices
 - Certificate of Operation
 - Reviewing and approving applications
 - Change in facility operations
 - Inspections by Buildings, Safety Engineering, and Environmental Department
 - Fugitive dust
 - Opacity limits; measurement
 - Fugitive Dust Plan—Required
 - Fugitive Dust Plan—Contents
 - Wind monitoring
 - Conveyors and transfer points
 - Transport
 - Coverings and other dust control
 - Prohibition against leakage
 - Truck loading and unloading
 - Railcar loading and unloading
 - Vessel loading and unloading
 - Roadway cleaning
 - Spilled material
 - Recordkeeping
 - Inspections
- For carbonaceous bulk solid material facilities, Chapter 42 already addresses:
 - Enclosure of carbonaceous bulk solid material
 - Enclosure plan
 - Enclosure requirements

Key among these provisions is the prohibition of the open air storage of carbonaceous bulk solid material, including “pet coke.”

Sec. 42-2-201. Enclosure of carbonaceous bulk solid material.

The owner or operator of a carbonaceous bulk solid material facility shall maintain all carbonaceous bulk solid material in fully enclosed structures in accordance with the enclosure requirements in this division.

These Chapter 42 (*Solid Waste and Illegal Dumping*) provisions are not under the purview of the City Planning Commission since Chapter 42 is one of the “police power” chapters of the Detroit City Code, whereas Chapter 50 (*Zoning*) is adopted pursuant to the Michigan Zoning Enabling Act, which mandates review by the CPC. The existing Chapter 42 provisions are germane to the Planning Commission because this Zoning Ordinance text amendment directs a permit applicant for the outdoor storage of bulk solid material storage and for a carbonaceous bulk solid facility to abide by the provisions of Chapter 42. Representatives of the Administration, who administer the Chapter 42 provisions, are expected at the July 8th hearing as technical resources.

The provisions adopted in 2017 already apply to existing facilities where bulk solid material, including carbonaceous bulk solid material, is stored and handled. The proposed Chapter 50 zoning provisions are meant to address new locations where outdoor storage of bulk solid material and/or facilities for carbonaceous bulk solid material are proposed to locate as the principal use of the land.

PREVIOUS REVIEW BY THE CPC

Commissioners may recall earlier versions of a “pet coke” ordinance. The issue was previewed in September and October 2014 by a Law Department attorney in advance of a November 20, 2014 public hearing on the text amendment. No member of the public spoke in support or opposition to the ordinance at that public hearing. The CPC voted in 2014 to recommend approval of the text amendment to City Council, however the zoning and the regulatory ordinances (Chapter 61 and Chapter 22 of the 1984 Detroit City Code) were held back from a vote by Council in 2015 pending the Administration’s analysis of additional, pertinent information.

Following that analysis, a second version of the text amendment was presented to the CPC in 2016, containing expanded and added definitions. On February 16, 2016, the CPC held a public hearing on the revised text amendment. No member of the public spoke in favor or against the text amendment. The Commission voted to recommend approval of the amendment to City Council. Again, the ordinance was held back from a vote at the request of the Administration. Further revisions to the non-zoning regulations were delegated to outside counsel, which led to the preparation of the ordinance that is now part of Chapter 42.

The attached ordinance differs from the versions approved by the CPC in 2014 and 2016 with the addition of new, refined, and more precise definitions related to bulk solid materials; it also includes unrelated revisions related to recently adopted text amendments.

OTHER PROVISIONS IN THE TEXT AMENDMENT

Traditional Main Street Overlay Areas—Applicability (Secs. 50-11-385 and 50-14-431)

When Traditional Main Street Overlay (TMSO) Areas were first established in the Zoning Ordinance in 2005, the related design standards were meant to improve the appearance of storefronts and other buildings along significant commercial strips. Shortly after the adoption of recent amendments to TMSOs in 2020 (Ordinance No. 2020-21), an unintended consequence of the design standards caught the University of Detroit Mercy (UDM) and city staff by surprise.

UDM is located on land zoned R6 (High-Density Residential) at the corner of West McNichols and Livernois—designated TMSOs. Permit review for construction of a new on-campus facility required UDM to seek a Board of Zoning Appeals variance from the TMSO standard for fenestration—a reasonable standard for a retail building, but not necessarily appropriate for an institutional building.

At the request of the Planning and Development Department, the applicability of TMSO design standards is proposed to be limited to land other than that zoned R1, R2, R3, R4, R5, R6, and residential PD.

Traditional Main Street Overlay Areas—Fence standard (Sec. 50-14-433)

The recent amendment to TMSO design standards (Ord. No. 2020-21) was adopted before the scope and design standard for “fencing” could be incorporated into the amendment. At the request of the Planning and Development Department (P&DD), the objective of the “fencing” standard is expanded:

- To provide for an enjoyable pedestrian experience; and
- To architecturally integrate fences and screens to enhance the design of the main buildings associated with the project to the greatest extent possible. Fences should be similar or complementary to the color and finishes of the exterior of the associated building.

The expanded objectives are addressed in the proposed new or revised design standards:

- A clear view of oncoming vehicular and pedestrian traffic must be maintained at street corners, driveways, alleys, or similar locations;
- Fences exceeding three feet in height along street frontages at the front lot line are required to provide a three-foot wide landscaped area with trees and landscaping between the sidewalk and the fence facing the street;
- The prohibitions on certain fence types—chain link, plywood, vinyl, recycled materials, sheet metal, plastic, picket-style—are called out and P&DD is authorized to allow for exceptions to the prohibitions where deemed appropriate and compatible with the buildings nearest the fence.

SD2 District—height limitation (Sec. 50-11-245(5))

The SD2 District (Special Development District, Mixed-Use) was just revised and updated with the adoption of Ordinance No. 2020-21. That text amendment unfortunately omitted a height provision for SD2 that was addressed in the SD1 District (Special Development District, Small-Scale Mixed-Use) leaving an inconsistent treatment of intensity and dimensional standards for the special development districts.

At the request of the Planning and Development Department, a 60-foot height limitation is specified for mixed-use buildings. The maximum height for non-mixed-use buildings is already specified appropriately as 45 feet.

Definitions, Article XVI—Brewery; Brewpub (Sec. 50-16-132)

CPC staff became aware of changes in state law, specifically the Michigan Liquor Control Act, which have an impact on Chapter 50, Article XVI (*Rules of Construction and Definitions*).

- When the Detroit Zoning Ordinance first regulated “brewpubs,” the definition of the land use was copied from state law—an establishment that manufactures and sells not more than 2,000 barrels of beer for consumption on the premises. Now that the state definition has changed “2,000 barrels” to “18,000 barrels” of beer, the Chapter 50 definition of “brewpub” is proposed to be changed to “18,000 barrels” for consistency with state law.
- Breweries have long been regulated by Detroit’s zoning, but the land use was never defined until micro-breweries emerged as a new and attractive land use. The Zoning Ordinance adopted the state’s definition of “brewery” as a facility that manufactures more than 20,000 barrels of beer. The revised state definition has changed “20,000 barrels” to “60,000 barrels” of beer. The Chapter 50 definition of “brewery” is proposed to be changed to “60,000 barrels” for consistency with state law.

Definitions, Article XVI—Microbrewery (Sec. 50-16-302)

Also changed in state law is the definition of “microbrewery.”

- When the Detroit Zoning Ordinance first regulated “micro-breweries, it adopted the state’s definition—a facility that produces less than 20,000 barrels of beer that may include on-premises consumption. The revised state definition has changed “20,000 barrels” to “60,000 barrels” of beer. The Chapter 50 definition of “microbrewery” is proposed to be changed to “60,000 barrels” for consistency with state law.

NEXT STEPS

Because the issues before the Commission are ones that are being revisited, CPC bylaws allow consideration of same-day approval of the ordinance if there are no outstanding questions to be addressed or issued to be resolved.

cc: David Bell, Director, BSEED
Raymond Scott, Deputy Director, BSEED
Malik Johnson, BSEED
Crystal Gilbert-Rogers, BSEED
Katy Trudeau, Director, P&DD
Karen Gage, P&DD
Greg Moots, P&DD
Victor Moncivais. Law
James Ribbron, Director, BZA

Attachment