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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)—RECOMMEND APPROVAL**

DATE: August 30, 2021

At the July 8, 2021 meeting of the City Planning Commission (CPC), a statutory public hearing was held to consider a text amendment to Chapter 50 of the 2019 Detroit City Code, *Zoning*. The proposed ordinance would provide 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 proposed 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.

## **BACKGROUND**

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 proposed text amendment contains five important provisions related to bulk solid material:

- 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*)

### **PREVIOUS REVIEW BY THE CPC**

Commissioners may recall earlier versions of a “pet coke” ordinance from the autumn of 2014. The CPC held a hearing and voted to recommend approval of the text amendment to City Council, however the zoning and the regulatory ordinances (Chapter 61 and Chapter 22 of the then 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. In February 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 and 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 regulatory ordinance that is now part of Chapter 42.

The ordinance, which was the subject of the CPC public hearing of July 8, 2021, 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.

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. Such a change would save land uses, such as UDM, from having to go to the Board of Zoning Appeals for a variance of standards that were never originally intended for them.

### ***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.

**RESULTS OF PUBLIC HEARING**

The July 8<sup>th</sup> public hearing included staff from the Environmental division of the Buildings, Safety Engineering and Environmental Department (BSEED), Planning and Development Department (P&DD), the Law Department, and of the CPC itself. The sponsor of the 2017 “bulk solid” ordinance and of this zoning amendment is Council Member Raquel Castaneda-Lopez.

At the public hearing, the Council Member provided historical background to the legislative initiative and brought forward two amendments to Sec. 50-12-365 of the draft ordinance for the Commission’s consideration (See attachment):

- The first amendment was to reduce the maximum height of unenclosed piles of non-carbonaceous bulk solid material from 50 feet to 30 feet;

- The second amendment was to increase the minimum setback of unenclosed outdoor storage of non-carbonaceous bulk solid material from a waterway from 25 feet to 100 feet.

Testimony from the public was offered remotely by four individuals:

**Simone Sagovac**, resident and representative of Southwest Detroit Community Benefits Coalition, who recommended additional amendments to the Bulk Solid/Fugitive Dust Ordinance, to include industrial businesses operating on unpaved ground where the operations generate fugitive dust by truck activity or other manipulations on the site—specifically junkyards, scrap yards, and freight container yards. She indicated that residents fear the depreciation of their property, health, and welfare and noted residents’ inability to enjoy property and quality of life; that residents cannot open windows, they experience increased asthma, and other health conditions; she reported that current street sweeping is highly inadequate, briefly tamping down the dust only on the immediate area streets. Ms. Sagovac submitted a written copy of her comments to Director Todd. (See attachment)

**Adam Patton**, an environmental consultant, representing the Revere Dock, said he was not aware of the proposed bulk storage zoning ordinance; found out only the previous day as did others in the regulated community or in a similar position; he urged the Planning Commission to allow the regulated community more time to review and provide comments on the proposed bulk storage zoning ordinance, especially given the additional comments and proposed amendments, prior to its adoption.

**Beth Gotthelf**, an attorney with Butzel Long, had been very active with the drafting and passage of the 2017 bulk solid material ordinance. She reported having learned about this proposed amendment only the previous day and provided this information to a few companies that could be impacted and to the Detroit Chamber of Commerce where she is a leader in their environmental and energy committee. She suggested there appears to be issues with the zoning ordinance being used to override specific requirements in another chapter of the code. The two just-proposed amendments of the 50 feet to 30 feet and the setback to 100 feet would have an enormous impact on a number of companies; she cautioned that that really needs to be flushed out. It could be inconsistent with the current bulk material storage ordinance; she also pointed out that there's a work group that was formed, which includes the Detroit Chamber that has been working with City Council and Council Member Castaneda-Lopez’s proposed “shoreline ordinance” that focuses on bulk material storage. She proposed, alternatively, adding some zoning and bulk material language for the “shoreline ordinance” ordinance that is currently being proposed.

**Otis Mathis**, a resident of Southwest Detroit, sought clarity relative to fugitive dust in his neighborhood coming from the Marathon Plant.

Unrelated to the issue of bulk solid material and subsequent to the meeting’s adjournment, CPC staff received written correspondence, dated July 21, 2021, from **Antoine Garibaldi**, President of University of Detroit Mercy relative to, and in support of, the proposed revisions to the Traditional Main Street Overlay standards. (See attachment)

No one spoke in favor or against the proposed changes to definitions related to **liquor** establishments. The revisions are being included so as to reconcile city and state definitions of terms.

## **FOLLOW-UP**

The Commission directed staff to go forward and hold the necessary meetings with stakeholders relative to the suggested amendments and to set a public hearing on matters beyond the scope of the proposed ordinance for the September meeting. Further discussions within CPC staff and with the Law Department were held to review substantive and procedural matters related to the comments from the public hearing.

On July 30<sup>th</sup>, CPC staff conferred with Ms. Gotthelf of Butzel Long and with Bernard Parker, Jr of the Detroit Chamber for a fuller briefing on concerns raised at the public hearing and concerning their ongoing work with Council Member Castaneda-Lopez related to shoreline protection.

These same parties were included in a zoom call initiated by Council Member Castaneda-Lopez on August 4<sup>th</sup>. At that time, CPC staff shared its conclusion, subsequent to conferring with the Law Department and among planning staff, that it would be preferable to omit the proposed “friendly amendments” on pile height and waterway setback from Sec. 50-12-365(b) of Chapter 50, Zoning.

Because the height limit on piles of bulk material is already addressed outside the Zoning Ordinance in Sec. 42-2-213 and because the waterway setback is already addressed in Sec. 42-2-214, to establish different standards in a different chapter of the City Code would unnecessarily create conflicting provisions for BSEED to administer. Had these zoning-like (height and setback) standards originally been recited in the Zoning Ordinance rather than in the Solid Waste chapter of the City Code, inclusion of these amendments in the proposed ordinance would not pose the same administrative and enforcement challenge.

## **RECOMMENDATION**

Staff respectfully recommends the following three-part action:

- That the City Planning Commission vote to recommend approve of the draft ordinance as presented to the Detroit City Council with correction of scrivener’s errors;
- That the City Planning Commission convey the two amendments suggested by the ordinance’s sponsor to Detroit City Council as worthy of consideration as an amendment to Chapter 42 (Sec. 42-2-213 and Sec. 42-2-214).
- That City Planning Commission staff convene an interdepartmental working group involving BSEED, BZA, Law, and CPC to review the proposals of the Southwest Detroit Community Benefits Coalition relative to fugitive dust at land uses not addressed in the bulk solid materials ordinances and that any resulting proposed revisions be reviewed with industry stakeholders prior to reporting back to the Planning Commission before the end of the year.

cc: David Bell  
Raymond Scott  
Malik Johnson  
Crystal Gilbert-Rogers  
Katy Trudeau  
Greg Moots  
Karen Gage  
Victor Moncivais  
James Ribbron

Attachment

Council Member Raquel Castaneda-Lopez's friendly amendments  
Southwest Detroit Community Benefits Coalition comments  
University of Detroit Mercy letter of support for TMSO modification