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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—
Permissibility of six land uses; off-street parking in Lower Woodward area;
miscellaneous updates/corrections**

DATE: October 18, 2021

BACKGROUND

Upon the urging of the Mayor's Equity Council, the Buildings, Safety Engineering and Environmental Department (BSEED) and the Detroit Economic Growth Corporation (DEGC) have requested revisions to Chapter 50 of the 2019 Detroit City Code, Zoning, to assist small businesses. City Planning Commission (CPC) staff has conferred with the Administration and prepared a draft amendment that incorporates several of the Administration's requests.

PROPOSAL

At the October 21, 2021 meeting of the City Planning Commission (CPC), a 6:45 PM statutory public hearing will be held to consider a Zoning Ordinance text amendment. The proposed ordinance (see attachment) provides for the change in permissibility of six land uses in certain zoning district from conditional to by-right. The ordinance also provides an exemption from off-street parking requirements for the Lower Woodward Master Plan area, it corrects an inaccuracy in Chapter 50, and it restores a provision inadvertently omitted from an earlier text amendment.

The six land uses proposed to be changed from conditional to by-right are:

- **Lofts** in B1, B2, B3, and B4 Districts;
- **Residential uses combined with permitted commercial uses** in B1, B2, B3, and B4 Districts;
- **Group day care homes** in R3, R4, R5, R6, and SD4 Districts;
- **Brewpub or microbrewery or small distillery or small winery** in B2, B3, B4, B5, B6, SD4 Districts, where deemed to not be a Regulated Use;
- **Restaurant, fast-food, without drive-up/drive-through** in B2 and B3 Districts; and
- **Used goods dealers** in B4, B5, B6, SD1, and SD2 Districts.

MEANING OF TERMS

By-right Uses are those land uses that are not subject to any discretionary determination. The legislative body, Detroit City Council, has determined that certain uses are appropriate in specified zoning districts and may be issued a permit provided they comply with any general or specific use

standards of Article XII (such as spacing requirements), intensity and dimensional standards of Article XIII (such as height limits and setbacks), and development standards of Article XIV (such as off-street parking and loading).

Typical of by-right uses are: single-family dwellings on land zoned R1, R2, R3, R4, and R5; general retail stores on land zoned B2, B3, B4, B5, B6 and in many industrial and special zoning districts; and warehouses and wholesalers on land zoned M1, M2, M3, M4, and M5.

Conditional Uses on the other hand are not eligible for a permit until certain discretionary factors are taken into account subsequent to notification of the public and the holding of a public hearing. Unlike most by-right uses, every conditional use is also subject to site plan review. The term, conditional use, is synonymous with the term, special land use.

For the first 34 years that Detroit administered a zoning ordinance, land uses were either permitted or prohibited in a given zoning district. When the Michigan Zoning Enabling Act (MZEA) was amended (MCL125.3502), however, Detroit exercised powers in 1974 that were granted by the MZEA to list certain uses as special land uses, or “permitted with approval.” This meant that those uses could only be granted after hearing from the public in a duly notified public hearing to owners and residents within 300 feet of a subject property. Since adoption of city charter amendments in 1974, the Buildings and Safety Engineering Department—now the Buildings, Safety Engineering and Environmental Department (BSEED)—has had the authority and responsibility to administer the zoning ordinance and to conduct special land use hearings. The 2005 update to the city’s zoning ordinance rechristened the permitted with approval uses as “conditional” uses.

The conditional use designation acknowledges that “one size doesn’t necessarily fit all.” For example, a rental hall on land zoned B4 might be objectionable to the residential neighbors located on the other side of a 20-foot wide alley whereas it might raise no concern in an area where residential properties are remote from the proposed use. The conditional use hearing allows the hearing officer to take local conditions into account and, if appropriate, to apply unique requirements or limitations to mitigate a land use’s possible detrimental effects. The BSEED hearing officer can make a judgment call and weigh the costs and benefits of a decision to approve or deny or approve with conditions a particular use. The hearing officer presents a recommendation to the director of BSEED, who make a final decision. BSEED’s current hearing officer is Ms. Jayda Philson.

Discretionary and non-discretionary standards

Any conditional land use that comes up for a hearing is evaluated against 15 approval criteria specified in Sec. 50-3-281 of the Zoning Ordinance:

Sec. 50-3-281. - General approval criteria.

No conditional use shall be approved by the Buildings, Safety Engineering, and Environmental Department, or the Board of Zoning Appeals on appeal, unless each of the following general findings is made:

- (1) The establishment, maintenance, location, and operation of the proposed conditional use will not be detrimental to or endanger the social, physical, environmental or economic well-being of surrounding neighborhoods, or aggravate any preexisting physical, social or economic deterioration of surrounding neighborhoods;
- (2) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes permitted;
- (3) The conditional use will not substantially diminish or impair property values within the neighborhood;

- (4) The conditional use shall not be inconsistent with the goals and objectives of the Detroit Master Plan;
- (5) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district. Plans for such development and improvement shall be evidenced in a written or published community plan, development plan, cluster board plan, or similar document;
- (6) Adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided;
- (7) The conditional use will be compatible with the capacities of public services and public facilities that are affected by the proposed use;
- (8) The conditional use will be compatible with land uses on adjacent and nearby zoning lots in terms of location, size, and character. For purposes of this section, the term "nearby zoning lots" means those lots on the same side of the same block face as the subject property;
- (9) The conditional use will not hinder or have a detrimental effect upon vehicular turning patterns, ingress/egress, traffic flow, nearby intersections, traffic visibility and the clear vision triangle, and other vehicular and pedestrian traffic patterns in the vicinity;
- (10) The conditional use will in all other respects conform to the applicable use regulations, dimensional requirements, general development standards, and any other applicable requirement of this chapter. In the event a dimensional or other variance is needed, the Buildings, Safety Engineering, and Environmental Department may approve the conditional use contingent on approval of the needed variance from the Board of Zoning Appeals as provided for in [Section 50-3-269](#) of this Code;
- (11) The conditional use is consistent with any approved preliminary site plan;
- (12) The conditional use is so designed, located, planned, and to be operated so that the public health, safety, and welfare will be protected;
- (13) The conditional use shall not involve activities, processes, materials, equipment or conditions of operation that will be detrimental to the physical environment or to public health and general welfare by reason of excessive production of noise, smoke, fumes, glare, or odors;
- (14) The conditional use is consistent with and promotes the intent and purpose of this chapter; and
- (15) Where a public, civic, or institutional use (see [Article XII, Division 1, Subdivision C](#), of this chapter) is proposed on land zoned industrial, the impacts of the normal operations that are allowed in the district, including noise, smoke, fumes, glare, and odor, shall not adversely affect the employees, patrons, or users of the proposed public, civic, or institutional facility.

SCOPE OF THE ZONING TEXT AMENDMENT

Permissibility of specific land uses

Lofts: changed from conditional to by-right in B1, B2, B3, and B4 (*Sec. 50-9-14, Sec. 50-9-20, Sec. 50-9-44, Sec. 50-9-50, Sec. 50-9-74, Sec. 50-9-80, Sec. 50-9-104, Sec. 50-9-110, Sec. 50-12-22, Sec. 50-12-159*).

A loft is defined as a dwelling unit in a building originally constructed for other than primarily residential use containing one or more rooms or enclosed floor space arranged for living, eating, sleeping and/or home occupations; such units shall include bathroom and kitchen facilities as required by applicable codes (Sec. 50-16-284).

Residential uses combined with permitted commercial uses: changed from conditional to by-right in B1, B2, B3, and B4 (*Sec. 50-9-14, Sec. 50-9-20, Sec. 50-9-44, Sec. 50-9-50, Sec. 50-9-74, Sec. 50-9-104, Sec. 50-9-110, Sec. 50-12-22, Sec. 50-12-159*).

This use allows for residential apartments with permitted commercial uses in a commercial building occupied by a use permitted in the given zoning district as indicated in the use table in Article XII, Division 1, Subdivision D of this chapter. As examples, a doctor's office in an R5 or R6 District may also include a residential unit on a by-right basis and a hardware store in a B2, B3, B4, B5 or B6 District may rent out apartments on its second floor (*Sec. 50-16-362*).

Group day care homes: changed from conditional to by-right in R3, R4, R5, R6, and SD4 (*Sec. 50-8-75, Sec. 50-8-81, Sec. 50-8-105, Sec. 50-8-111, Sec. 50-8-135, Sec. 50-8-141, Sec. 50-8-165, Sec. 50-8-171, Sec. 50-11-291, Sec. 50-11-297, Sec. 50-12-43*).

Group day care homes are defined as an accessory use to a private home, licensed by the Michigan Department of Human Services, where more than six but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home that gives care to an unrelated minor child for more than four weeks during a calendar year. Notwithstanding its status as an accessory use, a group day care home requires a permit (*Sec. 50-16-222*).

Brewpub or microbrewery or small distillery or small winery: changed from conditional to by-right in B2, B3, B4, B5, B6, SD4, where deemed to not be a Regulated Use. If the location is inside the CBD or if on the same zoning lot as and operates in conjunction with a standard restaurant, it's not a Regulated Use (*Sec. 50-3-323(1), Sec. 50-9-76, Sec. 50-9-106, Sec. 50-9-112, Sec. 50-9-136, Sec. 50-9-142, Sec. 50-9-166, Sec. 50-9-172, Sec. 50-10-16, Sec. 50-10-22, Sec. 50-10-46, Sec. 50-10-52, Sec. 50-10-76, Sec. 50-10-82, Sec. 50-10-106, Sec. 50-10-112, Sec. 50-11-116, Sec. 50-11-122, Sec. 50-11-206, Sec. 50-11-212, Sec. 50-11-292, Sec. 50-11-298, Sec. 50-12-62, Sec. 50-12-217*).

These four land uses are defined consistent with the definitions that appear in state law for liquor establishments under the purview of the Michigan Liquor Control Commission.

The Detroit Zoning Ordinance contains a category of land uses titled, **Regulated uses**—land uses whose concentration in a limited area raises concerns over skid-row-type blight and deterioration on a business strip. There are eight regulated uses as listed in Sec. 50-3-323 of the 2019 Detroit City Code that are subject to spacing requirements to prevent more than two Regulated Uses within 1,000 radial feet:

- 1) Brewpub, outside the Central Business District and SD2 District, microbrewery outside the Central Business District and SD2 District, and small distillery or small winery outside the Central Business District and SD2 District, that serve alcohol for consumption on the premises, except, that brewpubs, microbreweries, small distilleries and small wineries, which operate in conjunction with and are located on the same zoning lot as a standard restaurant as defined in [Section 50-16-362](#) of this Code, shall not be considered regulated uses;
- (2) Cabaret, outside the Central Business District and SD5 District;
- (3) Dance hall, public, outside the Central Business District;

- (4) Establishment for the sale of beer or alcoholic liquor for consumption on the premises, outside the Central Business District and outside the SD1, SD2 and SD5 Districts; however, such establishments that operate in conjunction with and are located on the same zoning lot as a standard restaurant as defined in Section 50-16-362 of this Code shall not be considered regulated uses;
- (5) Lodging house, public;
- (6) Motel;
- (7) Pawnshop; and
- (8) Plasma donation center.

Restaurant, fast-food, without drive-up/drive-through: changed from conditional to by-right in B2 and B3 (*Sec. 50-9-46, Sec. 50-9-52, Sec. 50-9-82, Sec. 50-11-364, Sec. 50-12-62, Sec. 50-12-310, Sec. 50-12-311*).

A fast-food restaurant is defined as an establishment for the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state for consumption either within the restaurant building or for carry-out with consumption off the premises, whose delivery of food to the customer may include service via a drive-up or outdoor walk-up pass-through window, and whose design or principal method of operation includes both of the following characteristics:

- (1) Foods, frozen desserts, or beverages are usually served in edible containers or disposable containers;
- (2) The consumption of foods, frozen desserts, or beverages within a motor vehicle parked upon the premises, or at other facilities on the premises outside the restaurant building other than designated and approved outdoor eating areas, is posted as being prohibited, and such prohibition is strictly enforced by the restaurateur. (*Sec. 50-16-362*)

Used goods dealers: changed from conditional to by-right in B4, B5, B6, SD1, and SD2 (*Sec. 50-9-106, Sec. 50-9-112, Sec. 50-9-136, Sec. 50-9-142, Sec. 50-9-166, Sec. 50-9-172, Sec. 50-11-206, Sec. 50-11-212, Sec. 50-11-236, Sec. 50-11-242, Sec. 50-12-69*).

Used goods dealer, previously referred to as a “secondhand store” under the 1984 Detroit City Code, is defined as a building, structure, premises, or part thereof, including a flea market, that is open to the public for buying, exchanging, bartering, offering for sale, or keeping with the intention of selling secondhand articles of any kind, except:

- (1) For books, magazines, records, CDs, or DVDs, which under this chapter and Chapter 41, Article VII, of this Code are considered to be new merchandise; and
- (2) For those articles, which are governed by Chapter 41, Article I, of this Code, *Junk Dealers, Junk Vehicles, and Junk Collectors* ; Chapter 41, Article II, of this Code, *Pawnbrokers* ; Chapter 41, Article III, of this Code, *Precious Metal and Gem Dealers* ; Chapter 41, Article IV, of this Code, *Scrap Metal Dealers* ; Chapter 41, Article V, of this Code, *Used Building Materials Dealers* ; and Chapter 41, Article VI, of this Code, *Used Motor Vehicle Dealers, Used Vehicle Parts Dealers, and Automobile Dismantling and Wrecking Yards*.

(Sec. 50-16-421)

Other provisions in the text amendment

A mistaken qualifier in Sec. 50-9-112(44) relative to **standard restaurants** without drive-up/drive-through facilities on land zoned B4 is corrected by removing the clause, “except such use is not permitted on any zoning lot abutting the Woodward Avenue Gateway Radial Thoroughfare.” The Woodward Avenue prohibition pertains to fast-food, not standard, restaurants.

A long sought-after **exemption from off-street parking** requirements for the greater Midtown area is provided for in Sec. 50-14-7(a). The Central Business District is already exempt from off-street parking. This revision identifies the Lower Woodward subsector of the Master Plan as being added to the areas already exempt from the off-street parking requirements. Lower Woodward is bounded by four freeways north of downtown: Edsel Ford on the north, Chrysler on the east, Fisher on the south, and Lodge on the west and includes the Medical Center, Cultural Center, and Midtown/Cass Corridor. Midtown Inc. has requested this exemption.

NEXT STEPS

Proper notice of the public hearing has been published and mailed out. In addition to CPC staff, representatives from BSEED and the DEGC are expected to provide information and respond to questions raised by Commissioners at the public hearing. Public testimony is expected and staff is prepared to formulate its recommendation for presentation at a subsequent meeting of the Commission in November.

Attachment: Draft Ordinance
Public Hearing Notice

cc: Antoine Bryant, Director, PDD
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