

City of Detroit

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TO: City Planning Commission

FROM: Eric Fazzini, Staff

RE: Proposed text amendment to Chapter 50 of the 2019 Detroit City Code, Zoning, regarding the permissibility of solar generation stations. **(PUBLIC HEARING)**

DATE: September 18, 2024

On September 19, 2024, the City Planning Commission (CPC) will hold a 7:00 P.M. public hearing on the subject text amendment request. Please see the attached copy of the public hearing notice containing a summary of the ordinance amendment as published for this public hearing.

BACKGROUND

2024 Solar Initiative Approvals

On July 30, 2024, City Council approved a package of items related to the Administration's Solar Initiative. This approval included a Resolution of Necessity that provides for property acquisition in three solar neighborhoods: Gratiot-Findlay, State Fair (Penrose), and Van Dyke Lynch (Airport Sub). The Resolution of Necessity is required for public improvements under chapter 15 of the 2019 Detroit City Code and states:

21. This Honorable Body hereby declares that the Solar Initiative is a governmental function and an essential service.

In Michigan and most other states, the courts have recognized that a local government may expressly exempt certain government projects or functions from its zoning ordinance by writing the exemptions into the zoning ordinance (MSU Extension Land Use Series; Restrictions on Zoning Authority). In cases where an exemption is not written into a zoning ordinance, the legislative body may be asked on a case-by-case basis to decide whether development activity is exempt from zoning. The Michigan Court of Appeals provided the following rationale for why local government entities should not be bound by their own zoning and land use regulations:

A governmental use, be it a police station, firehouse, school, or municipal office, serves the residents of a distinct, limited area, and, in order to be effective, must be located as close as possible to those persons. Further, a governmental use, by practical necessity, must be located somewhere within the boundaries of the governmental unit. As such, the governmental unit does not have the freedom to construct its structures wherever expedient, as does a private

business. Nor does the governmental unit have any real freedom not to build essential government structures. Mainster, Id at 327.

As the above states, “essential governmental structures” provide a unique and necessary service and, as such, should be considered for exemption from local zoning regulations. Municipal office buildings have been determined to be “essential governmental structures”, as have police stations, firehouses, schools, and structures related to waterworks systems (Taber, supra at 525-526). Courts have also concluded that when uses of a structure are “for the benefit of the general public”, it is a governmental function immune from zoning. Other court opinions have suggested that the grant of the power of eminent domain for a particular purpose implies an intent to exempt the land used from that purpose from zoning regulation (APA PAS Report 112).

The Administration and Council Member Benson have requested a zoning text amendment ratifying the exemption of city solar projects from the Zoning Ordinance (ZO) given City Council’s July approval that it is a governmental function and an essential service. Part 1 of the proposed amendment is intended to provide an exemption from the ZO for solar generation stations that qualify as an essential government function.

Zoning Ordinance

Prior to 2016, the ZO was silent on solar or wind alternative energy production facilities. To facilitate the development of O’Shea Solar Park, parallel zoning amendments were approved by City Council. First, a map amendment rezoned the former O’Shea playfield and recreation center from R1 Single-Residential to PR Parks and Recreation. Second, a text amendment added a new specific land use term of “solar generation station” as a Conditional Use in PR and permitted as a Planned Development. The PR district was targeted for alternative energy facilities as this district typically includes relatively large areas of publicly owned land, such as Belle Isle, Rouge Park, and Eliza Howell Park. The qualifications of a “solar generation station” as a principal use include that the facility is greater than one acre in area and includes ground-mounted devices. Ground-mounted devices could be photovoltaic panel or solar thermal collector (less common).

The 2016 amendments were specific to O’Shea and not intended to be comprehensive. The CPC staff report from 2016 states that the amendments were prepared to respond to a time-sensitive proposal and that additional research is appropriate for future zoning amendments relative to alternative energy facilities. The report also states, “in the future, it is anticipated that such facilities will be permitted by right or on a conditional basis in a variety of zoning districts.”

There are two additional city resources that support expanding the permissibility of solar beyond only the PR and PD districts. An April 2019 City Solar Policy Deployment Guide includes a recommendation to amend the ZO to promote solar energy systems. Zoning-specific recommendations include:

- *Principal Use Solar: Detroit should amend its ZO so that it is more facilitative of solar energy systems as a principal use. Many cities allow solar energy systems as a principal use in a variety of existing zoning districts.*
- *Accessory Use Solar: The ZO should expressly permit solar energy systems as an accessory use in all zoning districts.*

The specific recommendations of this guide have been incorporated into the proposed text amendment. Additionally, the in-progress Zone Detroit ZO update proposes to expand the permissibility of commercial solar throughout residential, business, and industrial districts.

SUMMARY OF PROPOSED AMENDMENT

Part 1 – Exempt City Solar (Article 1)

Part 1 of the proposed amendment is intended to provide an exemption from the ZO for solar generation stations that qualify as an essential government function. This includes the 2024 Solar Initiative and future solar generation stations that comply with the proposed Section 50-1-3(b) on page two of the draft ordinance:

- b) The development of solar generation stations by or on behalf of the City, located on land owned by the City or a City agency, and approved by City Council through adoption of a resolution, shall be considered an essential government function exempt from this chapter.*

Three qualifications are proposed to create the exemption, the first two being related. Requiring solar stations to be developed by or on behalf of the City and located on land owned by the City or a City agency ensures that the exemption is limited to city solar projects. The third qualification that the project be approved by City Council through adoption of a resolution is currently utilized in the ZO to administer other zoning functions, such as permitting commercial recreation facilities in the PR district. Requiring adoption of a resolution ensures there is an adequate level of City Council support for the project and provides for consideration of the project as part of a public meeting. A Resolution of Necessity under chapter 15 would qualify, but the resolution could also come as a standalone item.

Article 1, Section 50-1-3 currently includes a broad exemption statement intended to account for local zoning pre-emptions that may exist. These may include outright zoning pre-emptions that exist under the Michigan Zoning Enabling Act, other state or federal guidelines or laws, and case-by-case pre-emptions that may occur. The proposed language has been preliminarily reviewed by the Law Department and was found to adequately address the Solar Initiative and future qualified projects.

Part 2 – Nonexempt Solar

Part 2 of the proposed amendment is intended to address Council Member Benson’s additional request that a solar overlay district be drafted with new design standards for solar stations, and comments from other City Council members during the Solar Initiative discussion that they view solar stations as an industrial use. The proposed language in Articles 2 through 16 seeks to address these goals. Solar generation stations that do not qualify or pursue an exemption would be permitted as follows:

- Industrial (“M”) Districts: Permitted by-right subject to Development Standards
- Nonindustrial Districts: Permitted through the addition of an Overlay subject to Development Standards

Industrial Zoning Districts

The proposed amendment would expand the permissibility of solar generation stations by adding it as a by-right use in the M1 through M5 Industrial Districts whereas the use is currently only permitted in the PR and PD districts. Stations developed in Industrial Districts would be subject to new Article 14 design and development standards that have been developed in collaboration with the Planning and Development Department. Solar generation stations would be removed as a by-right use in the PR district as it is typically desirable to limit the area of structures occupying what is normally intended to be open park space.

Nonindustrial Zoning Districts (Overlay)

For nonindustrial zoning districts, solar generation stations would be permissible through the addition of a Solar Station Overlay Areas policy. These areas would be designated by City Council through the zoning amendment process, with a defined boundary intended to capture unique solar stations operating as a principal use. One overlay area is proposed for the existing boundaries of the O’Shea

Solar Park to account for solar generation stations being removed from the PR district. Benefits of an overlay approach include that they can proactively indicate where a use is desired, versus most zoning requirements being reactionary to broad zoning district areas and other use regulations such as spacing requirements. Overlay zoning is also more limiting than if, for example, stations were permitted Conditionally in the R1 or R2 district as the establishment of a Solar Overlay Area would require a text amendment. This restriction can be countered by encouraging solar facilities that fall under the defined threshold or are considered an accessory use, either ground-mounted or roof-mounted. Overlay stations would be subject to the same design and development standards as those in Industrial Districts. An additional MSU Extension resource, Planning and Zoning for Solar Energy Systems: A Guide for Michigan Local Governments, includes overlay zoning as an optional approach to permitting small or large-scale solar energy systems.

Standards (Industrial or Overlay)

The proposed amendment would replace the current specific use standards that apply to solar generation stations with a new set of development standards proposed for Article 14. Additionally, the amendment would:

- Add that urban gardens or urban farms may be permitted as an accessory use to a principal use solar generation station
- Require site plan review for solar generation stations with additional submittal requirements
- Add that a performance guarantee may be required
- Amend and add Article 16 definitions to support the proposed solar standards

The Planning and Development Department has led in the creation of new design and development standards that would follow zoning best practices for solar station development. These include provisions for massing and cross-access to provide for consideration of the public access network and amenities in the area, and a requirement that pedestrian through access be provided a minimum of every 1,320 feet (1/4 mile) in any direction. Additionally, a height maximum of 20 feet would be established for arrays and above-ground wiring, a minimum setback would be required for any buildings or structures (arrays), anti-glare/reflection and noise provisions would be added, and screening requirements would be added for solar stations depending on their proximity to streets and zoning districts. Screening would be required adjacent to public streets and adjacent zoning districts as follows:

Adjacent to streets or Residential Districts

- **Buffer Depth:** 15 feet
- **Trees:** Min. 1 deciduous shade or ornamental tree and Min. 1 coniferous tree provided for each 25 linear feet of buffer
- **Fencing:** Max. height 8 feet; chain link, barbed wire, or razor wire is prohibited. Fencing may be added within the buffer strip provided it is at least 10 feet from the property line so that the plantings are located on the perimeter of the fencing, not the interior.

Adjacent to Business or Special Districts:

- **Buffer Depth:** 12 feet
- **Trees:** Min. 1 deciduous shade or ornamental tree provided for each 25 linear feet of buffer and Min. 1 coniferous tree provided for each 30 linear feet of buffer
- **Fencing:** Max. height 8 feet; chain link, barbed wire, or razor wire is prohibited. Fencing may be added within the buffer strip provided it is at least 10 feet from the property line so that the plantings are located on the perimeter of the fencing, not the interior.

Adjacent to Industrial Districts:

- **Buffer Depth:** 10 feet
- **Trees:** Min. 1 deciduous shade or ornamental tree provided for each 25 linear feet of buffer and Min. 1 coniferous tree provided for each 40 linear feet of buffer
- **Fencing:** Max. height 10 feet; chain link is prohibited.

Please refer to the attached presentation for a detailed depiction of the proposed screening standards. Staff will provide an update during the public hearing presentation regarding some recent revisions and improvements desired to the proposed standards.

CONCLUSION

Staff may be prepared to provide a recommendation following the conclusion of the public hearing and Commissioner discussion.

Attachments: PHN Solar Text Amd 08292024
Solar Text Amd Ord - CPC 09042024
Solar Text Amd Presentation 09192024

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