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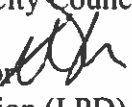
City of Detroit

CITY COUNCIL

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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division (LPD) Staff

DATE: October 15, 2019

RE: **State Enabling Legislation Regarding Solid Waste Permit
Modification Process**

On August 12, 2019, Council Member Benson requested that the Legislative Policy Division (LPD) and the Buildings, Safety Engineering and Environmental Department (BSEED) provide reports describing legal standards and procedures applicable to the permit modification process for Republic Waste/Dinverno, Inc.'s solid waste facility in the City of Detroit.

On September 24, 2019, BSEED issued their report in response to that referral, thoroughly summarizing the process for review by the Solid Waste Facility Review Committee (SWERC). Council Member Benson subsequently directed LPD to report regarding the applicable state enabling legislation.

LPD's research identifies the following statutes as the basic state enabling legislation for the permit modification process at issue:

- The Michigan Zoning Enabling Act, MCL 125.3201

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201. (1) A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber,

energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

(2) Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

(3) A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.

(4) A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.

History: 2006, Act 110, Eff. July 1, 2006.

- The Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, Section 115 Solid Waste Management, MCL 324.11508

324.11508 Solid waste management program; certification.

Sec. 11508. A city, county, or district health department may be certified by the department to perform a solid waste management program. Certification procedures shall be established by the department by rule. The department may rescind certification upon request of the certified health department or after reasonable notice and hearing if the department finds that a certified health department is not performing the program as required.

History: 1994, Act 451, Eff. Mar. 30, 1995.

The Zoning Enabling Act provides for public participation in the process as follows:

125.3103 Notice; publication; mail or personal delivery; requirements.

Sec. 103. (1) Except as otherwise provided under this act, if a local unit of government conducts a public hearing required under this act, the local unit of government shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.

(2) Notice required under this act shall be given as provided under subsection (3) to the owners of property that is the subject of the request. Notice shall also be given as provided under subsection (3) to all persons to whom real property is assessed within 300 feet of the property that is the

subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.

(3) The notice under subsection (2) is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

(4) A notice under this section shall do all of the following:

(a) Describe the nature of the request.

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

(c) State when and where the request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

History: 2006, Act 110, Eff. July 1, 2006; ¾Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

Depending on the particular issues involved in any individual facility or permit modification, there are myriad specific legal standards that may apply. The Zoning Enabling Act and the Solid Waste Management Act collectively run to over 80 pages of dense, single-spaced text that address many issues. Other constitutional, statutory, regulatory and common law provisions, such as rules governing the creation and mitigation of a nuisance, may come into play. Depending on factual developments any one or more other legal rules may prove decisive. If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.



MEMORANDUM

TO: Hon. Scott Benson, City Council District 3
Detroit City Council

FROM: Raymond A. Scott, MPH, Deputy Director
Buildings, Safety Engineering and Environmental Department

DATE: September 24, 2019

RE: BSEED Permit Standard

This memorandum is in response to your request for the Buildings, Safety Engineering and Environmental Department (BSEED) to outline the standards used to grant or deny permit modifications for Republic Waste/Dinverno, Inc. Republic Waste/Dinverno, Inc. requested a modification of a previous hearing 126-95. A request of this nature will include a review by the Solid Waste Facility Review Committee (SWFRC). This committee is made up of City Planning Commission (CPC), BSEED's Environmental Affairs, Detroit Health Department (DHD), Department of Public Works (DPW), Detroit Fire Department (DFD), and Planning and Development Department (P&DD).

On July 24, 2019, BSEED held a Special Land Use (SLU) hearing which included the SWFRC. Following the hearing, BSEED will receive a response from the review committee, which will be included in the final decision. The standards used by this department to provide an approval or denial, can be found in Chapter 61 of the Detroit Zoning Ordinance. In Section 61-3-231, fifteen (15) criteria are listed that must be satisfied in order to approve the request by the department. The criteria are as follow:

- (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 wellbeing of surrounding neighborhoods, or aggravate any preexisting physical, social or economic deterioration of surrounding neighborhoods; and
- (2) The Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes permitted; and
- (3) The Conditional Use will not substantially diminish or impair property values within the neighborhood; and
- (4) The Conditional Use shall not be inconsistent with the goals and objectives of the City of Detroit Master Plan; and
- (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; and



- (6) Adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided; and
- (7) The Conditional Use will be compatible with the capacities of public services and public facilities that are affected by the proposed use; and
- (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, "nearby zoning lots" shall mean those lots on the same side of the same block face as the subject property; and
- (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; and
- (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 Zoning Ordinance. In the event a dimensional or other variance is needed, the Buildings and Safety Engineering Department may approve the Conditional Use contingent on approval of the needed variance from the Board of Zoning Appeals as provided for in Sec. 61-3-219 of this Code; and
- (11) The Conditional Use is consistent with any approved preliminary site plan; and
- (12) The Conditional Use is so designed, located, planned, and to be operated so that the public health, safety, and welfare will be protected; and
- (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; and
- (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) 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.

At this time, the consideration for Republic Waste/Dinverno, Inc. is under review and a decision has not been made. If there are any additional questions regarding this matter, do not hesitate to contact me.

RAS/jp/dd

Cc: Honorable City Council
David Bell, Director BSEED
Marcell Todd, CPC
Louise Jones, City Clerk's Office
Stephanie Washington, City Council Legislative Liaison




City of Detroit
COUNCILMAN SCOTT R. BENSON

198

MEMORANDUM

TO: David Bell, BSEED

FROM: Hon. Scott Benson, City Council District 

CC: Ron Brundidge, DPW
Stephanie Washington, Mayor's Office

VIA: Hon. Brenda Jones, City Council President

DATE: 12 August 2019

RE: BSEED PERMIT STANDARDS

Our office has been made aware of a request from Republic Waste requesting that the City of Detroit modify its previous permit which restricts and prohibits the type of waste they may collect. Republic Waste would like to have this request modified to allow for the acceptance of household waste and an increase to the amount of waste they may accept. Please prepare a response which provides the standards BSEED uses to grant or deny this type of permit modification.

If you have any questions do not hesitate to call my office at, 313-224-1198.

SRB