



TOLEDO-LUCAS COUNTY PLAN COMMISSIONS

ONE GOVERNMENT CENTER, SUITE 1620, TOLEDO, OHIO 43604 PHONE 419-245-1200 FAX 419-936-3730

THOMAS C. GIBBONS, DIRECTOR



DATE: October 11, 2019

REF: M-9-19

TO: President Matt Cherry and Members of Council, City of Toledo

FROM: Toledo City Plan Commission, Thomas C. Gibbons, Secretary

SUBJECT: Request for a review of modifications to the Convenience Store definition.

The Toledo City Plan Commission considered the above-referenced request at its meeting on Thursday, October 10, 2019 at 2:00 P.M.

GENERAL INFORMATION

Subject

Request	-	Review of modification to Convenience Store definition
Applicant	-	Toledo City Council One Government Center, Suite 2120 Toledo, Ohio 43604

Applicable Plans and Regulations

- Toledo Municipal Code Part Eleven: Planning and Zoning

STAFF ANALYSIS

This application was deferred from the September 12, 2019 Plan Commission hearing in order to provide an additional opportunity for public input. In May 2019, Toledo City Council proposed Ordinance 248-19, requesting a Text Amendment to TMC§1104.0600 *Convenience Stores* and TMC§1116.0217(A & B) *Food and Beverage Retail Sales*. As described in the Ordinance, the goal of the Text Amendment is to address the economic, health, and safety concerns associated with the concentration of Convenience Stores and their impact on citizens of Toledo. The following Staff Analysis provides a brief background of the Convenience Store regulations and a review of other municipalities in the State of Ohio. The proposed text amendments includes two (2) modifications and included in Exhibit "A".

1) Section 1104.0600 - Use Regulations - Convenience Stores

This text amendment is to modify the Convenience Store maximum square footage requirement from 5,000 square feet to 11,000 square feet.

STAFF ANALYSIS (cont'd)

2) Section 1116.0217(A & B) Use Categories – Food and Beverage Retail Sales

This text amendment is to modify the definition of Convenience Stores and Large Stores under Food and Beverage Retail Sales in the Use Categories of Sec. 1116.0200.

As defined in TMC§1116.0217, any Food and Beverage Retail Sales with a floor area of less than 5,000 square feet is considered a Convenience Store. Food and Beverage Retail Sales with a floor area of 5,000 square feet or more is categorized as a Large Store.

Currently, any new Convenience Store in the City of Toledo is required to obtain a Special Use Permit. Large Stores are permitted by right in the same Zoning Districts as Convenience Stores but not subject to the same Use Regulations of TMC§1104.0600.

One of the Use Regulations that limits the clustering of Convenience Stores is the spacing requirement. Pursuant to TMC§1104.0603(A), a Convenience Store shall not be located within a 2,000 foot radius of another Convenience Store. Additionally, a Convenience Store shall not be located within 1,000 foot radius of a school, public park, public library, licensed child day care center, or other use established specifically for the activities of minors (Per TMC§1104.0603(B)).

Spacing requirements were originally introduced into the zoning code in 1993. They were removed from the 2004 zoning code and then reintroduced in 2009. In both instances, spacing requirements were added because the over saturation and proliferation of convenience stores led to secondary negative effects, such as littering and crime, which factored into the destabilization of neighborhoods.

Typical products sold at convenience stores include prepackaged food and beverages, alcohol and tobacco, or lottery. However, when looking at the products sold in most grocery/pharmacy stores today, there are less niche products and more uniform goods typically found at Convenience Stores. Whereas with specialty stores, like a bakery or meat market, a majority of the sales generated for the business rely heavily on one (1) type of good or product. As a result, consumers support a diversity of local businesses that support each other's success and growth instead of competing for market territories.

Small food and beverage retail stores, typically less than 10,000 square feet of gross floor area but greater than 5,000 square feet of gross floor area, sell similar products as convenience stores but are exempt from the spacing regulation and requirement for a Special Use Permit. Similarly, neighborhood drug stores and pharmacies, typically over 10,000 square feet of floor area, sell similar products to convenience stores but again, are exempt from spacing requirements and obtaining a Special Use Permit.

Moreover, spacing requirements for Convenience Stores allow an existing business owner to occupy a market territory with little-to-no competition for businesses surrounding their property. As a result, this creates areas in the city where operators who provide the bare minimum services, continue to succeed and eliminates the opportunity for a competitive future market.

One factor that limits the classification of Food and Beverage Retail Sales is the consideration of specialty markets that supply niche products to consumers. Typical examples in the Toledo area include Monette's Market, House of Meats, Tiger Bakery, Lei Lei Asian Market, Middle East Market, etc. These types of specialty stores are included in the *Food and Beverage Retail Sales* category and therefore subject to the proposed modification of the Use Category definition. The proposed text amendment would require all *Food and Beverage Retail Sales* with a floor area less than 11,000 square feet to obtain a Special Use Permit and subject to the Spacing Requirements of TMC§1104.0603. This change would also impact the location of most pharmacies in the City.

Simple market location analysis supports the clustering of like-businesses which does not support diverse land uses with mixed-use developments. In order to restrict the development of homogeneity and monotony in our community we must rely on strict land use and zoning regulations that apply to all types of stores selling similar products. However, the proposed modification to the definition of Food and Beverage Retail Sales will further restrict development opportunities for small specialty stores to operate due to spacing requirements.

Review of other Ohio Cities

Staff reviewed the zoning regulations for five (5) other major municipalities in the State of Ohio and four (4) local suburban municipalities. A table is provided in Exhibit "B" outlining the other municipalities' zoning regulations which pertain to Food and Beverage Retail Sales. In summary, none of the other Ohio municipalities subject Food and Beverage Retail Sales to spacing requirements, particularly from one another. A majority of the other municipalities do not use the Special Use Permit process, but instead restrict Food and Beverage Retail Sales by only permitting in specific Zoning Districts. A common characteristic found in multiple municipalities' zoning regulations was the use of gross floor area to determine the use category. The City of Columbus uses a threshold of 10,000 square feet to determine if a business is a "Carry-out" or "Supermarket", neither are restricted by location other than proper Zoning District classification. The City of Maumee classifies "Retail Sales Establishment" into three (3) categories: small-scale, medium-scale, and large-scale, which are determined by the gross floor area. All three (3) categories are permitted in the commercial zoning district with "small-scale retail sales establishments" being permitted in the lower-intensity neighborhood commercial zoning districts. The only municipality that regulates the spacing of convenience store/carry-out businesses is the City of Perrysburg. However, the spacing applies only to Carry Out-Alcoholic Beverages and requires those establishments to be located one thousand (1,000) feet from any school, church or place of public assembly.

Exhibit "A"

(Proposed additions are shown in bold italics,
proposed deletions are shown in strikethrough text)

1104.0600 Convenience Stores

The following standards apply to convenience stores with a floor area of less than ~~5,000~~ ***11,000*** square feet.

1116.0217 Food and Beverage Retail Sales

Retail sale of food and beverages for home consumption. Typical uses include groceries and delicatessens. There are two types of Food and Beverage Retail Sales uses:

- A. Convenience Stores, with a floor area of less than ~~5,000~~ ***11,000*** square feet; and
- B. Large Stores, with a floor area of ~~5,000~~ ***11,000*** square feet or more.

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STAFF ANALYSIS (cont'd)

Staff recommends additional research be conducted on modifying the definition of Food and Beverage Retail Sales and/or the creation of an additional Use Category, which would permit small-scale specialty food and beverage stores in certain zoning districts without spacing requirements. Additionally, research of other Ohio municipalities concluded the City of Toledo is the only municipality that regulates Convenience Stores by the Special Use Permit process.

PLAN COMMISSION RECOMMENDATION

The Toledo City Plan Commission recommended disapproval of the amendment to the Planning and Zoning Code as shown in Exhibit "A" to the Toledo City Council for the following reason:

1. Increasing the square footage requirement will continue to impede the establishment of small businesses.

Respectfully Submitted,

Thomas C. Gibbons
Secretary

Exhibit "A" & "B" follows
Cc: Lisa Cottrell, Administrator
Ryne Sundvold, Planner

Exhibit "B"

City	Definition of Convenience Store / Carry-out	Spacing	Permitted Use Category
Cleveland	"General retail business" means an enterprise for profit for the convenience and service of, and dealing directly with, and accessible to, the ultimate consumer; neither injurious to adjacent premises or to the occupants thereof by reason of the emission of cinders, dust, fumes, noise, odors, refuse matter, smoke, vapor or vibrations; nor dangerous to life or property.	No	Permitted in Local Retail Business District, General Retail, Shopping Center, Semi-Industry and General Industry Districts.
Columbus	"Carry-out" means a retail business operation, established on an individual tract of land or lot; occupying less than 10,000 square feet of gross floor area, engaged in the sale of food and beverages which are furnished to customers primarily for consumption or use off the premises. "Supermarket" means a store which is primarily for the retail sale of food and which has a gross floor area, including all types of storage rooms, restrooms, and other incidental rooms or areas, of 10,000 square feet or more.	No	- Permitted in C-1, C-3, C-4 & C-5. - Supermarkets only permitted in C-4.
Cincinnati	"Food market" means an establishment for retail sales of food and beverages for off-site preparation and consumption. Typical uses include supermarkets, specialty food stores, or delicatessens. This category also includes large-scale stores that sell food items and beverages in bulk. "Convenience market" means establishments that retail a limited line of goods that generally include milk, bread, soda, and snacks. Convenience markets may or may not include fuel sales.	No	- RM-0.7: Permitted on the ground floor occupying less than 2,500 sq. ft. More space requires a conditional use approval. - RM-2.0 & RM-1.2: Permitted on the ground floor in multi-family buildings with a minimum of 50 dwelling units, occupying 1,200 square feet or less of gross floor area and having a separate exterior entrance; structures with less than 50 dwelling units require conditional use approval; food markets occupying more than 1,200 square feet of gross floor area require conditional use approval. - Office Districts: Permitted on the ground floor occupying less than 2,500 sq. ft. More space requires a conditional use approval. Drive-through facilities are not permitted. - Permitted in all Commercial Districts. - Permitted in Urban Mix & Downtown Districts: Drive-through facilities are not permitted. - Manufacturing Districts: Permitted only if occupying less than 5,000 sq. ft. in Manufacturing Limited and 10,000 sq. ft. in Manufacturing General.
Dayton	"Retail establishment" An establishment engaged in the selling or renting of goods or merchandise to the general public for personal or household consumption, and rendering services incidental to the sale of such products. This term includes, but is not limited to, artist's studios, dry cleaning establishments, laundromats, portrait studios, and bakeries.	No	- Permitted in Downtown Districts, Commercial Districts, Mixed-Use Hub Districts, and Campus-Institutional District. - Permitted as accessory use in Multi-Family Residential Districts, Industrial Districts, & Park/Open Space.
Akron	"Retail Store"	No	Permitted in Class U3, U4
Maumee	"Retail Sales Establishment" means a business offering consumer goods directly for sale to the end consumer, where such goods are available for immediate purchase and consumption or removal from the premises by the consumer. (a) Large-scale Retail Sales Establishment: A retail sales establishment which contains more than 10,000 square feet of gross floor area. (b) Medium-scale Retail Sales Establishment: A retail sales establishment which contains between 5,000 and 10,000 square feet of gross floor area. (c) Small-Scale Retail Sales Establishment: A retail sales establishment which does not exceed 5,000 square feet of gross floor area.	No	- Small Scale permitted in C-1, C-3 - All types permitted in C-2, C-M
Oregon	"Retail business" shall mean any business selling goods, wares or merchandise to the ultimate consumer for direct consumption and not for resale.	No	- Permitted in C-1: Retail sales in structures of less than 10,000 square feet whose primary clientele is area residents. - Permitted in C-2, C-3, C-4, C-5, C-1.
Perrysburg	"Grocery Store" means stores where most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offer other home care and personal care products, and which are substantially larger and carry a broader range of merchandise than convenience stores. "Neighborhood Business" means an establishment primarily engaged in the provision of frequently or recurrently needed goods for household consumption, such as prepackaged food and beverages and limited household supplies. Neighborhood stores shall not include fuel pumps or the selling of fuel for motor vehicles. Typical uses include neighborhood markets and small retail outlets. "Retail Business" means businesses involved in the sale, lease or rent of new or used products to the general public. This excludes Animal Services, Business Equipment Sales and Services, Construction Sales and Services, Food and Beverage Retail Sales, Gasoline and Fuel Sales and Vehicle Sales and Service. Typical uses include department stores, drug stores, apparel stores and furniture stores.	No, only for Carry-Outs with Alcohol.	- Carry-outs/ alcoholic beverages: Special Use in C-2, C-3, C-4 & PBP - Grocery Stores: Permitted in C-2, C-3, C-4 & PBP - Neighborhood business less than 10,000 sq. ft.: Permitted in C-1, C-2, C-3, C-4 & PBP, Special Use in OS - Retail business less than 60,000 sq. ft.: Permitted in C-2, C-3, C-4, and PBP - Retail business more than 60,000 sq. ft.: Special Use in C-3, C-4 and PBP - Carry Out-Alcoholic Beverages: The locations of such establishments shall not be nearer than one thousand (1,000) feet to any school, church or place of public assembly as measured from property line to property line.
Sylvania	"Retail Sales Establishment" means an establishment engaged in sale or rental or merchandise with incidental service of commonly used goods and merchandise for personal or household use but excludes those classified more specifically by definition. Establishments are typically engaged in selling commodities or goods in small quantities to ultimate customers or consumers.	No	Permitted in B-1, B-1-B, B-2, B-3, B-4, B-5



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THOMAS C. GIBBONS, DIRECTOR



September 13, 2019

Toledo City Council
One Government Center, Suite 2120
Toledo, Ohio 43604

RE: Request for a text amendment to Convenience Store definition.
PC File: M-9-19

Dear President Matt Cherry and Members of Council:

The Toledo City Plan Commission on September 12, 2019 voted to defer to October 10, 2019, a request for a text amendment to the Convenience Store definition.

If you have any questions, please call this office at your convenience.

Sincerely,

Thomas C. Gibbons
Secretary

Cc: ✓ Lisa Cottrell, Administrator
✓ Ryne Sundvold, Planner

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Sylvania	"Retail Sales Establishment" means an establishment engaged in sale or rental or merchandise with incidental service of commonly used goods and merchandise for personal or household use but excludes those classified more specifically by definition. Establishments are typically engaged in selling commodities or goods in small quantities to ultimate customers or consumers.	No	Permitted in B-1, B-1-B, B-2, B-3, B-4, B-5

Zoning information obtained from Municipal Zoning Codes in August 2019.



City of Toledo

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File #: O-248-19 Version: 1 Name:
 Type: Ordinance Status: In Committee
 File created: 5/17/2019 In control: [Toledo City Plan Commission](#)
 On agenda: 5/28/2019 Final action:
 Title: Amending Toledo Municipal Code, Part Eleven, Subsections 1104.0600 and 1116.0217; enacting new Subsections 1104.0600, 1116.0217 regarding convenience stores; and declaring an emergency.

[History \(1\)](#) [Text](#)

Label
Councilman Riley

Title
Amending Toledo Municipal Code, Part Eleven, Subsections 1104.0600 and 1116.0217; enacting new Subsections 1104.0600, 1116.0217 regarding convenience stores; and declaring an emergency.

Body
SUMMARY & BACKGROUND:
The request is a Text Amendment to TMC§1104.0600 *Convenience stores* and TMC§1116.0217 *Food and Beverage Retail Sales* and is intended to add text regarding convenience store facilities.

The goal of the amendment is to address the economic, health, and safety concerns associated with the concentration of convenience stores and their impact on residents of Toledo. Convenience store use regulations were initially enacted in 2004 to control the secondary effects on crime and blight associated with these businesses. Since that time, the convenience store model has grown to include stores in excess of 5000 square feet. These stores are proliferating with no spacing, litter or congestion elimination restrictions in place.

The proposed text amendment will not impact any existing convenience stores established in the City of Toledo, however any new convenience stores will be subject to the proposed legislation. As stated in TMC§1101.0400, the Zoning Code is intended protect the health, safety, and general welfare of the citizens of Toledo.

Summary
NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That Part Eleven Subsection 1116.0217, Planning and Zoning which reads as follows:

1116.0217 Food and Beverage Retail Sales.

Retail sale of food and beverages for home consumption. Typical uses include groceries and delicatessens. There are two types of Food and Beverage Retail Sales uses:

A. Convenience Stores, with a floor area of less than 5,000 square feet; and

B. Large Stores, with a floor area of 5,000 square feet or more.
(Ord. 170-04. Passed 3-23-04.)

be amended to read as follows:

1116.0217 Food and Beverage Retail Sales.

Retail sale of food and beverages for home consumption. Typical uses include groceries and delicatessens.
There are two types of Food and Beverage Retail Sales uses:

- A. Convenience Stores, with a floor area of less than 11,000 square feet; and
- B. Large Stores, with a floor area of 11,000 square feet or more.

SECTION 2. That a new Part Eleven Subsection 1104.0600 which reads as follows:

1104.0600 Convenience stores.

The following standards apply to convenience stores with a floor area of less than 5,000 square feet.
(Ord. 170-04. Passed 3-23-04.)

be amended to read as follows:

1104.0600 Convenience stores.

The following standards apply to convenience stores with a floor area of less than 11,000 square feet.

SECTION 3. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety and property, and that this Ordinance must be immediately effective in order to provide for the orderly development of the area and to protect the land values in the area.

Vote on emergency clause: yeas _____, nays _____.

Passed: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council