



Legislation Details (With Text)

File #: O-545-21 **Version:** 2 **Name:**

Type: Ordinance **Status:** Approved

File created: 10/27/2021 **In control:** Regional Growth, Development, & Small Business Enterprise Committee-inactive

On agenda: 11/9/2021 **Final action:** 12/21/2021

Title: Amending Chapter 721 entitled "Neighborhood Plans" by adopting a new Chapter 721 entitled "Convenience Stores Licensing Requirements" thereby requiring all convenience store operators to acquire a license to operate.

Sponsors: John Hobbs III, Theresa Gadus, Vanice Williams, Rob Ludeman

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
12/21/2021	1	City Council	relieve of Committee	Pass
12/21/2021	1	City Council	amend	Pass
12/21/2021	1	City Council	Passage	Pass
11/9/2021	1	City Council	Referred To:	Pass

Amended at Dec. 21, 2021 City Council Meeting

Amending Chapter 721 entitled "Neighborhood Plans" by adopting a new Chapter 721 entitled "Convenience Stores Licensing Requirements" thereby requiring all convenience store operators to acquire a license to operate.

SUMMARY & BACKGROUND:

Since 1992 a Special Use Permit was required through the Toledo City Plan Commission, under the provisions of the Zoning Code, to regulate the locations where convenience stores are allowed to operate. Toledo City Council has been faced with complaints about the operation of convenience stores, many of which are not subject to the SUP requirements because they pre-date the 1992 zoning regulation. The concerns include the manner of operation, the activity, proximity to other properties, behavior by customers, licensees and the public. The provisions of this Chapter which establish licensing requirements for convenience stores will preserve the best interests of all parties in a more neighborhood-oriented, business-friendly environment.

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

SECTION 1. That Toledo Municipal Code Chapter 721 which currently reads as follows:

Chapter 721 Neighborhood Plans

721.01 Neighborhood plans.

(a) In those parts of the City in which a recognized Community Development Corporation ("CDC"), as defined by the current map on file at the City of Toledo Department of Neighborhoods, operates, a convenience store and the applicable CDC may enter into a written Neighborhood Plan. The Neighborhood Plan shall

address issues of concern, which may include but not be limited to plans to address issues of crime, safety, loitering, traffic, noise, convenience store operations, items offered for sale at the convenience store, marketing plans to encourage residents to patronize the store, and any other areas the convenience store and the CDC deem appropriate. Either party may withdraw from the Neighborhood Plan upon thirty (30) days notice to the other party. The parties may mutually agree to modify the Neighborhood Plan or mutually terminate it at any time. A representative of the convenience store and the CDC shall sign the Neighborhood Plan and provide a copy to the Director of Finance who shall keep the Neighborhood Plan on file.

(b) The Director of Finance shall periodically publish a list of the convenience stores that have entered into Neighborhood Plans with CDCs and distribute that list in a manner that encourages the community to patronize establishments that have Neighborhood Plans on file.

(c) The Mayor, from time to time, shall recommend other means of rewarding and encouraging CDCs and convenience store owners to work together to build stronger neighborhoods, reduce the incidence of tobacco use, especially among young people, and increase the opportunity for residents to purchase healthy foods at neighborhood convenience stores.

(Ord. 425-09. Passed 8-4-09.)

Is hereby repealed and a new Chapter 721 is to read as follows:

Chapter 721 Convenience Stores Licensing Requirements

721.01. Definitions and Scope

The provisions of this Chapter shall apply to all establishments, which now exist and which may be established or conducted in the future, locations and/or places, which are included in the Toledo Municipal Code definitions of Section 1116.0217 Food and Beverage Retail Sales- Chapter 11, as amended for purposes of this Ordinance, established or conducted in the future. "Convenience store"- as defined in TMC 1116.0217 (A) Food and Beverage Retail Sales- Retail sales of food and beverages for immediate consumption or home consumption: convenience stores with a floor area of less than 5000 sq ft., requiring food preparation licensure pursuant to TMC 1719, excluding eating and/or drinking establishments outlined in TMC 1116.0213, and excluding establishments not requiring a Toledo-Lucas County Health Department permit.

721.02 License Required

No person or legal entity shall operate a convenience store within the limits of the City of Toledo until the convenience store has been duly licensed for such purpose. Failure on the part of any person(s) or entity to obtain such license shall subject the licensee to the penalties hereinafter provided.

721.03 Application for License

Every person, society, club, firm, or legal entity, including but not limited to (corporation, partnership, sole proprietorship, limited liability company) desiring a license to operate a convenience store shall make written application to the City of Toledo Department of Finance. Each application shall be in the form prescribed herein. Such application shall be filed at least 30 days prior to the time of granting such license and subject to an investigation as hereinafter provided.

721.04 Content of Application

Each applicant for a convenience store license shall file with the Department of Finance a written application stating the name and residence address of the applicant, or if more than one person or an entity or firm, the full name of all parties interested and their addresses. If the applicant is a partnership, corporation or limited

liability company, the application shall contain a complete list of the officers or members of such entity with the names and addresses of such officers, the state in which such entity is organized, and the names and addresses of persons designated as its manager or managers. The application shall also include the following:

- (a) The location by street name and address where the convenience store is to be operated.
- (b) The name of the owner of the premises in which such convenience store is to be located.
- (c) Whether a shareholder, owner, member, manager or chief financial officer applicant has ever been engaged in the operation of a convenience store, and if so, when, where and duration at each location.
- (d) Certificate of tax compliance. No license shall be issued, or renewed if taxes, assessments or other financial claims of the City of Toledo, Lucas County or State of Ohio are delinquent or unpaid. If an appeal is filed regarding the amount or the validity of taxes, the Division of Taxation may waive this provision. No waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless a payment plan has been entered into or the liability is included in litigation.
- (e) The application shall include a criminal background check of all applicants performed within 1-year prior to the application. The background check shall be for Northwest, Ohio unless the applicant has resided or operated a business in any other State in the last two (2) years in which case additional checks may also be required. All background checks shall be performed at the expense of the applicant. Within two (2) years preceding the date of the application an applicant cannot have been convicted of any crime related to the occupation for which the license is sought, unless pursuant to law, said record is sealed or expunged. These crimes include, but are not limited to, the violation of any law dealing with food subsidy programs or the sale, possession, manufacture or transportation of controlled substances and Alcohol violations. If a conviction is considered there must be an additional review and approval by the Toledo Police Department of said background check. The applicant has the right to show relevant evidence of sufficient rehabilitation and present fitness.

The application shall be signed by the applicant or applicants or in the case of a partnership, limited liability company or corporation, by the shareholder/directors or members of the entity thereof in addition to the manager/chief financial officer.

(f) The application shall have attached a zoning review addendum. This form must be completed and approved by the Toledo Lucas County Plan Commission. The addendum will verify the correct zoning and satisfaction of conditions and confirmation of legal, non-conforming use status (grandfathering), if applicable. This review includes but is not limited to zoning, special use permits and site plan reviews.

(g) The application shall have attached a Building Inspection review addendum, as shown by an Occupancy Permit for said location. This form must be completed and approved by the Toledo Division of Building Inspection.

(h) In the event an applicant operates more than one convenience store location, the individual or entity need complete only one identity disclosure, background check and tax compliance report. A separate site identification and permit are required for each convenience store location.

721.05 Issuance of License; Renewal of License

(a) If the Director of Finance determines that an application meets the requirements of this Chapter, the Director of Finance shall evaluate the application and may issue the license.

(b) Any application for a license that does not contain all requested and/or necessary information shall be deemed incomplete. An application remaining incomplete for one hundred twenty (120) days shall be administratively denied by the Director of Finance. The Director shall notify the applicant of any deficiencies at

least thirty (30) days prior to administrative denial.

(c) If the application remains incomplete after being given the thirty-day notice, the Director of Finance may send written notice that the application is denied. Applicants shall not be allowed to engage in any activities for which a license is required. The application fees shall not be refunded.

(d) An applicant may, prior to denial, send a written request to extend the application deadline. The Director may extend the deadline for good cause.

(e) After being granted a license under this Chapter, the licensee shall make an annual application for renewal of the license accompanied by the required license fee. If there have been no material changes in the information provided on the licensee's last full application, the licensee shall so state on an approved renewal form and need not submit the full application required for an initial license. The Director of Finance is authorized to issue the renewal of the license on the basis of the affirmation of no material change, but is authorized to require the licensee to provide complete information and to conduct a review of that information if the Director deems such further review to be appropriate.

721.06 Denial of Application

- (a) The application for a license or renewal shall be denied if the report submitted therewith shows that the applicant fails to qualify or the premises sought to be licensed do not comply with the health, building and fire inspection regulations, ordinances and laws applicable thereto.
- (b) Any violation under Title 43 of the Ohio Revised Code is a basis for denial.

721.07 Right to Appeal; Procedure and Board

(a) If an application is denied, the applicant shall be notified in writing of the reasons for denial and shall have the right to appeal to a Board composed of the Director of Public Safety, Director of Neighborhoods and the Director of Law, or their designees. Publication will be made of all appeals filed.

(b) In case of a denial, an applicant shall, within ten (10) days after receiving notice of denial, perfect the appeal by giving notice in writing of the applicant's request to appeal at the office of the Director of Finance. The Appeal Board shall attempt to set a time and place for a hearing not later than thirty (30) days after the date of filing the notice of appeal. The Appeal Board may extend such time at the request of applicant. The applicant may be represented by counsel at the hearing and present witnesses or other evidence showing that the application should be granted. The Appeal Board may sustain, modify or reverse the decision of the Director of Finance.

(c) A fine assessed under TMC 721.99(a) may be suspended, held in abeyance, modified or upheld by the Appeal Board.

721.08 License Fee; Expiration date

Any person, firm or entity to whom a license is granted shall pay an annual fee of Two Hundred and Fifty Dollars (**\$250.00**) per license location. The annual fee shall be due and payable on September 1 (commencement date) of each year. The license is valid for one year expiring annually on August 31st. A renewal application submitted after September 1st and prior to September 30th will require an additional late fee of \$50. Failure to renew by September 30th will constitute full expiration.

721.09 Transfer of License

Transfer of a Convenience Store license shall be permitted only upon written notice to the Director of Finance and will be effective for a period of 90 days at which time a new license should be in effect. Upon issuance of a new license for a specific location it shall supersede and cancel any previous licenses for the same location.

721.10 Conditional Licensing

At the discretion of the Director of Finance, if a license is under consideration for issuance, renewal or scheduled to be revoked, it may be granted or extended for a length of time as a conditional license. This license may contain written terms as conditions to the license.

721.11 Suspension / Revocation of License-

(a) The Director of Finance may suspend or revoke the license of any convenience store, up to thirty (30) if the Director of Finance determines that the licensee during the term of said license has been convicted of a crime related to the operation of said license and/or no longer satisfies the requirements for holding a license under this Chapter. In determining whether to make a certification for suspension or revocation, the Director of Finance will take into consideration the type and number of convictions. A license generally should not be revoked until the licensee has been given a reasonable opportunity to cure discrepancies.

(b) A revocation of a convenience store license shall go into effect thirty (30) days after the Director of Finance notifies the licensee of the revocation. A revocation shall not be effective during a period in which a licensee appeals a revocation to the Appeal Board. In the event the Appeal Board affirms a decision to deny issuance, deny renewal or revoke a license, such decision shall be effective thirty (30) days following the certified mailing of said decision to licensee or by personal service.

(c) Any violation under Title 43 of the Ohio Revised Code is a basis for revocation.

721.12 Notice of Revocation; Hearing

The Director of Finance shall notify a licensee in writing via U.S. certified mail, return receipt requested of a revocation within ten (10) days after the decision of revocation. The notice shall advise the licensee of the right to file an appeal and the right to a hearing under TMC 727.07.

721.13 License Conditions; Security Cameras Required

(a). In conjunction with acquiring a license, all convenience stores are required to maintain an existing camera or install a surveillance camera system selected by the applicant and operated in the following manner:

1. Establishments shall post a conspicuous sign which states that the premises are under camera surveillance.
2. All camera devices shall operate during the premise's hours of operation.
3. The camera system shall provide photographic coverage of the counter where purchases are made.

(b). A camera system shall be:

1. Maintained on a routine basis by the licensee to ensure that the camera system contains required

equipment and is working properly.

2. Capable under normal lighting and operating conditions of recording and producing a recognizable, retrievable, and reproducible photographic image of persons in the designated photographic field. Such photographic image shall be of sufficient clarity to provide for suspect identification in investigations or criminal proceedings.

(c). Media forms shall be maintained in the following manner:

1. Each licensee shall maintain his or her media form or retrievable images for a period of no less than seven (7) days.

2. It is the responsibility of the licensee to acquire and maintain all equipment, assure the accuracy of time keeping and schedule repair if necessary.

721.14. Business premise maintenance.

Licensee shall comply with all applicable Health Department, Department of Neighborhoods, Building Code and landscaping requirements as detailed in the Toledo Municipal Code. All solid waste and recyclable materials shall be stored in approved refuse containers made of metal or plastic and shall be equipped with secure lids or covers, and such covers shall remain closed so as to prevent the intrusion of storm water or vermin. Unless required by a special use permit or site plan conditional requirement, refuse storage containers shall be enclosed on three (3) sides by screening compatible with the principal structure and not less than two (2) feet higher than the refuse container or shall be otherwise effectively screened from the street if adjacent to residential property.

721.15 Business license management responsibilities.

(a) A licensee shall comply with requirement of this Chapter. Failure to comply with any of the following standards and conditions may be grounds for imposition of penalties as set forth in TMC 721.99 herein.

(1) It shall be the responsibility of said licensee to maintain the premises in a nuisance free condition as defined by TMC 1726.01.

(2) It shall be the responsibility of the licensee to maintain and operate the business in compliance with all applicable laws and ordinances, including the zoning, fire, health, food, liquor, Tobacco and building and fire codes.

(3) Parking and other outdoor areas of the premises accessible to the public shall be illuminated subject to TMC 1107.1908 Lighting.

(4) This section shall not preclude the enforcement of any other provisions of The Toledo Municipal Code or state and federal laws and regulations.

721.16 License certificate to be posted in conspicuous place.

The license or conditional license certificate issued under this Chapter shall be posted in a conspicuous place on the premises of the business. For the purposes of this section, "conspicuous place" shall mean display of the license certificate on a wall of the business, clearly visible to customers of the business.

721.17 New license after revocation.

Upon a license revocation, no license application, for the same location, shall be accepted by the same individual, firm, entity or any shareholder/director, member, manager/chief financial officer or immediate family member of any of the same licensee until after the expiration of at least one (1) year from the effective date of revocation.

721.99 Penalty

(a) Except for one who operates a convenience store without the license required by this Chapter, a violation of the provisions of this Chapter shall not be deemed to be a criminal offense. A licensee who violates the provisions of this Chapter shall be subject to a civil administrative fine of \$100.00 per violation. Within ten (10) days after receiving notice of the assessment of a civil fine, the licensee may file a notice of appeal as provided in TMC 727.07.

(b) The Law Director is authorized to bring an action to compel compliance with this Chapter including the collection of outstanding fines and to bring an action to cease and desist operations in violation of this Chapter.

(c) One who operates a convenience store without a license required by this Chapter shall be guilty of a misdemeanor of the fourth degree with applicable Toledo Municipal Code criminal penalties.

SECTION 2. That this Ordinance shall take effect and be in force from and after May 1, 2022.

SECTION 3. All parties with a fully compliant SUP will pay only \$100.00 for the initial application fee in 2022.

Passed: _____: 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