



Legislation Text

File #: O-559-19, **Version:** 1

Zoning & Planning Committee

Amending Toledo Municipal Code, Part Eleven, Subsection 1104.0600 Convenience Stores and Subsection 1116.0217 Food and Beverage Retail Sales; and declaring an emergency.

SUMMARY & BACKGROUND:

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.

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 Monnette'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.

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.

On October 10, 2019 the Toledo City Plan Commission considered and recommended disapproval of the requested text amendment.

On November 13, 2017, Toledo City Council, Zoning & Planning Committee reviewed, and sent to the full Council without a recommendation the requested text amendment.

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

SECTION 1. That Toledo Municipal Code, Part Eleven, Subsection 1104.0600 and 1116.0217, 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.

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.

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.

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 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