



## Legislation Text

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**File #:** O-412-19, **Version:** 2

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Councilman Waniewski

### **Enacting Toledo Municipal Code Section 1726.09, “Chronic Commercial Property Nuisance”.**

#### **SUMMARY & BACKGROUND:**

The City of Toledo has identified a problem in that some commercial enterprises have repeatedly disturbed the peace and failed to prevent nuisance conditions on their property, and as such, these enterprises constitute a hazard to public safety and general wellbeing. The operation of these establishments and the use and occupation of their property result in flagrant and persistent violation of state and local laws and ordinances which substantially and seriously interfere with the interest of the public in enhancing the quality of life and community environment in the City. These businesses fail in their duty to maintain their properties in such a manner that prohibits disorderly conduct to the extent that emergency services are regularly requested to intervene in criminal activities on the premises. The City believes this cycle wastes the resources of both itself and emergency service providers. These incidents, which oftentimes include fighting, discharging of firearms, and selling of illegal substances, are immediately dangerous to the citizens of the City. As such, the City believes it necessary and vital to establish a new system by which to address said commercial entities. The Council finds that the sanctions and penalties pursuant to this law constitute an additional and appropriate method of law enforcement in response to the proliferation of the above-described public nuisances.

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

SECTION 1. That a new Section 1726.09, “Chronic Commercial Property Nuisance,” to the Toledo Municipal Code is hereby enacted to state as follows:

1726.09. Commercial Property Nuisance.

(a) Definition.

(1) For the purposes of this Section:

- (A) "Commercial Property" shall mean any property used for a commercial purpose now or in the past except for residential rental properties whether or not such property is zoned commercial, industrial, residential, or retail pursuant to Part Eleven, “Planning and Zoning Code” of this Code.
- (B) “Responsible Party” shall mean any Owner, as defined in Section 1726.01 of this Code, Operator, as defined in Section 1726.01 of this Code, or any person who otherwise has rightful possession or possessory control, individually or jointly with others, of any Commercial Property, who either sponsors, conducts, hosts, invites, or permits a social gathering, event, or party on said Commercial Property, or conducts business on such Commercial Property.

(b) Duty to Control the Premises.

(1) Any Responsible Party affiliated with a Commercial Property has the duty to control and maintain, within reasonable expectations, the interior and exterior of the Commercial Property in a manner that maintains public safety and prevents nuisance.

(c) Establishment of Point System

For the purposes of this Section, there shall be a system whereby points are assessed against the Responsible Parties of any Commercial Property in the City. Points shall be assessed based upon violations by any person on the Commercial Property of any provisions of the Toledo Municipal Code and/or the Ohio Revised Code as are designated in this article.

Whenever 12 or more points are assessed within a period of 12 months, or if 18 or more points are assessed within a period of 24 months, a “Chronic Commercial Property Nuisance” is deemed to exist.

Points shall be assessed in accordance with the point schedule set forth herein at (d).

(d) Point Schedule

- (1) Each violation of the Ohio Revised Code constituting a felony shall be assigned a point value of eight (8) points;
- (2) Each violation of the Ohio Revised Code constituting a misdemeanor of the first degree shall be assigned six (6) points; all lesser misdemeanor offenses shall be assigned three (3) points;
- (3) Each violation of Part Five, “General Offenses Code”, of this Code constituting a misdemeanor of the first degree shall be assigned six (6) points; all lesser misdemeanor offenses shall be assigned three (3) points;
- (4) Each violation of Part Seventeen, “Health Code”, of this Code, except those violations in Appendix A, “Food Establishments”, shall be assigned three (3) points; and
- (5) Each violation of Part Seventeen, “Health Code”, Appendix A, “Food Establishments”, of this code shall be assigned one (1) point.

(e) Abatement of Chronic Commercial Property Nuisance

When a Chronic Commercial Property Nuisance is deemed to exist, the Director of Public Safety or his or her designee(s) shall implement abatement procedures. The Director of Public Safety or his or her designee (s) shall provide written notice to the Responsible Parties of the Commercial Property that has been deemed a Chronic Commercial Property Nuisance.

- (1) The written notice shall be given to the Responsible Parties:
  - (a) In person to the Responsible Parties;
  - (b) By ordinary U.S. mail to the Responsible Parties’ last known addresses; or
  - (c) By posting notice on the premises which has been determined to be a Chronic Commercial Property Nuisance.
- (2) The notices of violation shall state the nature of the violations and the associated points accumulated for those violations.

- (3) The Chronic Commercial Property Nuisance, once issued by an official enumerated in section 1726.09(e), runs with the property notwithstanding any change(s) in the titled ownership of the property, unless the Responsible Party can show compelling evidence that the transfer of ownership is an arms-length transaction.

The Director of Public Safety or his or her designee(s) shall abate a Chronic Commercial Property Nuisance by prohibiting any event, social gathering, or party on the premises, or the conducting of regular commercial activity on the premises. An official shall also issue a cease and desist order requiring the immediate discontinuance of such activity at the Commercial Property which led to its becoming a Chronic Commercial Property Nuisance.

(f) Notice of Point Accumulation and Amelioration

When a Commercial Property has been assessed 6 or more points within a period of 12 months or 9 or more points within a period of 24 months, the Director of Public Safety or his or her designee(s) will provide written notice as described in that section to the Responsible Parties of the Commercial Property. Upon the delivery of this notice, the Director of Public Safety or his or her designee(s) shall in good faith and effort work with the Responsible Parties of the Commercial Property to ameliorate the violations that have occurred. During this process, the Director of Public Safety or his or her designee(s) may remove points assessed to the Commercial Property if they deem adequate progress has been made to prevent further instances of criminal and nuisance activity.

(g) Appealing a Chronic Commercial Property Nuisance

The Responsible Parties of a Commercial Property that has been deemed a Chronic Commercial Property Nuisance has the right to appeal. The Responsible Parties may appeal in writing, and request a hearing with the Nuisance Abatement Housing Appeals Board within seven (7) days of the delivery of the notice. The written request shall be made to the Commissioner of Health. The appeal request does not stay the order to abate the Chronic Commercial Property Nuisance.

A summary abatement appeal hearing, if properly requested, shall be held as an emergency meeting of the Nuisance Abatement Housing Appeals Board within five (5) business days of the request.

- (1) The Nuisance Abatement Housing Appeals Board, after hearing the matter, may amend, modify, revoke, or uphold the notice or order, including but not limited to adjusting the assessment of points against the Responsible Parties.
- (2) The Nuisance Abatement Housing Appeals Board, at the conclusion of the hearing and after deliberations, may render a decision immediately or take the matter under advisement. The Board, however, shall render a written decision on the matter within three (3) business days after the hearing.
- (3) The ruling or decision of the Nuisance Abatement Housing Appeals Board is a final appealable order; but appeal to a court of competent jurisdiction will not act as a stay of the abatement order.

(h) Criminal Conviction not Required for Point Assessment

For the purposes of this Section, a conviction for an offense in a court of competent jurisdiction shall not be required to establish that a specified violation of law has occurred at a building, erection, or place. Instead, the City shall be required to prove a specified violation by a preponderance of the evidence.

SECTION 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: October 15, 2019: yeas 12, nays 0.

Attest:

Gerald E. Dendinger  
Clerk of Council

Matt Cherry  
President of Council

Approved:

October 15, 2019  
Wade Kapszukiewicz  
Mayor