



Legislation Text

File #: O-391-20, **Version:** 1

Zoning & Planning Committee

Amending Toledo Municipal Code (“TMC”), Part Eleven, Chapter 1114.0205.A.2, Loss of Legal Nonconforming Status; and declaring an emergency.

SUMMARY & BACKGROUND:

Amending the Toledo Municipal Code Section 1114.0205.A.2 which pertains to the loss of a legal nonconforming land use status. Once a nonconforming use is abandoned, the use’s nonconforming status is lost and any subsequent use of the property must comply with the regulations of the zoning district in which it is located. Currently, a nonconforming use is considered abandoned when one of the following occurs:

1. The intent of the owner to discontinue the use is apparent;
2. The use has been voluntarily discontinued for a period of 1 year or more,
3. The characteristic equipment and furnishings associated with the nonconforming use have been removed from the premises and have not been replaced by similar equipment and furnishings within 1 year, unless other facts show intention to resume the non-conforming use;
4. The nonconforming use has been replaced by a conforming use;
5. The nonconforming use has been changed to another use in accordance with Sec. 1114.0203; or
6. A building permit to reconstruct a damaged nonconforming use has not been secured within 1 year of the date of occurrence of such damage, or construction has not been diligently pursued.

Plan Commission staff has concerns about business owners who have technically met these requirements by opening their business for extremely short durations once a year, and therefore are able to maintain their legal nonconforming status, even though the vast majority of the year the business is vacant and not in operation.

Research shows that numerous jurisdictions across the country include the requirement that a legal nonconforming use must be “continuously operated” in order for it to keep grandfathered status. However, Ohio Revised Code Section 713.15 states that “...if any such nonconforming use is voluntarily discontinued for two years or more, or for a period of not less than six months but not more than two years that a municipal corporation otherwise provides by ordinance, any future use of such land shall be in conformity...” However, requiring a use be in operation for a minimum amount of time annually is both a reasonable requirement and would prevent legal nonconforming uses from persisting when the use is in actuality abandoned.

In order to prevent legal nonconforming uses from remaining and to discourage persistent vacancy, staff recommends an amendment to TMC 1114.0205.A.2 requiring a legal nonconforming use be in continuous operation for a minimum of 30 days in a calendar year in order for the legal nonconforming status to remain. Staff recommends the approval of the amendment to TMC 1114.0205.A.2 as the text amendment clarifies the stated purpose of the Zoning Code.

On August 13, 2020, the Toledo City Plan Commission considered and recommended approval of the requested

text amendment.

On September 16, 2020, Toledo City Council, Planning and Zoning Committee reviewed, and sent without recommendation the requested text amendment.

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

SECTION 1. That TMC, Part Eleven, Subsection 1114.0205 Loss of Legal Nonconforming status, which reads as follows:

1114.0205 Loss of Legal Nonconforming Status

- A. Once a nonconforming use is abandoned, the use's nonconforming status is lost and any subsequent use of the property must comply with the regulations of the zoning district in which it is located. A nonconforming use will be considered abandoned when any of the following occurs:
1. the intent of the owner to discontinue the use is apparent;
 2. the use has been voluntarily discontinued for a period of 1 year or more, as specified in Revised Code Sec. 713.15;
 3. the characteristic equipment and furnishings associated with the nonconforming use have been removed from the premises and have not been replaced by similar equipment and furnishings within 1 year, unless other facts show intention to resume the non-conforming use;
 4. the nonconforming use has been replaced by a conforming use;
 5. the nonconforming use has been changed to another use in accordance with Sec. 1114.0203; or
 6. a building permit to reconstruct a damaged nonconforming use (in accordance with paragraph C, below) has not been secured within 1 year of the date of occurrence of such damage, or construction has not been diligently pursued.

Is hereby repealed.

A new TMC, Part Eleven, Subsection 1114.0205 Loss of Legal Nonconforming), is hereby enacted, to read as follows:

1114.0205 Loss of Legal Nonconforming Status

- A. Once a nonconforming use is abandoned, the use's nonconforming status is lost and any subsequent use of the property must comply with the regulations of the zoning district in which it is located. A nonconforming use will be considered abandoned when any of the following occurs:
1. the intent of the owner to discontinue the use is apparent;
 2. the use has been voluntarily discontinued for a period of 1 year or more, as specified in Revised Code Sec. 713.15; the use must be in continuous operation for a minimum of 30 days during the 1

year period to maintain legal nonconforming status;

3. the characteristic equipment and furnishings associated with the nonconforming use have been removed from the premises and have not been replaced by similar equipment and furnishings within 1 year, unless other facts show intention to resume the non-conforming use;
4. the nonconforming use has been replaced by a conforming use;
5. the nonconforming use has been changed to another use in accordance with Sec. 1114.0203; or
6. a building permit to reconstruct a damaged nonconforming use (in accordance with paragraph C, below) has not been secured within 1 year of the date of occurrence of such damage, or construction has not been diligently pursued.

SECTION 2. That this Ordinance is hereby 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 effective immediately in order to provide for the orderly development of the area and to protect the land values of 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