



## Legislation Text

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**File #:** O-023-22, **Version:** 1

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### Zoning & Planning Committee

#### **Amending Toledo Municipal Code (TMC), Part Eleven, Subsection 1115.0500 Violations, Penalties & Enforcement and Part Seventeen, Subsection 1726.99 Public Nuisances Prohibited; Penalty; Fines; Cash bond; and declaring an emergency.**

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

The request is a text amendment to modify Toledo Municipal Code (TMC) §1115.0500 - *Remedies & Enforcement Powers* so that the Division of Code Enforcement is better able to enforce the Toledo Zoning Code. The current TMC§1115.0500 identifies the fee of a Zoning Code penalty, however it does not allow the Division of Code Enforcement to elevate the violation if the issue is not rectified. There have also been issues with citing Zoning violations due to a lack of clarity in the Code. Allowing Code Enforcement to elevate a Zoning violation will better resolve Zoning issues within the City of Toledo, as well as benefit the welfare of City of Toledo citizens.

Currently, when the Division of Code Enforcement or the Division of Building Inspections receives a complaint about a property that is in violation of the Toledo Zoning Code, they verify the complaint and then issue penalties in the amount of \$300, with a \$20 late penalty per day after fifteen (15) days of the violation notice. This amount is very low in today's standards, and does not change with severity of the violation. The Zoning Code addresses a wide variety of land use requirements. Some violations can affect the health and safety of Toledo residents, while others are more aesthetic in nature. Allowing Code Enforcement to identify the degree of violation and issuing a suitable penalty based on the severity and impact will result in better Zoning Code Enforcement.

Another correction of the Toledo Municipal Code will be made to TMC§1726.99 - *Public Nuisance Prohibited; Fines; Cash Bond*. This section of the TMC is the Section which the Division of Code Enforcement uses to issue fees and penalties for any City nuisance. Currently, Sections of the TMC listed include portions of the Streets, Utilities and Public Services Code; the Sign Code; and, the Health Code. The Zoning Code needs to be added to TMC§1726.99, and the Zoning Code also needs to reference TMC§1726.99. This cross-reference will add additional certainty that penalties can be legally issued and enforced by City staff.

Lastly, how the Toledo Municipal Code is currently written, penalties may only be enforced by the Commissioner of Building Inspection and/or the Commissioner of Code Enforcement, not the Planning Director. This is due to the lack of inspectors on Plan Commission staff. Now, the Plan Commission is in the process of expanding its duties to include enforcement, and Plan Commission staff will work with Code Enforcement and Building Inspections to take on more responsibilities. By providing the Planning Director with enforcement powers, future Zoning Inspectors will be able to enforce the Zoning Code.

This text amendment will provide better enforcement powers of the City of Toledo, and staff will better enforce Zoning violations. Additionally, this text amendment will improve the health, safety, and welfare of City of Toledo citizens.

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

SECTION 1. That Toledo Municipal Code, Part Eleven, Subsection 1115.0100, which reads as follows:

1115.0101 It is the duty of the Commissioner of Building Inspection and the Commissioner of Code Enforcement to enforce this Zoning Code.

Be amended to read as follows:

1115.0100 Responsibility for Enforcement

1115.0101 It is the duty of the Director of Building and Code Compliance, and the Planning Director to enforce this Zoning Code.

SECTION 2. That Toledo Municipal Code, Part Eleven, Subsection 1115.0506, which reads as follows:

1115.0506 Criminal Penalties

- A. For each and every violation or instance of noncompliance, violators may be deemed guilty of a misdemeanor of the 4th degree, as defined by Title 5 Criminal Offenses, Sec. 501.99, and each day that the violation exists will constitute a separate offense.
- B. A subsequent violation of this Zoning Code involving the same property, the same violator, and occurring within 2 years of the last prior conviction for the same violation, constitutes a misdemeanor of the third degree, as defined in Title 5 Criminal Offenses Code, Sec. 501.99.

Be amended to read as follows:

1115.0500 Remedies and Enforcement Powers

1115.0506 Penalties

- A. Whoever violates any section of Sec. 1115.0201 through 1115.0211 is guilty of a misdemeanor of the 1<sup>st</sup> degree per Toledo Municipal Code Part 17 - Health Code Sec. 1726.99, and each day that the violation exists will constitute a separate penalty per Sec. 1115.0507(E).

SECTION 3. That Toledo Municipal Code, Part Eleven, Subsection 1115.0507, which reads as follows:

**1115.0507 Citation for Infractions.**

A. **Authority.** The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement may issue one or more citations and impose one or more non-criminal citations and civil penalties for a violation, as provided below. If the violator does not pay the penalty, the City may collect it in court through a civil action in the nature of debt.

B. **Notice.** Notice of the citation and penalty shall include a copy of the notice of violation, the amount of the penalty, information about where to pay the penalty, the deadline for payment, which shall be 15 days from the date of the notice, and the possibility of civil enforcement.

C. **Amount.**

1. The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement may impose a penalty of up to three hundred dollars (\$300.00) per violation.

2. If a violator has remedied the violation prior to imposition of the penalty, but not within the deadlines given in the notice of violation, and if the violator is not guilty of previous violations then the penalty shall not exceed fifty dollars (\$50.00).

3. A late payment penalty of twenty dollars (\$20.00) per day per violation may also be imposed for penalties not paid within 15 days of the date of the notice of citation and penalty.

4. The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement shall formulate written guidelines for enforcement personnel to use in assessing penalties. Criteria for assessing penalties shall include, but not be limited to, the violator's knowledge of legal requirements, whether the violator has been guilty of past violations, the possible profit to the violator in continuing the violation, the impact of the violation on the community, the degree of noncompliance, and the cost and time required to remedy the violation.

D. **Settlement of Claims.** The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement is authorized to determine the amount of payment that will be accepted in full and final settlement of some or all of the claims the governing body may have in connection with the violation. The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement shall indicate in writing the claims from which the violator is released. If the violation has not been remedied, payment shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

E. **Continuing Violations.** The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement may issue a citation for a violation which continues without being corrected. The violators in such cases may be assessed a penalty for each day of the continuing violation.

1. Except as provided below, an initial citation for a single violation must be issued before a citation for a continuing violation is issued.

2. An initial citation is not required if the Commissioner of Building Inspection and/or the Commissioner of Code Enforcement has previously issued a citation to the violator for the same violation at the same location within the previous two years, or if the violator has been specifically warned concerning the violation.

3. The Commissioner of Building Inspection and/or the Commissioner of Code Enforcement may give a single notice of a citation for a continuing violation. The notice must contain a copy of the notice of violation and must state the violation is continuing, that a daily penalty of a specified amount is being imposed, and that the penalty is cumulative.

4. If the violator has failed to pay the penalty and correct the violation after the initial citation the violator is subject to a citation for a continuing violation with a daily penalty.

Be amended to read as follows:

## **1115.0507 Citations for Infractions**

### **A. Authority**

The Director of Building and Code Compliance, and/or the Planning Director may issue one or more citations and impose one or more noncriminal citations and civil penalties for a violation, as provided below. If the violator does not pay the penalty, the City may collect it in court through a civil action in the nature of debt.

### **B. Notice**

Notice of the citation and penalty shall include a copy of the notice of violation, the amount of the penalty, information about where to pay the penalty, the deadline for payment, which shall be 15 days from the date of the notice, and the possibility of civil enforcement.

### **C. Amount**

1. The Director of Building and Code Compliance, and/or the Planning Director may issue penalties for violations subject to Sec. 1726.99 and include the following:

a. Whoever violates Sec.1115.0201 through 1115.0211 shall be guilty of a misdemeanor of the first degree.

b. Whoever violates Sec.1115.0201 through 1115.0211 shall be assessed fines as follows:

First offense \$75.00

Second offense \$150.00

Third offense \$300.00

Fourth offense and any offense thereafter \$600.00

- c. All fines for citations issued in accordance with this Chapter, shall be deposited in the Nuisance Abatement Trust Fund which fund shall be used exclusively for the enforcement of those chapters, with the exception of court costs which will be deposited as required by law.
- d. Payment of a fine under this section may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

**D. Settlement of Claims.** The Director of Building and Code Compliance, and/or the Planning Director is authorized to determine the amount of payment that will be accepted in full and final settlement of some or all of the claims the governing body may have in connection with the violation. The Director of Building and Code Compliance, and/or the Planning Director shall indicate in writing the claims from which the violator is released. If the violation has not been remedied, payment shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

#### **E. Continuing Violations**

The Director of Building and Code Compliance, and/or the Planning Director may issue a citation for a violation which continues without being corrected. The violators in such cases may be assessed a penalty for each day of the continuing violation.

- 1. Except as provided below, an initial citation for a single violation must be issued before a citation for a continuing violation is issued.
- 2. An initial citation is not required if the Director of Building and Code Compliance, and/or the Planning Director has previously issued a citation to the violator for the same violation at the same location within the previous 2 years, or if the violator has been specifically warned concerning the violation.
- 3. The Director of Building and Code Compliance, and/or the Planning Director may give a single notice of a citation for a continuing violation. The notice must contain a copy of the notice of violation and must state the violation is continuing, that a daily penalty of a specified amount is being imposed, and that the penalty is cumulative.
- 4. If the violator has failed to pay the penalty and correct the violation after the initial citation the violator is subject to a citation for a continuing violation with a daily penalty.
- 5. The Director of Building and Code Compliance, and/or the Planning Director may elevate violations to a criminal penalty and/or fines, fees, judgements, and liens

SECTION 4. That Toledo Municipal Code, Part Seventeen, Subsection 1726.99, which reads as follows:

1726.99. Public nuisance prohibited; penalty; fines; cash bond.

(a) Whoever violates Section [1726.08](#)(a) or (b), or Section [1393.07](#) shall be guilty of a misdemeanor of the first degree.

(b) Whoever violates Section [1726.08](#) (d) shall be assessed a fine as follows:

First offense \$75.00

Second offense \$150.00

Third offense \$300.00

Fourth offense and any offense thereafter \$600.00

(c) Whoever violates Section [1726.08](#)(c) illegal transfer of title, shall be guilty of a misdemeanor of the first degree and shall be fined Six Hundred Dollars (\$600.00).

(d) Whoever violates and is found liable pursuant to any section or rule of [Chapter 963](#) shall be guilty of a misdemeanor offense as defined in Section [963.99](#), and shall be fined according to the provisions found in Section [963.99](#).

(e) All fines for citations issued in accordance with [Chapters 963](#), [1367](#) and [1701](#) through [1763](#) inclusive, shall be deposited in the Nuisance Abatement Trust Fund which fund shall be used exclusively for the enforcement of those chapters, with the exception of court costs which will be deposited as required by law.

(f) Payment of a fine under this section may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

(g) The Court may, in addition to any other penalty imposed, order the offender to correct all existing Health Code violations and/or order the offender to occupy the property which is the subject of any violation for a designated period of time.

(1) If the Court orders the offender to occupy the property which is the subject of any violation, such occupancy or confinement shall be electronically monitored as provided for in Ohio Revised Code Section 2929.23.

(2) The City may petition the Toledo Municipal Court's Housing Division Court, or any other court of competent jurisdiction, to order the owner, as defined by Section [1726.01](#)(b), of property on which a public nuisance is found to:

A. Abate the nuisance and/or

B. Post with the Court a cash bond totaling the estimated abatement costs after a preliminary hearing on the matter. The cash bond shall be paid to the City, if the City abates the public nuisance, or returned to the owner of the property on which the public nuisance is found if the owner abates the public nuisance.

C. Comply with all orders issued by the Director of the Department of Neighborhoods or his/her designee or refrain from any current or future violations of any such orders.

D. Pay damages to the City in an amount equal to the estimated cost of abating the nuisance.

E. Impose a penalty and fine for investigation of the violation in accordance with the provisions found in Section [1319.04](#), which funds shall be deposited in the Building Inspection Trust Fund.

(Ord. 539-15. Passed 11-10-15.)

Be amended to read as follows:

1726.99. Public nuisance prohibited; penalty; fines; cash bond.

(a) Whoever violates Section 1115.0201 through 1115.0211, Section 1726.08(a) or (b), or Section 1393.07 shall be guilty of a misdemeanor of the first degree.

(b) Whoever violates Section 1115.0201 through 1115.0211 or Section 1726.08 (d) shall be assessed a fine as follows:

First offense \$75.00

Second offense \$150.00

Third offense \$300.00

Fourth offense and any offense thereafter \$600.00

(c) Whoever violates Section [1726.08](#)(c) illegal transfer of title, shall be guilty of a misdemeanor of the first degree and shall be fined Six Hundred Dollars (\$600.00).

(d) Whoever violates and is found liable pursuant to any section or rule of [Chapter 963](#) shall be guilty of a misdemeanor offense as defined in Section [963.99](#), and shall be fined according to the provisions found in

Section [963.99](#).

(e) All fines for citations issued in accordance with Chapters 963, 1115, 1367 and 1701 through 1763 inclusive, shall be deposited in the Nuisance Abatement Trust Fund which fund shall be used exclusively for the enforcement of those chapters, with the exception of court costs which will be deposited as required by law.

(f) Payment of a fine under this section may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

(g) The Court may, in addition to any other penalty imposed, order the offender to correct all existing Health Code violations and/or order the offender to occupy the property which is the subject of any violation for a designated period of time.

(1) If the Court orders the offender to occupy the property which is the subject of any violation, such occupancy or confinement shall be electronically monitored as provided for in Ohio Revised Code Section 2929.23.

(2) The City may petition the Toledo Municipal Court's Housing Division Court, or any other court of competent jurisdiction, to order the owner, as defined by Section [1726.01](#)(b), of property on which a public nuisance is found to:

A. Abate the nuisance and/or

B. Post with the Court a cash bond totaling the estimated abatement costs after a preliminary hearing on the matter. The cash bond shall be paid to the City, if the City abates the public nuisance, or returned to the owner of the property on which the public nuisance is found if the owner abates the public nuisance.

C. Comply with all orders issued by the Director of the Department of Neighborhoods or his/her designee or refrain from any current or future violations of any such orders.

D. Pay damages to the City in an amount equal to the estimated cost of abating the nuisance.

E. Impose a penalty and fine for investigation of the violation in accordance with the provisions found in Section [1319.04](#), which funds shall be deposited in the Building Inspection Trust Fund.

SECTION 5. 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