

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Midwest Retailers Associated, Ltd.)	Case No. 3:08-CV-851
)	
Plaintiff.)	
)	CHIEF JUDGE JAMES G. CARR
vs.)	
)	
City of Toledo,)	
)	
Defendant.)	
)	
)	
)	
)	

**DEFENDANT CITY OF TOLEDO'S MOTION TO VACATE TEMPORARY
RESTRAINING ORDER AND TO DISMISS PLAINTIFFS' AMENDED COMPLAINT
FOR MOOTNESS**

Defendant City of Toledo moves the Court for an Order Vacating the June 24, 2008 temporary restraining order and dismissing plaintiffs Amended Complaint because the lawsuit is moot. This motion is supported by the attached memorandum.

Respectfully submitted,

ADAM LOUKX, ACTING DIRECTOR OF LAW

/s/ Keith J. Winterhalter, Senior Attorney

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MEMORANDUM IN SUPPORT

1. INTRODUCTION

On April 2, 2008, Plaintiff Midwest Retailers Association, LTD. ("Midwest") filed its five count Complaint in which it alleged violations of the Fifth Amendment, the Thirteenth Amendment, the Fourteenth Amendment and the *Ex Post Facto* Clause of the United States Constitution based on the City's enactment of Ordinance No. 797-07, which concerned convenience store licensing requirements. In addition, Midwest alleged that Ordinance No. 797-07 was unconstitutionally vague, and that it conflicted with Ohio Law. Midwest sought a declaratory judgment that the ordinance was invalid, and also sought preliminary and permanent injunctions.

On May 15, 2008, Midwest filed a motion for preliminary injunction and then on May 29, 2008, it filed for a motion for temporary restraining order. On June 24, a hearing was held on Midwest's' motions. At the conclusion of the hearing, the Court converted Plaintiffs' request for a preliminary injunction to a motion for temporary restraining order, and ordered a temporary restraining order until July 10. Thereafter, the parties agreed to extend the temporary restraining order until August 29.

On June 26, Midwest filed its First Amended Complaint adding ten (10) individual Plaintiffs and counts for violation the privileges and immunities clause and the commerce clause of the United States Constitution. Plaintiffs First Amended Complaint seeks declarative and injunctive relief and attorney's fees and costs.

On August 12, 2008, however, Toledo City Council repealed Ordinance No. 797-07 and enacted Ordinance No. 495-08 which removes the challenged features of Ordinance No. 797-07. A copy of Ordinance 495-08 is attached as Exhibit A. The City's action moots

Plaintiffs case in its entirety, and the Court therefore should vacate the TRO and dismiss Plaintiffs Amended Complaint.

II. ARGUMENT

Claims become moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1978). A case is moot when it no longer presents a live controversy upon which a court can give meaningful relief. If events that occur subsequent to the filing of a lawsuit deprive the Court of the ability to give the plaintiff meaningful relief, the case is moot and must be dismissed. *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335-36 (11th Cir. 2001). Generally, the repeal or amendment of an unconstitutional ordinance moots a legal challenge to the constitutionality of the repealed law because a court "can neither declare unconstitutional nor enjoin the enforcement of a provision that is no longer in effect." *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830, 836 (6th Cir. 2004).

An exception to this general rule is the doctrine of voluntary cessation, which applies if there is a substantial likelihood that the challenged statutory language will be reenacted. See *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289 (1982). However, courts generally trust public officials more than private defendants to desist from future violations. In *Jews for Jesus v. Hillsborough County Aviation Authority*, 162 F. 3d 627 (11th Cir. 1998), the court held that where a public airport had lifted a prohibition on distributing literature after a complaint had been filed, the issue of whether the prior policy was constitutional was "a purely academic point" and was accordingly moot because there was "no reasonable expectation that the challenge [would] resume after the lawsuit [was] dismissed." *Id* at 629. See also *Brandywine*, *supra* at 836. Thus, if there is no threat that the offending legislation

will be reenacted, the voluntary cessation exception to mootness does not apply. *Kentucky Right to Life, Inc. v. Terry*, 108 F. 3d 637, 645 (6th Cir. 1997).

In the case at bar, Toledo City Council, on August 12, 2008, repealed the ordinance containing the constitutional violations that Plaintiffs alleged in their First Amended Complaint. At the same time, Council enacted Ordinance No. 495-08, which none of the challenged features of Ordinance No. 797-07. See Exhibit A. As a result of the City's actions, this case is moot. *Brandwine*, supra at 836. Moreover, the voluntary cessation exception does not apply in this case because there is no reasonable expectation that the City intends to reenact the offending legislation. In fact, the enactment of Ordinance No. 495-08 provides sufficient assurance that the prior ordinance will not be reenacted. As a result, Plaintiffs claims in this lawsuit are moot and, therefore, they should be dismissed.

iii. CONCLUSION

For the reasons stated above, the Court should grant the City's motion and enter an Order vacating the Temporary Restraining Order and dismiss Plaintiffs lawsuit.

Respectfully submitted

/s/ Keith J. Winterhalter. Senior Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion was filed electronically this 28th day of August, 2008. Notice of this filing was sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Keith J. Winterhalter, Senior Attorney

Convenience Store 721
McNamara Amendment

ORD.495-08

Amending Chapter 721 entitled "Convenience Stores Licensing Requirements" by adopting a new Chapter 721 entitled "Convenience Stores Licensing Requirements" thereby requiring all convenience store operators to acquire a license to operate; and declaring an emergency.

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. The licensing requirements also encourage convenience store owners in neighborhoods with recognized community development corporations (CDCs) to enter into voluntary Neighborhood Plans to address concerns about the operation of convenience stores. NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That the Toledo Municipal Code Chapter 721 entitled "Convenience Store Licensing Requirements" which reads as follows:

721.01. Definitions and Scope

The provisions of this Chapter shall apply to all establishments, locations and/or places, which fall under the Toledo Municipal Code definitions of Section 11 16.0217 Food and Beverage Retail Sales- Chapter 11 which now exist and which may be established or conducted in the future. "Convenience store"- As defined in 11 16.0217 (A) Food and Beverage Retail Sales- Retail sales of food and beverages for home consumption: convenience stores with a floor area of less than 5000 sq ft.

721.02 License Required

No person or legal entity shall operate a convenience store within the limits of the City 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 him/her/it or them to the penalties hereinafter provided.

721.03 Application for License

Every person, society, club, firm, or legal entity (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 after 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 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 how long in each place.
- (d) No license shall be granted, or renewed for any premises or person on which taxes; assessments or other financial claims of the City are delinquent or unpaid. If an appeal is filed questioning 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 under litigation or appeal. A certificate of tax compliance must be provided with the application.
- (e) The application shall have attached a criminal background check performed within the last 30 days of all applicants. The check shall be for northwest Ohio unless the applicant has resided or operated a business in the State of Michigan in the last 5 years in which case an additional check for the State of Michigan shall also be provided. All background checks shall be performed at the expense of the applicant. Within five (5) years of the date of the application an applicant cannot have been convicted of any crime related to the occupation for which the license is sought which conviction has not been, pursuant to law, annulled or expunged, including but not limited to the violation of any law dealing with food subsidy programs or the sale, possession, manufacture or transportation of controlled substances. If a violation is found 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. This will verify the correct zoning issues have been met prior to the issuance of the license. 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.

721.05 Issuance of License; Renewal of License

(a) If the Department of Finance determines that an application is complete and the applicant qualifies to engage in such business as defined in TMC 721.01, the Department of Finance shall grant the application and issue the license.

(b) No license shall be granted or renewed unless the application contains all the information required, together with the approval of the various departments charged with the duty of conducting the investigations and making the reports as above set forth.

(c) 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-days (30) prior to administrative denial.

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

(e) An applicant may, prior to denial, send a written request to extend the application deadline. The director may extend the deadline for good cause. An applicant may appeal a license or extension denial to the Appeal Board as defined in 721.07 within ten (10) days of receipt of notification of the denial. The notification shall be presumed to have been received three (3) days after mailing.

(f) 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 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 Rejection of Application

The application for a license or re-instatement shall be rejected if the report submitted therewith shows that the applicant(s) fail(s) 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.

721.07 Right to Appeal; Procedure and Board

(a) If the 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, Commissioner of Inspection and the Director of Law, or their designees. Publication will be made of all Appeals filed.

(b) In case of appeal the applicant shall, within ten days (10) 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 set a time and place for a hearing not later than thirty (30) days after the date of filing the notice of appeal. The applicant may be represented by counsel at the hearing and present witnesses or other evidence showing that the application should be granted. After hearing, the Appeal Board may sustain, modify or reverse the decision of the Director of Finance and in every case the decision of the Board shall be final.

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 every year on August 31st. Failure to renew by September 30th will constitute full expiration. For the period of May 1, 2008 through August 31, 2008, the license fee shall be One Hundred Dollars (\$100.00).

721.09 Transfer of License

No transfer of a Convenience Store license shall be permitted. Once a new license is approved for a specific location it shall supercede and cancel any previous licenses for that location.

721.10 Conditional Licensing

At the discretion of the Director of Finance, a license that is scheduled to be revoked may be extended for a length of time as a conditional license. This license may contain written terms as conditions to the license. If the established conditions are not satisfied the license may be revoked. A conditional license must be posted, with its conditions, in a conspicuous place where it can be plainly seen by the public and in compliance with Section 721.16.

721.11 Revocation of License

(a) The Director of Finance shall revoke the license of any convenience store if the Director of Public Safety certifies to the Director of Finance that the licensee no longer satisfies the requirements for holding a license under this Chapter, including the licensee's persistent or willful failure to discharge the licensee's responsibilities under Sections 721.13, 721.14 or 721.15. In determining whether to make a certification for revocation to the Director of Finance due to the licensee's failure to discharge the licensee's responsibilities under Section 721.13, 721.14 or 721.15, the Director of Public Safety shall be guided by the following considerations:

(1) A license generally should not be revoked until the licensee has been given a reasonable opportunity to cure the problems identified at the convenience store; but

(2) Once a reasonable opportunity to cure the problems has been afforded to the licensee without substantial success, a license should be revoked even though the license holder has taken all reasonable measures to achieve compliance.

(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. The revocation shall not be effective during the period that the licensee is appealing the revocation to the Appeal Board, and shall go into effect thirty (30) days after Appeal Board affirms the decision to revoke the license.

721.12 Notice of Revocation; Hearing

The Department of Finance shall notify in writing the individual, firm, or entity whose license has been revoked within ten days (10) after its act of revocation effective prospectively to cease operations within 30 days.

721.13 License Conditions; Security Cameras Required

(a) All Convenience stores are required under each license to install and maintain a surveillance camera system to be operated in the following manner:

SIGNAGE REQUIRED.

Establishments shall post a conspicuous sign which states that the property is under camera surveillance. [01]

PERIODIC INSPECTIONS

All recording devices shall be subject to periodic inspections by the Business License Division, the Toledo Police Department or any authorized City official. Licensees shall cooperate in any inspections and make recording devices available for inspection

24 HOURS PER DAY OPERATION.

All recording devices shall operate 24 hours per day without interruption. One tape shall be used each 24-hour period.

VIOLATION OF RULES SUBJECT TO ENFORCEMENT UNDER ADMINISTRATIVE ENFORCEMENT.

Stores with cameras that do not meet all of the requirements in this Chapter are subject to administrative fines in the amount of \$100 per day for each day of non-compliance and shall constitute cause for the revocation or non-renewal of a license. Administrative fines shall not be regarded as criminal penalties. Administrative fines may be appealed to the Appeal Board.

(b) The camera system shall be:

1. Positioned to provide photographic coverage of the cash register or place where money is exchanged or other area approved by the Director of Finance.

2. Maintained on a routine basis by the licensee to ensure that the camera system contains required equipment and is working properly. The camera system shall have a light or other signal, which indicates when the system has been activated.

3. Capable under normal lighting and operating conditions of recording and producing a recognizable color, retrievable, enlargeable 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.

4. Remain fixed in this location and not consist of a panning camera.

5. Recorded images must be capable of being retrieved by the Toledo Police Crime Lab. Upon the request of an authorized City official, the media form shall be provided to the official no later than eight (8) hours after the request.

(c). Tapes/images shall be maintained in the following manner:

1. Each licensee shall maintain his or her tapes or retrievable images for a period of no less than 30 days.

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

721.14. Business premise maintenance.

Licensees shall inspect their premises from lot line to lot line and shall remove any litter and debris found thereon daily. All solid waste and recyclable materials shall be stored in refuse containers made of metal or approved 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. Refuse storage containers shall be enclosed on all four (4) 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, adjacent residential uses located in a residential or commercial district. The buildings, fixtures, and grounds of all business premises shall be well maintained and in compliance with the Building Code of the City of Toledo. Further, facilities shall at all times be in compliance with the setback and landscaping requirements of T.M.C. Section 1108.0203

721.15. Business license management responsibilities.

The following minimum standards and conditions shall be met in order to hold a license. Failure to comply with any of these standards and conditions shall be grounds for the denial, refusal to renew or the revocation of the license.

(1) It shall be the responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including parking areas, in violation of any of the following Toledo Municipal Code Sections:

- a. TMC Section 517.02 which prohibits gambling.
- b. TMC Section 513.10, which prohibits prostitution and acts relating thereto.
- c. TMC Chapter 513 which prohibits the unlawful sale or possession of controlled substances.
- d. TMC Sections 533.07, 533.11 and 533.12 which prohibit indecent exposure and the exhibition and distribution of obscene materials or performances.
- e. ORC Section 2923.12, which prohibits the unlawful possession, transportation, sale or use of a weapon.
- f. TMC Section 509.03 which prohibits disorderly conduct.
- g. TMC Section 509.08 which prohibits loitering.
- h. TMC Sections 139.11 and 1726, which prohibit public nuisance and permitting a public nuisance.
- i. TMC Section 525.07 which prohibits obstructing legal process.
- J. Any other criminal activity arising out of the conduct of the business.

Suggestions for appropriate actions will be provided to the applicant upon request and may include but not be limited to adequate lighting in problem areas, signage stating acceptable activities such as no loitering, and review of items for sale which could be used as drug paraphernalia or in illegal activities.

(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, housing and building codes.

(3) The licensee is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee.

(4) It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas.

(5) A license shall be required to pay all delinquent court judgments for violations of the Toledo Municipal Code including fines and costs.

(6) Areas of the premises that are not regularly monitored by employees or security shall not be accessible to patrons, customers, or the public.

(7) Vending and other unattended coin operated machines shall be in plain view of employees and shall not be operable during hours the business is not open to the public and in operation.

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

(9) The provisions of this section are not exclusive. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations.

721.16 License certificate to be posted in conspicuous place.

The 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 new license application shall be accepted or license issued to the same individual, firm, entity or any shareholder/director, member, manager/chief financial officer of any of the same until after the expiration of at least one year from the effective date of revocation.

721.18 Neighborhood Plans

(a) In those parts of the City in which a recognized Community Development Corporation ("CDC"), as identified by the current map on file at the City of Toledo Department of Neighborhoods, operates, a licensee 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, store operations, items offered for sale at the premises, marketing plans to encourage residents to patronize the store, and any other areas the licensee 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 licensee 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 with the licensee's file.

(b) The Director of Finance shall periodically publish a list of the licensees 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 in place.

(d) The Mayor shall, from time to time, 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.

721.19 Implementation

All initial applications shall be submitted to the City of Toledo Department of Treasury prior to May 1st. All applications which are complete and have not been issued or denied a permit from the City within 21 days shall be issued a temporary permit to be in effect until a permit is either issued or denied.

721.99 Penalty

Except for one who operates a convenience store without the license required by this Chapter, the violation of the provisions of this Chapter shall not be deemed to be a criminal offense. A licensee who violates this Chapter's provisions shall be subject to the administrative fines specified in Section 721.13 and shall be subject to license revocation or non-renewal in accordance with the provisions of this Chapter. In addition, the Law Director is authorized to bring an action to compel compliance with this Chapter and an action to cease and desist operations in violation of this Chapter. One who operates a convenience store without the license required by this Chapter shall be guilty of a misdemeanor of the fourth degree.

is repealed in its entirety.

SECTION 2. That the Toledo Municipal Code is supplemented by enacting a new Chapter 721 entitled "Convenience Store Licensing Requirements" as follows:

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 him/her/ it or them 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 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. A background check performed pursuant to Ohio Department of Commerce or Ohio Lottery Commission requirements shall comply. The background check shall be for Northwest, Ohio unless the applicant has resided or operated a business in any other State in the last five (5) years in which case additional checks may also be required. All background

checks shall be performed at the expense of the applicant. Within five (5) 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. 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. An applicant may appeal a license issuance or license renewal denial to the Convenience Store Appeal Board as defined in 721.07

within ten (10) days of receipt of notification of the denial. Notification shall be mailed via U.S. certified mail, return receipt requested.

(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

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.

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.

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

No transfer of a Convenience Store license shall be permitted. Upon issuance of a new license for a specific location it shall supercede 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 Snsension / Revocation of License

(a) The Director of Finance may suspend or revoke the license of any convenience store 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, including the licensee's persistent, repeated or willful failure to discharge the licensee's responsibilities 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.

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 effective prospectively to cease operations within thirty (30) days of mailing thereof.

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:

I. Establishments shall post a conspicuous sign which states that the premises are under camera surveillance.

2. All camera devices shall operate during the premises hours of operation.

3. The camera system shall provide photographic coverage of the cash register or place where money is exchanged.

(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 thirty (30) 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 report criminal violations by any persons on the business premises, including parking areas to Toledo Police.

(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, housing and building 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 shall be accepted by the same individual, firm, entity or any shareholder/director, member, manager/chief financial officer of any of the same licensee until after the expiration of at least one (1) year from the effective date of revocation.

721.18 Neighborhood Plans

(a) In those parts of the City in which a recognized Community Development Corporation ("CDC"), as identified by the current map on file at the City of Toledo Department of Neighborhoods, operates, a licensee and the applicable CDC may enter into a written Neighborhood Plan. The Neighborhood Plan may address issues of concern, which may include but not be limited to plans to address issues of crime, safety, loitering, traffic, noise, items offered for sale at the premises, marketing plans to encourage residents to patronize the store, and any other areas the licensee and the CDC deem appropriate. Licensee and the CDC are encouraged to adopt a Neighborhood Plan and provide a copy to the Director of Finance who shall keep the Neighborhood Plan on file with the licensee's file. 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.

(b) The Director of Finance shall periodically publish a list of the licensees that have entered into Neighborhood Plans and distribute that list in a manner that encourages the community to patronize establishments that have Neighborhood Plans in place.

(c) The Mayor shall, from time to time, 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.

721.19 Implementation

All applications which are complete and have not been issued or denied a license within 21 days of the date when the application packet is complete shall be issued a temporary license to be in effect until a license is either issued or denied.

721.99 Penalty

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, which is subject to review by the Director of Finance, and shall be subject to license revocation or non-renewal **in** accordance with the provisions of this Chapter. In addition the Law Director is authorized to bring an action to compel compliance with this Chapter and an action to cease and desist operations in violation of this Chapter. 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 3. That this Ordinance 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 this Ordinance is necessary for the immediate preservation of the public peace, health, safety, and property, and for the further reason that this Ordinance must be immediately effective **in** order to correctly amend the existing Chapter 721 .

Vote on emergency clause: yeas 12, nays 0.

Passed: August 12,2008, as an emergency measure: yeas 9, nays 3.

Attest:

Gerald E. Dendinger
Clerk of Council

Mark Sobczak
President of Council