

City of Niles, Ohio

SPONSORED BY: SAFETY COMMITTEE
AUTHORIZED BY: PEZZANO AND McNAUGHTON

DRAFT NO. 145-17

ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE NO. 30-17, PLACING A MORATORIUM ON SEXUALLY ORIENTED BUSINESSES AND CREATING CHAPTER 711 TO REGULATE SEXUALLY ORIENTED BUSINESSES IN THE CITY OF NILES

WHEREAS, a moratorium presently exists on sexually oriented businesses; and

WHEREAS, after careful review of laws in area communities the administration desires to amend Part 7, Business Regulations of the Niles Codified Ordinances to create a chapter regulating sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: Council hereby approves the creation of Chapter 711, Sexually Oriented Businesses to read as follows:

“711.01 PURPOSE AND INTENT.

It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations regarding sexually oriented businesses within the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

711.02 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Adult arcade" means any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) "Adult bookstore" or "adult video store" means a commercial establishment which utilizes twenty five percent (25%) or more of its retail selling area for the purpose of the sale or rental for any form of consideration of any one or more of the following:

(1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas;" or

(2) Instruments, devices, or paraphernalia, other than medical or contraceptive devices, which are designed for use in connection with "specified sexual activities."

(c) "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity; or

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(d) "Adult motel" means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration, provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of

"specified sexual activities" or "specified anatomical areas," and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

(e) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas."

(f) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity, semi-nudity or live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas."

(g) "Chief of Police" means the chief of police of the City of Niles or his designated agent.

(h) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(i) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(j) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a gratuity or other consideration.

(k) "Establishment" means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The addition of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

(1) "Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(m) "Nudity" or "state of nudity" shall have the same meaning as defined by ORC 2907.01.

(n) "Operates" or "causes to operate" means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or sexually oriented business licensee of the business.

(o) "Person" means an individual.

(p) "Public park" means public land which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian bicycle paths, open space, wilderness areas, or similar public land within the City which is under the control, operation or management of the City, County or State.

(q) "Residential district" shall have the same meaning as defined by the Niles City Zoning Code.

(r) "Residential use" means a single family, duplex, multiple family, or mobile home park, mobile home subdivision and campground use.

(s) "School" means any public or private educational facility including, but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities.

(t) "Semi-nude" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt,

leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(u) "Sexual encounter center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

(v) "Sexually oriented business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(w) "Sexually oriented business licensee" means an individual in whose name a sexually oriented business license has been issued, and in the case of a "sexually oriented business employee licensee," a person in whose name a sexually oriented business license has been issued authorizing employment in a sexually oriented business.

(x) "Specified anatomical areas" means human genitals in a state of sexual arousal.

(y) "Specified sexual activities" means and includes any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; and

(4) Excretory functions as part of or in connection with any of the activities set forth in subsections (y)(1) to (3) hereof.

(z) "Substantial enlargement" of a sexually oriented business means the increase in floor area occupied by the business by more than twenty-five percent (25%), as the floor area exists as of the date of the issuance of the sexually oriented business license.

(aa) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

711.03 CLASSIFICATION.

Sexually oriented businesses are classified as follows:

(a) Adult arcades;

(b) Adult bookstores or adult video stores;

(c) Adult cabarets;

(d) Adult motels;

(e) Adult motion picture theaters;

(f) Adult theaters;

(g) Escort agencies;

(h) Nude model studios, and

(i) Sexual encounter centers.

711.04 LOCATION OF SEXUALLY-ORIENTED BUSINESSES OR ADULT ENTERTAINMENT BUSINESSES.

(a) No person shall operate or cause to be operated a sexually-oriented business or adult entertainment business in any zoning district other than the appropriate zoning district for such use as set forth in the City of Niles Zoning Code.

(b) No person shall operate or cause to be operated a sexually-oriented business or adult entertainment business within:

(1) One thousand (1000) feet of a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities, whether or not said facility is located within the City or an adjacent City, Village or Township;

(2) One thousand (1000) feet of a public or private educational facility including, but not limited to, child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools,

vocational schools, secondary schools, continuation schools, special educational schools, junior colleges and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school whether or not said facility is located within the City or an adjacent City, Village or Township;

(3) Three hundred fifty (350) feet of a boundary of a residential district as defined in the Codified Ordinances of the City of Niles and any adjacent City, Village or Township;

(4) One thousand (1000) feet of a park or recreational area, public or private, which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar land within the City;

(5) Three hundred fifty (350) feet of the property line of a lot devoted to a residential use as defined in the Codified Ordinances of the City of Niles;

(6) Three hundred fifty (350) feet of an entertainment business which is oriented primarily towards children, family, or senior citizen entertainment, whether inside or outside the City.

(c) No person shall operate or permit the operation, establishment, substantial enlargement, or transfer of ownership of a sexually-oriented business or adult entertainment business within one thousand feet (1,000') of another sexually-oriented business or adult entertainment business.

(d) No person shall cause or permit the operation, establishment, or maintenance of more than one (1) sexually-oriented business or adult entertainment business in the same building, structure, or portion thereof, or the increase of floor area of any sexually-oriented business or adult entertainment business in any building, structure, or portion thereof containing another sexually-oriented business or adult entertainment business.

(e) For the purpose of subsection (b) hereof, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually-oriented business or adult entertainment business is conducted, to the nearest property line of the premises of a use listed in subsection (b). Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(f) For purposes of subsection (c) hereof, the distance between any two (2) sexually oriented businesses or adult entertainment businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(g) Any sexually-oriented business or adult entertainment business lawfully operating on the date of passage of this section that is in violation of subsection (a) through (g) hereof shall be thus permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually-oriented businesses or adult entertainment businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business or adult entertainment business which was first established and continually operating at a particular location is the first permitted usage.

(h) A sexually-oriented business or adult entertainment business lawfully operating is a permitted use by the location, subsequent to the grant or renewal of the sexually oriented business or adult entertainment business license, of a use listed in subsection (b) hereof within one thousand feet (1,000') of the sexually oriented business or adult entertainment business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

711.05 SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED.

(a) No person shall operate a sexually oriented business without a valid "Sexually Oriented Business License" issued by the City for the particular type of sexually oriented business classification.

(b) All applications for a "Sexually Oriented Business License" must be made on forms provided by the Chief of Police.

711.06 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED.

(a) No person who operates a sexually oriented business shall employ a person who does not have a "Sexually Oriented Business Employee License".

(b) No person shall obtain employment with a sexually oriented business without having secured a "Sexually Oriented Business Employee License" issued by the City.

(c) All applications for a "Sexually Oriented Business Employee License" must be made on forms provided by the Chief of Police.

711.07 ISSUANCE OR RENEWAL OF SEXUALLY ORIENTED BUSINESS LICENSE.

(a) The Chief of Police shall approve the issuance or renewal of a "Sexually Oriented Business License" to an applicant within sixty (60) days after receipt of an application unless the Chief of Police finds one or more of the following to be true:

- (1) An applicant is under eighteen years of age.
 - (2) An applicant, applicant's spouse or person residing with the applicant, is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, applicant's spouse or person residing with the applicant.
 - (3) An applicant has failed to provide information reasonably necessary for issuance of the sexually oriented business license or has falsely answered a question or request for information on the application form.
 - (4) An applicant, applicant's spouse or person residing with the applicant has been convicted of any violation of a provision of this chapter. The fact that a conviction is being appealed shall have no effect.
 - (5) An applicant or the proposed establishment is in violation of or is not in compliance with this chapter.
 - (6) The sexually oriented business license fee required by this chapter has not been paid.
 - (7) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.
 - (8) An applicant has been convicted of:
 - A. Any felony;
 - B. Any offense listed in ORC Chapter 2907;
 - C. Any offense listed in ORC 2950.01, including all subsections of such offenses, regardless of whether or not such offenses are classified by the State of Ohio as "sexually oriented offenses", and regardless of the ages of the persons involved in such cases, a violation of ORC 2919.22, 2919.23, 2919.24, or of an offense defined by existing or former laws of this State, present or former ordinances of any municipality of any state, former or present law of any state or of the United States, or a violation under the law applicable in military courts that is or was substantially equivalent to any of the listed offenses, or of an attempt to commit, conspiracy to commit, or complicity to commit any such offenses.
 - (9) An applicant proposes a site which does not comply with the location regulations as set forth in Section 711.04 hereof.
- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
- (c) The "Sexually Oriented Business License" shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business.
- (d) All "Sexually Oriented Business Licenses" shall be posted in a conspicuous place at or near the entrance of the sexually oriented business so that they may be easily read at any time.

711.08 ISSUANCE OR RENEWAL OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

(a) The Chief of Police shall approve the issuance or renewal of a "Sexually Oriented Business Employee License" to an applicant within sixty (60) days after receipt of an application unless the Chief of Police finds one or more of the following items to be true:

- (1) An applicant is under eighteen years of age.
- (2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the "Sexually Oriented Business Employee License" or has falsely answered a question or request for information on the application form.
- (4) An applicant has been convicted of a violation of a provision of this chapter.
- (5) An applicant or the proposed establishment is in violation of or is not in compliance with this chapter.
- (6) The sexually oriented business employee license fee required by this chapter has not been paid.
- (7) An applicant has been employed in a sexually oriented business within the preceding twelve months and has demonstrated an inability to maintain employment in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.
- (8) An applicant has been convicted of:

A. Any felony,
B. Any offense listed in ORC Chapter 2907;
C. Any offense listed in ORC 2950.01, including all subsections of such offenses, regardless of whether or not such offenses are classified by the State of Ohio as "sexually oriented offenses", and regardless of the ages of the persons involved in such cases, a violation of ORC 2919.22, 2919.23, 2919.24, or of an offense defined by existing or former laws of this State, present or former ordinances of any municipality of any state, former or present law of any state or of the United States, or a violation under the law applicable in military courts that is or was substantially equivalent to any of the listed offenses, or of an attempt to commit, conspiracy to commit, or complicity to commit any such offenses.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(c) The "Sexually Oriented Business Employee License" shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business by whom the employee will be employed.

(d) All "Sexually Oriented Business Employee Licenses" shall be posted in a conspicuous place at or near the entrance of the sexually oriented business so that they may be easily read at any time.

711.09 FEES FOR SEXUALLY ORIENTED BUSINESS LICENSE.

(a) Every application for "Sexually Oriented Business License," whether for a new license or for renewal of an existing license, shall be accompanied by a fifty dollar (\$50.00) nonrefundable application and investigation fee.

(b) In addition to the application and investigation fee required above, every sexually oriented business that is granted a "Sexually Oriented Business License," new or renewal, shall pay the City an annual non-refundable license fee of twenty-five dollars (\$25.00) within thirty (30) days of issuance or renewal of the license.

(c) All fees for "Sexually Oriented Business Licenses" shall be submitted to the Chief of Police.

711.10 FEES FOR SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

(a) Every application for a "Sexually Oriented Business Employee License," whether for a new license or for renewal of an existing license, shall be accompanied by a fifty dollar (\$50.00) non-refundable application and investigation fee.

(b) All fees for "Sexually Oriented Business Employee Licenses" shall be submitted to the Chief of Police.

711.11 EXPIRATION OF SEXUALLY ORIENTED BUSINESS LICENSE.

(a) Each "Sexually Oriented Business License" shall expire one year from the date of issuance and may be renewed only by making application as provided for in Section 711.05 hereof.

(b) Applications for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the "Sexually Oriented Business License" will not be affected.

(c) It is the responsibility of the sexually oriented business license holder to apply for renewal.

711.12 EXPIRATION OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

(a) Each "Sexually Oriented Business Employee License" shall expire one year from the date of issuance and may be renewed only by making application as provided for in Section 711.06 hereof.

(b) Applications for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the "Sexually Oriented Business Employee License" will not be affected.

(c) It is the responsibility of the sexually oriented business employee license holder to apply for renewal.

711.13 SUSPENSION OF SEXUALLY ORIENTED BUSINESS LICENSE.

The Chief of Police shall suspend a "Sexually Oriented Business License" for a period not to exceed thirty (30) days if he determines that a sexually oriented business licensee has:

- (a) Violated or is not in compliance with this chapter;
- (b) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;
- (d) Recklessly permitted gambling by any person on the sexually oriented business premises;
- (e) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law abiding manner thus necessitating action by law enforcement officers.

711.14 SUSPENSION OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

The Chief of Police shall suspend a "Sexually Oriented Business Employee License" for a period not to exceed thirty (30) days if he determines that a sexually oriented business employee licensee has:

- (a) Violated or is not in compliance with this chapter;
- (b) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;
- (d) Recklessly permitted gambling by any person on the sexually oriented business premises;
- (e) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law abiding manner thus necessitating action by law enforcement officers.

711.15 REVOCATION OF SEXUALLY ORIENTED BUSINESS LICENSE.

(a) The Chief of Police shall revoke a "Sexually Oriented Business License" if a cause of suspension in Section 711.13 occurs and the "Sexually Oriented Business License" has been suspended within the preceding twelve months.

(b) The Chief of Police shall revoke a "Sexually Oriented Business License" if he determines that the sexually oriented business licensee:

- (1) Gave false or misleading information in the material submitted to the Chief of Police during the application process;
- (2) Recklessly allowed possession, use, or sale of controlled substances on the premises;
- (3) Recklessly allowed prostitution on the premises;
- (4) Recklessly operated the sexually oriented business during a period of time when the sexually oriented business licensee's license was suspended;
- (5) Has been convicted of an offense listed in Section 711.07(a)(8);
- (6) Recklessly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the sexually oriented business licensed premises; or
- (7) Is delinquent in payment more than ninety days to the City for income taxes, or any other taxes or assessments which the City imposes, or sales taxes related to the sexually oriented business.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the "Sexually Oriented Business License."

(d) Subsection (b)(6) hereof does not apply to adult motels as grounds for revoking the "Sexually Oriented Business License" unless the sexually oriented business licensee recklessly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) A "Sexually Oriented Business License" revocation shall continue for one year and the sexually oriented business licensee shall not be issued a "Sexually Oriented Business License" or a "Sexually Oriented Business Employee License" for one year from the date the revocation became effective.

711.16 REVOCATION OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

(a) The Chief of Police shall revoke a "Sexually Oriented Business Employee License" if a cause of suspension in Section 711.14 occurs and the "Sexually Oriented Business Employee License" has been suspended within the preceding twelve months.

(b) The Chief of Police shall revoke a "Sexually Oriented Business Employee License" if he determines that the sexually oriented business employee licensee:

(1) Gave false or misleading information in the material submitted to the Chief of Police during the application process;

(2) Recklessly allowed possession, use, or sale of controlled substances on the premises;

(3) Recklessly allowed prostitution on the premises;

(4) Recklessly operated the sexually oriented business during a period of time when the sexually oriented business licensee's license was suspended;

(5) Has been convicted of an offense listed in Section 711.08(a)(8).

(6) Recklessly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the sexually oriented business licensed premises; or

(7) Is delinquent in payment more than ninety days to the City for income taxes, or any other taxes or assessments which the City imposes, or sales taxes related to the sexually oriented business.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the "Sexually Oriented Business Employee License."

(d) Subsection (b)(6) hereof does not apply to adult motels as grounds for revoking the "Sexually Oriented Business Employee License" unless the sexually oriented business employee licensee recklessly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) A "Sexually Oriented Business Employee License" revocation shall continue for one year and the sexually oriented business employee licensee shall not be issued a "Sexually Oriented Business Employee License" for one year from the date the revocation became effective.

711.17 APPEAL RIGHTS.

(a) Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the City of Niles Board of Zoning Appeals by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Board of Zoning Appeals must hold a hearing on the appeal within thirty (30) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing.

(b) Any decision by the Board of Zoning Appeals shall be a final appealable order and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this chapter, the applicant or licensee shall provide written notice of such appeal to the Board of Zoning Appeals in advance of or at the time of the filing of the appeal. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board of Zoning Appeals shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board of Zoning Appeals and all other departments or agencies of the City shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

(d) Subject to the provisions of subsection (f) hereof, any licensee lawfully operating a Sexually Oriented Business or adult motel prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said business during the pendency of an appeal of a decision rendered under this chapter to the Board of Zoning Appeals or to a court.

(e) Subject to the provisions of subsection (f) hereof, any licensee lawfully acting as an employee in a Sexually Oriented Business or adult motel prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal of a decision rendered under this chapter to the Board of Zoning Appeals or to a court.

(f) In the event that an applicant for a new Sexually Oriented Business license or a new Sexually Oriented Business employee license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within thirty (30) days of the date the appeal was filed, the City will issue such applicant a provisional sexually oriented business license or Sexually Oriented Business employee license upon request of the applicant. The provisional license:

(1) Will allow an applicant for a Sexually Oriented Business license to operate the Sexually Oriented Business or adult motel named in the license application under the same terms as a normal Sexually Oriented Business issued pursuant to Section 711.07 of this chapter for the period of time specified in subsection (g) hereof; and

(2) Will allow an applicant for a Sexually Oriented Business employee license to act as an employee on the premises of a Sexually Oriented Business or adult motel under the same terms as a normal Sexually Oriented Business employee license issued pursuant to Section 711.08 of this chapter for the period of time specified in subsection (g) hereof; and

(3) Will be subject to the same requirements as a normal Sexually Oriented Business license or Sexually Oriented Business employee license issued under Section 711.07 or Section 711.08 of this chapter.

(g) A provisional license will expire on whichever of the following three dates is earliest:

(1) The date that a judicial decision is issued upholding the license denial;

(2) The date on which a non-provisional Sexually Oriented Business license or Sexually Oriented Business employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or

(3) The date one (1) year from the issuance of the provisional license.

(h) In the event that judicial review of the denial of a new license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application pursuant to Section 711.11 or 711.12 of this chapter. The Chief of Police shall grant an application for renewal of a provisional license unless he determines that new grounds exist for denial of a license application pursuant to Section 711.07 or Section 711.08 of this chapter, which did not exist at the time of the original license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial; the City has the right to consolidate such review with the pending judicial appeal of the previous license denial.

711.18 TRANSFER OF SEXUALLY ORIENTED BUSINESS LICENSE.

"Sexually Oriented Business Licenses" are not transferable. A sexually oriented business licensee shall not operate a sexually oriented business at any place other than the address designated in the "Sexually Oriented Business License."

711.19 TRANSFER OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

"Sexually Oriented Business Employee Licenses" are not transferable. A sexually oriented business employee licensee shall not work at any place other than the address designated in the "Sexually Oriented Business Employee License."

711.20 INSPECTION.

(a) No person shall refuse to permit any law enforcement officer as defined by ORC 2901.01, or any representative of the Fire Department, Building Department, City Engineer or any other department of the City, County or State government to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law.

(b) No person shall refuse to permit a lawful inspection of the sexually oriented business premises.

711.21 REGULATIONS REGARDING PUBLIC NUDITY.

(a) No person in a sexually oriented business shall recklessly appear in a state of nudity or depict "specified sexual activities."

(b) No person in a sexually oriented business shall appear in a semi-nude condition unless the person is an employee who while semi-nude shall be at least ten (10) feet from any patron or customer and on a stage at least three (3) feet above the floor.

(c) No employee, while semi-nude in a sexually oriented business, shall solicit or accept any pay or gratuity from any patron or customer.

(d) No patron or customer shall pay or give any gratuity to an employee while said employee is semi-nude in a sexually oriented business.

(e) No employee, while semi-nude in a sexually oriented business, shall touch a patron or customer or the clothing of a patron or customer.

(f) No patron or customer shall touch an employee of a sexually oriented business while said employee is on duty.

711.22 PROHIBITION AGAINST MINORS IN A SEXUALLY ORIENTED BUSINESS.

(a) No person under the age of eighteen (18) years is permitted on the premises of a sexually oriented business.

(b) No person shall recklessly allow a person under the age of eighteen (18) years on the premises of a sexually oriented business.

711.23 HOURS OF OPERATION.

(a) No sexually oriented business shall remain open at any time between the hours of one o'clock (1:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays.

(b) No sexually oriented business shall remain open at any time between the hours of one o'clock (1:00) a.m. and twelve o'clock (12:00) p.m. on Sundays or on legal holidays as defined by ORC 1.14.

711.24 ESCORT AGENCIES.

No person shall recklessly act as an escort or recklessly agree to act as an escort for any person under the age of eighteen (18) years.

711.25 NUDE MODEL STUDIOS.

(a) No person shall appear in a state of nudity or recklessly allow another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(b) No nude model studio shall place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

711.26 ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(b) No person shall, while in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, rent or sub-rent a sleeping room to a person and, within ten (10) hours from the time the room is rented, rent or sub-rent the same sleeping room again.

(c) For the purpose of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

711.27 REGULATIONS REGARDING EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(a) A sexually oriented business, other than an adult motel, which exhibits on the premises a film, video cassette, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas" shall be configured in such a manner that:

(1) There is at all times an unobstructed view from a manager's station of every area of the interior premises to which any patron or customer is permitted access for any purpose, excluding restrooms. The view required in this section must be by direct line of sight from the manager's station.

(2) If the premises has two (2) or more manager's stations designated, then the interior premises shall be configured in such a manner that there is an unobstructed view from at least one of the manager's stations of each area of the interior premises to which any patron or customer is permitted access for any purpose, excluding restrooms.

(3) A closed circuit television system shall be maintained and operated with a television monitor(s) located in the area of the manager's station(s), in the clear view of the public, and available for continuous viewing by the manager on duty.

(4) A camera or cameras shall be installed in any booth areas and shall scan each hallway and aisle way of the entranceway to any booth or room.

(5) The closed circuit television system shall operate on a switcher system so that television monitor(s) will switch sequentially and continuously from one camera to another. The continuous switching process will be timed to allow an adequate view of each area surveyed by each camera while accomplishing a complete circuit within less than one minute. To the extent necessary, more than one television monitor shall be installed so that there will be adequate circuits to provide a complete view of the entire interior premises, including any booth areas, but excluding restrooms, in less than one minute.

(6) No video reproduction equipment is permitted in restrooms.

(7) In the event of a malfunction of any of the closed circuit television equipment described in this section, the sexually oriented business licensee shall act promptly to repair or cause to be repaired any such malfunction within twenty-four (24) hours, and shall maintain documentation of the date and time of any such malfunction and all measures taken to effect a repair. If an equipment malfunction cannot be repaired within twenty-four (24) hours, those areas of the premises which are not able to be monitored as a result of the malfunction shall be closed until repairs are completed.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate at all times every place to which patrons or customers are permitted access at an illumination not less than that which is required in the Ohio Basic Building Code.

(b) The sexually oriented business licensee must provide that at least one employee is on duty and situated in each manager's station at all times that any patron or customer is present inside the premises.

(c) The sexually oriented business licensee must post signs of adequate size for clear visibility to give notice to patrons and customers that the areas therein are continuously monitored by closed circuit television cameras with monitors.

(d) No person shall recklessly fail to fulfill any duty described in this section.

711.28 INJUNCTION.

(a) A person who operates or causes to be operated a sexually oriented business or adult entertainment business without a valid license or in violation of Section 711.20 is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business or adult entertainment business so operates is a separate offense or violation.

(b) The owner of a location who knowingly permits the operation of a sexually oriented business or adult entertainment business without a license is in violation of this chapter and subject to prosecution under Section 711.99 of this Chapter.

711.29 ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENT PLAN REQUIREMENTS.

(a) Lot area and width, setbacks, buffering, yard area, height provisions and other site development requirements for a Sexually Oriented Business are those specified in the Industrial Districts of the Zoning Ordinance.

(b) ~~Parking requirements for an Adult Cabaret are those specified for restaurants in Section 1111.07(???) of the Zoning Ordinance.~~

(c) Parking requirements for other Sexually Oriented Businesses are those specified for retail stores in Section 1111.07(???) of the Zoning Ordinance.

711.30 SIGN REGULATIONS.

(a) All signs shall be “business signs” and “wall signs” as defined and regulated in Section 1111.08(???) of the Zoning Ordinance, but in no event shall the maximum allowable sign area exceed 40 square feet. Any address sign area shall be included in the maximum sign area calculation.

(b) Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the Zoning Ordinance.

(c) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or street in front of the building.

(d) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

711.31 LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS.

(a) It shall be the duty of the operator of a Sexually Oriented Business to:

(1) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the Sexually Oriented Business is located;

(2) Post conspicuous signs stating that no loitering is permitted on such property;

(3) Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every thirty (30) minutes or inspecting such property by use of video cameras and monitors; and

(4) Provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within an employee's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

711.32 SEVERABILITY AND EFFECT OF PARTIAL INVALIDITY.

If any section, subsection or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

711.33 CHANGE IN INFORMATION.

During the pendency of any application for, or during the term of, any Sexually Oriented Business license, the applicant or licensee shall promptly notify the Chief of Police in writing of any change in any material information given by the applicant or licensee in the application for such license, including specifically, but without limitation, any change in managers of the Sexually Oriented Business establishment or in the individuals identified in the application pursuant to this chapter; or if any of the events constituting grounds for suspension or revocation pursuant to this chapter occur.

711.99 PENALTY.

(a) Except as provided by subsection (b) or (c) hereof, any person violating this chapter, upon conviction, is guilty of a misdemeanor of the first degree punishable by a fine not to exceed one thousand dollars (\$1,000.00), six months in jail or a combination of both.

(b) It is an affirmative defense, as defined by ORC 2901.05, to prosecution under Sections 711.05, 711.06, 711.21 or 711.22(d) that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) In a structure:

A. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

B. Where in order to participate in a class a student must enroll at least three days in advance of the class; and

C. Where no more than one nude model is on the premises at any one time.

(c) It is an affirmative defense, as defined by ORC 2901.05, to prosecution under Sections 711.05(a) or 711.21 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political or scientific value.”

SECTION 2: Ordinance No. 30-17 is hereby repealed in its entirety.

SECTION 3: This Ordinance shall take effect at the earliest time permitted by law.

PRESIDENT OF COUNCIL

PASSED: _____

ATTEST: _____
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the _____ day of _____, 2017 and signed by me as such Mayor on the _____ day of _____, 2017.

MAYOR

City of Niles, Ohio

SPONSORED BY: UTILITIES COMMITTEE
AUTHORIZED BY: McNAUGHTON

DRAFT NO. 146-17

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE SERVICE DIRECTOR TO REQUEST MEMBERSHIP IN THE TRUMBULL COUNTY NATURAL GAS PROGRAM; AND, DECLARING AN EMERGENCY

WHEREAS, the Ohio Legislature has enacted deregulation legislation (H.B. No. 9") which authorizes the legislative authorities of municipal corporations to aggregate the retail natural gas loads located in the respective jurisdictions; and

WHEREAS, such legislative authorities may exercise such authority jointly with any other legislative authorities; and

WHEREAS, Trumbull County Board of Commissioners passed a resolution recorded in Journal Volume 131, page 13645 to initiate a Natural Gas Program; and

WHEREAS, this Council seeks to request membership in the Trumbull County Natural Gas Program on an "opt-in" basis;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Niles, State of Ohio:

Section 1. This Council finds and determines that it is in the best interest of the city, its residents, businesses and other natural gas located within the corporation limits of the City of Niles and who receive commodity sales service and distribution service from Dominion Energy Ohio to request membership in the Trumbull County Natural Gas Program.

Section 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. That this resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, thereof, for the reason that it is immediately necessary to contract consulting services for advice in a rapidly changing technical area, and provided it receives the necessary affirmative votes as required by the passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.

Wherefore, this Resolution is declared to be an emergency measure in the interest of the public health, safety and welfare and for the reason that the City of Niles can become a member of the Trumbull County Natural Gas Program at the earliest possible date. This resolution shall be in full force and effect from and after its passage and approval by the Mayor.

PRESIDENT OF COUNCIL

PASSED: _____

ATTEST: _____
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the _____ day of _____, 2017 and signed by me as such Mayor on the _____ day of _____, 2017.

MAYOR

City of Niles, Ohio

SPONSORED BY: SAFETY COMMITTEE
AUTHORIZED BY: PEZZANO & McNAUGHTON

DRAFT NO. 147-17

ORDINANCE NO. _____

AN ORDINANCE AMENDING IN PART, CODIFIED ORDINANCE NO. 1402.99, THE PENALTY SECTION OF THE HOUSING MAINTENANCE CODE; AND, DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: Section 1402.99 is hereby amended to read as follows:

“1402.99 PENALTY.

(a) Any person who violates a provision of this Housing Maintenance Code shall be fined not more than one hundred dollars (\$100.00), and each day's failure to comply with any such provision shall constitute a separate violation. IF A PERSON HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF ANY PROVISION OF THIS HOUSING MAINTENANCE CODE WITHIN THREE YEARS PRECEDING THE DATE OF THE FILING OF THE COMPLAINT, THEN THE PERSON SHALL BE GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE; ON EVERY SUBSEQUENT OFFENSE, ANY PERSON SHALL BE GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE.

(b) The Law Director is hereby authorized and empowered in cases of flagrant, continued or repeated violations of this Housing Maintenance Code, to apply to a court of competent jurisdiction for an order enjoining the owner or any other person or persons from inhabiting or otherwise occupying the dwelling or dwelling unit, or room wherein such violation exists.”

In all other respects, Codified Ordinance shall remain in full force and effect.

SECTION 2: This ordinance is declared to be an emergency measure in the interest of the public safety, health and welfare and for the reason to discourage repeat offenders of the housing code.

PRESIDENT OF COUNCIL

PASSED: _____

ATTEST: _____
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the ____ day of _____, 2017 and signed by me as such Mayor on the ____ day of _____, 2017.

MAYOR

City of Niles, Ohio

SPONSORED BY: SAFETY COMMITTEE
AUTHORIZED BY: PEZZANO & McNAUGHTON

DRAFT NO. 148-17

ORDINANCE NO. _____

AN ORDINANCE CREATING A VACANT PROPERTY/BUILDING REGISTRATION CHAPTER

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: There is hereby created a new chapter within the Building Code to require, under certain circumstances, registration of a vacant building and shall read as follows:

“VACANT PROPERTY/BUILDING REGISTRATION

PURPOSE.

The purpose of this Chapter is to establish a program for identifying and registering vacant residential and commercial buildings; to determine the responsibilities of owners of vacant buildings and structures; and to speed the rehabilitation of the vacant buildings. Shifting the cost of burden from the general citizenry to the owners of the blighted buildings will be the goal of this Chapter.

DEFINITIONS.

(a) Unless otherwise expressly stated, the following terms shall for the purpose of this chapter, have the meanings indicated in this section.

(1) "Owner or person in control" means the owner of the freehold estate of the premises; a mortgagee or vendee in possession; a receiver; and executor; a trustee; and any person, public or private entity, lessee or holder of a lessor estate in the premises, and/or its dually authorized agent, with the authority to bring a building or premises into compliance with the provisions of this code, including but not limited to any mortgagee that has filed an action in foreclosure on the particular premises at issue, based on breach or default of mortgage agreement, until title to the premises is transferred to a third party.

(2) "Secured by other than normal means" means a building secured by means other than those used in the design of the building.

(3) "Unoccupied" means a building which is not being used for the occupancy authorized by the owner and/or person in control.

(4) "Unsecured" means a building or portion of a building which is open to entry by unauthorized persons without the use of tools or ladders.

(5) "Vacant building" means a building (excluding government owned buildings) which is:
A. Unoccupied and unsecured; or
B. Unoccupied and secured by other than normal means; or
C. Unoccupied and an unsafe building as determined by the Housing Maintenance Code Official or his/her designee; or

D. Unoccupied or having utilities disconnected; or
E. Unoccupied and has housing maintenance or building code violations; or
F. Illegally occupied which shall include loitering and vagrancy; or
G. Unoccupied for a period of time over ninety (90) days and having an existing notice of code violation issued by the Housing Maintenance Code Official or his/her designee; or
H. Unoccupied with a mortgage status of abandonment (i.e. deceased or foreclosed).
I. Unoccupied and abandoned by the property owner or person in control.
J. A building shall not be considered a vacant building if the building contains multiple units and any one (1) of the multiple units is considered to be occupied.

(6) "Evidence of vacancy" means any condition that on its own or combined with other conditions present would lead a reasonable person to believe the property is vacant. Such conditions include, but are not limited to: significantly below standard utility usage, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, accumulation of trash, junk, and/or debris, broken or boarded up windows or doors, abandoned vehicles, auto parts or materials, the absence of window coverings, such as curtains, blinds, and/or shutters, the absence of furnishings and/or personal items consistent with habitation or occupation, statement(s) by governmental employee(s) that the property is vacant.

(7) "Temporarily Vacant" means an owner occupied residential building which is unoccupied by the owner for a period not to exceed six (6) months in any calendar year.

(8) "Vacant residential building" means a vacant building with three (3) or fewer dwelling units within the structure and no commercial or other space.

(9) "Vacant commercial building" means a vacant building with more than three (3) dwelling units within the structure or any vacant building containing commercial, industrial or other space.

VACANT PROPERTY/BUILDING REGISTRATION.

(a) The owner shall register with the Building Department not later than ninety (90) days after any building located in an area zoned for, or abutting an area zoned for, residential or commercial use in the City becomes a vacant building or not later than thirty (30) days of being notified by the Building Department of the requirement to register based on evidence of vacancy, whichever event first occurs.

(b) The registration shall be submitted on forms provided by the Building Department and shall include the following information supplied by the owner:

(1) The name and address of the owner or owners;

(2) If the owner does not reside in Trumbull County or within ten miles of Niles City limits, the name and address of any third party who the owner has entered into a contract or agreement for property management. By designating an authorized agent under the provisions of this section, the owner is consenting that the third party is authorized to receive any and all notices relating to the property and conformance of any and all ordinances;

(3) The names and addresses of all known lien holders and all other parties with an ownership interest in the building;

(4) A telephone number where a responsible party can be reached at all times during business and non-business hours; and

(5) A vacant building plan as described in division (c) of this section.

(c) The owner shall submit a vacant building plan, which must meet the approval of the Building Inspector. The plan, at a minimum, must contain information from one of the following three choices:

(1) If the building is to be demolished, a demolition plan indicating the proposed time frame for demolition which includes starting within thirty (30) days of acceptance of the proposed demolition timeline and does not exceed sixty (60) days in accordance with the Ohio Building Code; or

(2) If the building is to remain vacant, a plan for the ensuring the building is secured along with the procedure that will be used to maintain the property, and a statement of the reasons why the building will be left vacant (e.g., building is for sale, etc.); or

(3) If the building is to be returned to appropriate occupancy or use, a rehabilitation plan for the building and grounds. The rehabilitation plan shall not exceed twelve (12) months from the time they obtain permits, unless the Building Inspector grants an extension upon receipt of a written statement from the owner detailing the reasons for the extension. Any repairs, improvements or alterations to the property must comply with any applicable zoning, housing, historic preservation, or building codes, and the property must be secured during the rehabilitation.

(d) All applicable laws and codes shall be complied with by the owner. The owner shall notify the Building Inspector of any changes in information of their vacant building registration within 30 days of the change. If the plan or timetable for the vacant building is revised in any way, the revision(s) must be in writing and must meet the approval of the Building Commissioner.

(e) The owner and subsequent owners shall keep the building secured and safe and the building and grounds properly maintained in accordance with all applicable Codes.

(f) A new owner(s) shall register or re-register the vacant building with the Building Inspector within thirty (30) days of any transfer of an ownership interest in the vacant building if the building continues to remain vacant after transfer. The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and meet the approval of the Building Inspector.

(g) The failure of the owner of the vacant building to obtain a deed for the property or to file the deed with the County Recorder shall not excuse the property owner from registering the property.

(h) Failure of the owner or any subsequent owners to maintain the building and premises that result in remedial action taken by the City shall be grounds for revocation of the approved plan and shall be subject to any applicable penalties provided by the law.

(i) The Building Inspector shall include in the file any property specific written statements from community organizations, other interested parties, or citizens regarding the history, problems, status, or blighting influence of a vacant building.

(j) The registration and all associated processes must be completed in its entirety annually for as long the property remains vacant.

ESCROW.

Each demolition of a vacant building requires that the owner hold in escrow with the City a deposit of ten thousand dollars (\$10,000) for a residential building and seventy-five thousand dollars (\$75,000) for a commercial building. If the amount to be set up in escrow cannot be paid in full, the City will place a lien on the property for the amount previously specified. The City will use these funds to complete the plans submitted by the owner in the event that the owner does not comply with the deadlines as previously submitted in the owner's vacant building plan. Escrow funds will be released upon completion of the work or transfer of ownership, provided that all fees have been paid in full. New owners must sign a form accepting responsibility for completing the demolition.

INSPECTIONS.

The Building Department shall inspect any premises in the City for the purpose of enforcing and assuring compliance with the provisions of this Chapter. Upon the request of the Building Inspector, an owner may provide access to all interior portions of an unoccupied building in order to permit a complete inspection. Nothing contained herein, however, shall diminish the owner's right to insist upon the procurement of a search warrant from a court of competent jurisdiction by the Building Inspector or his designee in order to enable such inspection. The Building Inspector shall be required to obtain a search warrant whenever an owner refuses to permit a warrantless inspection of the premises. The following shall apply:

- (a) Vacant properties will be externally inspected by the Housing Maintenance Code Official a minimum of twice per year to ensure the compliance of Housing Maintenance codes;
- (b) Vacant properties will be both internally and externally inspected at the start of each registration period (new and renewal) and when the registration is terminated by the property owner;
- (c) Vacant properties will be both internally and externally inspected upon acquisition of the property by a new owner and prior to an issuance of an Occupancy Permit as outlined in Section [1109.02](#) of the Planning and Zoning Code.
- (d) Any inspection that is to take place within thirty (30) days of a previous inspection may or may not be conducted at the discretion of the Building Inspector.

VACANT BUILDING FEES.

The fees shall be reasonably related to the administrative costs for registering and processing the vacant building owner registration form and for the costs incurred by the City in monitoring the vacant building site. The annually increased fee amounts shall be reasonably related to the costs incurred by the City for demolition and hazard abatement of or repairs to vacant buildings, as well as the continued normal administrative costs stated above.

- (a) The owner of a vacant residential building shall pay an annual fee of two hundred dollars (\$200.00) for the first year the building remains vacant. For every consecutive year that the building remains vacant, the annual fee will be assessed at double the previous year's fee amount for a maximum annual fee equaling the five-year fee of three thousand two hundred dollars (\$3,200.00) to be used for the fifth and for all consecutive, subsequent years of vacancy.
- (b) The owner of a vacant commercial building shall pay an annual fee of four hundred dollars (\$400.00) for the first year the building remain vacant. For every consecutive year that the building remains vacant, the annual fee will be assessed at double the previous year's fee amount for a maximum annual fee equaling the five-year fee of six thousand four hundred dollars (\$6,400) to be used for the fifth and for all consecutive, subsequent years of vacancy.
- (c) The first annual fee shall be paid at the time the building is registered. If the fee is not paid, the owner shall be subject to prosecution as prescribed in this chapter.
- (d) The fee shall be paid in full prior to the issuance of any building permits unless the property is granted an exemption. The fee shall be prorated and a refund may be issued if the building is no longer deemed vacant under the provisions of this Chapter within one hundred eighty (180) days of its registry.
- (e) All delinquent fees shall be paid by the owner prior to any transfer of an ownership interest in the vacant building. A lien may be placed on the property to collect delinquent fees.
- (f) Late fees shall be paid in addition to the annual registration and will be equal to the annual fee or one thousand dollars (\$1,000), whichever is less.

EXEMPTIONS.

(a) A building under active construction/renovation and having a valid building permit(s) at the time of initial inspection shall be exempt from registration until the expiration of the longest running, currently active building permit.

(b) A building which has suffered fire damage or damage caused by extreme weather conditions shall be exempt from the registration requirement for a period of ninety (90) days after the date of the fire or extreme weather event if the property owner submits a request for exemption in writing to the Building Department. This request shall include the names and addresses of the owner or owners, and a statement of intent to repair and reoccupy the building in an expedient manner, or the intent to demolish the building.

(c) A building that is for sale and listed with a licensed State of Ohio realtor shall be exempted for a period of twelve (12) months from the start of vacancy, provided that the owner submits proof to the Building Department of such listing and for sale status.

(d) A building that has been granted an exemption pursuant to the following. Any owner of a vacant building may request an exemption from the provisions of this Chapter by filing a written application with the Building Inspector who shall timely consider same. In determining whether a request for exemption should be granted, the Director shall consider the following: the applicant's prior record as it pertains to City Housing Code, Building Code, or Housing Maintenance Code violations; the amount of vacant property the applicant currently has within the City; and the length of time that the building for which the exception is sought has been vacant.

(e) The application of this Chapter shall not be inconsistent with or contrary to any and all requirements for historical structures established by any City, State, or Federal Agency.

(f) This section shall not apply to any residential properties determined to be temporarily vacant as defined in this Chapter.

(g) All requests for an exemption shall be made to the Building Department. The Building Inspector shall make a decision and notify the applicant within seven (7) business days of the filing of the request for exemption.

APPEALS.

Any owner who is served a notice of vacant property registration may, within ten calendar days of receipt of such notice, apply for an exemption or appeal the findings of the Building Inspector as set forth in Sections 1113 of the Planning and Zoning Code. An application for an appeal shall be based on a claim that the true intent of this Chapter or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Chapter do not fully apply, or the requirements of this Chapter are adequately satisfied by other means.

PENALTY.

Any person violating any provision of the Vacant Building Registry or providing false information to the Building Department or Building Inspector or any other department or official of the City of Niles shall be fined not more than one thousand dollars (\$1000.00), or be imprisoned not more than six months, or both, and each day's failure to comply with any such provision shall constitute a separate violation."

SECTION 2: This Ordinance shall take effect at the earliest time allowed by law.

PRESIDENT OF COUNCIL

PASSED: _____

ATTEST: _____
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the _____ day of _____, 2017 and signed by me as such Mayor on the _____ day of _____, 2017.

MAYOR

City of Niles, Ohio

SPONSORED BY: FINANCE COMMITTEE
AUTHORIZED BY: STEFFEY

DRAFT NO. 149-17

RESOLUTION NO. _____

A RESOLUTION APPROPRIATING FUNDS FROM THE UNAPPROPRIATED CAPITAL PROJECTS FUND TO CAPITAL PROJECTS BOND CONSTRUCTION ACCOUNT FOR REPAIRS TO CITY-OWNED BUILDINGS; AND, DECLARING AN EMERGENCY

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: That Council hereby authorizes the appropriation of One Million, Six Hundred Thousand Dollars (\$1,600,00.00) from the Unappropriated Capital Projects Fund to Capital Projects Bond Construction Account, Account No. 401-4646-56160.

SECTION 2: This Resolution is hereby declared to be an emergency measure in the interests of the public health, safety and welfare for the reason that these funds are needed to begin repairs at the earliest possible date. As such an emergency measure, this Resolution shall be effective upon passage by Council and approval by the Mayor.

President of Council

Passed: _____

Attest: _____
Clerk of Council

Received by the Mayor of the City of Niles this _____ day of _____, 2017,
and approved by me as such Mayor this _____ day of _____, 2017.

Mayor