

**CITY OF MAPLE HEIGHTS
COUNCIL MEETING AGENDA**

Maple Heights Senior Center – 7:00 PM

October 2, 2019

- | | | |
|-----|----------------------------------|--|
| 1. | Caucus: 6:30 pm | All members of Council |
| 2. | Call to Order: | Council President Ron Jackson |
| 3. | Invocation/Pledge of Allegiance: | Councilwoman Toni Jones, District 2 |
| 4. | Roll Call: | Council Clerk Leonette Cicirella |
| 5. | Addendum: | |
| 6. | Approval of Minutes: | Sept. 4, 18, 2019 (Regular Meetings of Council)
Sept. 11, 2019 (Special Meeting of Council) |
| 7. | Communications: | |
| 8. | Council Committee Reports: | |
| 9. | Department Reports: | |
| 10. | Citizens' Comments: | 3-minute limitation |
| 11. | Legislation: | |

2019-83 A RESOLUTION OVERRULING THE DECISION BY THE PLANNING AND ZONING COMMISSION IN CASE NO. 2019-PZ-20 TO DENY THE APPLICATION OF RASHID RASHID OF CHAMPION AUTO CARE & TOWING INC. FOR A CONDITIONAL USE PERMIT TO OPERATE AN AUTOMOTIVE REPAIR AND SERVICE BUSINESS INCLUDING TOWING OPERATIONS WITHOUT OVERNIGHT STORAGE IN A GENERAL COMMERCIAL (GC) ZONING DISTRICT.

Reading 1 (Council As A Whole)

2019-84 A RESOLUTION PROCLAIMING OCTOBER 31, 2019 FROM 5:30 P.M TO 7:30 P.M. AS HALLOWEEN OBSERVANCE IN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.

Reading 1 (Blackwell)

2019-85 A RESOLUTION DESIGNATING OCTOBER 2019 AS "NATIONAL BREAST CANCER AWARENESS MONTH" IN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.

Reading 1 (Jones, Miller, Madden, Thomas, Agee)

2019-86 A RESOLUTION AUTHORIZING THE ENGINEER TO BEGIN THE PREPARATION OF PLANS AND SPECIFICATIONS AND TO ADVERTISE FOR BIDS FOR ASPHALT ROAD REPAIRS ON RAYMOND STREET, BETWEEN PHILIP STREET AND TATRA STREET, AND ON LIBBY ROAD, BETWEEN GRANGER ROAD AND THE WEST BRIDGE APPROACH LOCATED WITHIN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.

Reading 1 (Blackwell)

2019-87 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH RWJ WIRING INCORPORATED TO PROVIDE SERVICES FOR THE STAFFORD PARK SITE LIGHTING IMPROVEMENTS PROJECT, AND DECLARING AN EMERGENCY.

Reading 1 (Blackwell)

2019-88 AN ORDINANCE ENACTING CHAPTER 819 “CIGARETTE AND TOBACCO VENDORS; SALES TO PERSONS UNDER 21” OF THE CODIFIED ORDINANCES OF THE CITY OF MAPLE HEIGHTS IN ORDER TO AMEND AND CREATE REGULATIONS INVOLVING LICENSING FOR AND SALES OF TOBACCO PRODUCTS, AND DECLARING AN EMERGENCY.

Reading 1 (Blackwell and Jackson)

- 12. Expenditures over \$1,000.00**
- 13. Mayor’s Report**
- 14. Council & Council President’s Reports**
- 15. Adjournment**

RESOLUTION NO. 2019-83

INTRODUCED BY: Council as a Whole

MOTION FOR ADOPTION BY:

A RESOLUTION OVERRULING THE DECISION BY THE PLANNING AND ZONING COMMISSION IN CASE NO. 2019-PZ-20 TO DENY THE APPLICATION OF RASHID RASHID OF CHAMPION AUTO CARE & TOWING INC. FOR A CONDITIONAL USE PERMIT TO OPERATE AN AUTOMOTIVE REPAIR AND SERVICE BUSINESS INCLUDING TOWING OPERATIONS WITHOUT OVERNIGHT STORAGE IN A GENERAL COMMERCIAL (GC) ZONING DISTRICT.

WHEREAS, in **Case No. 2019-PZ-20** the City's Planning and Zoning Commission issued a decision denying the application of Rashid Rashid of Champion Auto Care & Towing Inc. ("the Applicant") for a conditional use permit to operate an automotive repair and service business including towing operations without overnight storage in a General Commercial (GC) zoning district; and

WHEREAS, the Applicant timely filed an appeal of the P&Z Decision to Council pursuant to Codified Ordinance Sections 1262.03(F) and 1262.13(F) and the Applicant presented its appeal to Council at its September 18, 2019 Council meeting.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

Section 1. The decision by the City's Planning and Zoning Commission in **Case No. 2019-PZ-20** denying the application of Rashid Rashid of Champion Auto Care & Towing Inc. for a conditional use permit to operate an automotive repair and service business including towing operations without overnight storage in a General Commercial (GC) zoning district is overruled. A conditional use permit to operate an automotive repair and service business including towing operations without overnight storage in a General Commercial (GC) zoning district is hereby granted to Rashid Rashid and Champion Auto Care & Towing Inc. and the Building Department is ordered to immediately make a record of, and provide the conditional use permit to, Rashid Rashid and Champion Auto Care & Towing Inc.

Section 2. 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 on the date indicated below, 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. Pursuant to Codified Ordinance Sections 1262.03(F) this Resolution, provided it receives the affirmative vote of five (5) or more members elected to Council, shall take effect and be in force immediately upon its passage.

PASSED: _____, 2019

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga and State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

RESOLUTION NO: 2019-84
INTRODUCED BY: Mayor Annette M. Blackwell
MOTION FOR ADOPTION BY:

**A RESOLUTION PROCLAIMING OCTOBER 31, 2019 FROM 5:30 P.M.
TO 7:30 P.M. AS HALLOWEEN OBSERVANCE IN THE CITY OF
MAPLE HEIGHTS AND DECLARING AN EMERGENCY.**

WHEREAS, the Mayor of the City of Maple Heights recommends that Halloween be observed in the City of Maple Heights on October 31, 2019 from 5:30 p.m. to 7:30 p.m.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Maple Heights, County of Cuyahoga and State of Ohio that:

Section 1. The Council of the City of Maple Heights, Ohio, directs that Halloween be observed in the City of Maple Heights on October 31, 2019 from 5:30 p.m. to 7:30 p.m.

Section 2. The Council further directs that the original of this Resolution shall be filed in the Journal of the proceedings of this Council, and that the Clerk of Council shall transmit a certified copy of same to the Chief of Police and the Maple Heights Board of Education.

Section 3. 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 on the date indicated below, 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 4. This Resolution constitutes an emergency measure necessary for the health and welfare of our residents, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2019

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

RESOLUTION NO. 2019-85

INTRODUCED BY: Councilwomen Toni Jones, Ebony Miller, Tanglyn Madden, Sharri Thomas and Edwina Agee

MOTION FOR ADOPTION BY:

CO-SPONSORED BY: Council President Ron Jackson

A RESOLUTION DESIGNATING OCTOBER 2019 AS “NATIONAL BREAST CANCER AWARENESS MONTH “IN THE CITY OF MAPLE HEIGHTS, AND DECLARING AN EMERGENCY.

WHEREAS, During National Breast Cancer Awareness Month, we recognize the women and men who courageously fight to survive, detect, treat and support survivors of this devastating disease and we honor the loving memory of those lost to this disease. We reiterate our continued commitment to eradicate breast cancer through education, early detection and continued research; and

WHEREAS, According to the American Cancer Society, in the United States this year more than 268,600 women and approximately 2,670 men will be diagnosed with breast cancer and approximately 41,760 women and more than 500 men in the U.S. are expected to die from breast cancer; and

WHEREAS, Approximately 10,240 women will be diagnosed with breast cancer in the State of Ohio this year and approximately 1,710 women are expected to die from this disease; and

WHEREAS, Besides skin cancer, breast cancer is the most commonly diagnosed cancer among American women; it is second only to lung cancer as the cause of cancer death; and

WHEREAS, A woman living in the U.S. has a 1-in-8 lifetime risk of being diagnosed with breast cancer, and men have a 1 in 833 lifetime risk of getting breast cancer; and

WHEREAS, Breast cancer typically produces no symptoms when the tumor is small and most easily treated; and although breast cancer generally has been referred to as a single disease, there are up to 21 distinct subtypes; and

WHEREAS, It is encouraging to know that survival rates have dramatically improved in recent years due to increased awareness through public education and medical advancements in early detection and treatment; and

WHEREAS, Education about the symptoms of breast cancer, early detection strategies and treatment are critical to save lives and preserve and protect families.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

Section 1. Council of the City of Maple Heights hereby designates October 2019 as National Breast Cancer Awareness Month in the City to raise public awareness of breast cancer, including its prevention, detection and treatment, as well as to increase knowledge of the programs that have been and are being developed to support individuals with breast cancer and their families.

Section 2. 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 on the date indicated below, 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. This Resolution constitutes an emergency measure necessary for the safety, health and welfare of the City, and to educate the public about breast cancer prevention and treatment and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2019

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

RESOLUTION NO.: 2019-86

INTRODUCED BY: Mayor Annette M. Blackwell

MOTION FOR ADOPTION BY:

A RESOLUTION AUTHORIZING THE ENGINEER TO BEGIN THE PREPARATION OF PLANS AND SPECIFICATIONS AND TO ADVERTISE FOR BIDS FOR ASPHALT ROAD REPAIRS ON RAYMOND STREET, BETWEEN PHILIP STREET AND TATRA STREET, AND ON LIBBY ROAD, BETWEEN GRANGER ROAD AND THE WEST BRIDGE APPROACH LOCATED WITHIN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.

WHEREAS, the Service Director has informed the Mayor and the Engineer that the asphalt pavement conditions on Raymond Street between Philip Street and Tatra Street are such that maintaining the pavement in a condition free of snow during Winter 2019-2020 will not be possible because of the difficulty in plowing deteriorated asphalt pavement with a variable cross slope; and

WHEREAS, Raymond Street between Philip Street and Tatra Street serves numerous residents as a local roadway which provides both land access and traffic circulation to residential neighborhoods located between Lee Road and Northfield Road; and

WHEREAS, the Engineer has prepared a street inventory which rates pavement conditions for streets located within the City of Maple Heights for use in the development of a potential 2020 citywide pavement maintenance program; and

WHEREAS, the Engineer has rated the asphalt pavement condition of Raymond Street between Philip Street and Tatra Street as Very Poor in the street inventory; and

WHEREAS, the Service Director has informed the Mayor and the Engineer that the asphalt pavement joint conditions on Libby Road between Granger Road and the west bridge approach are such that the entire pavement section is now susceptible to excessive deterioration during freeze/thaw cycles such as those anticipated during Winter 2019-2020; and

WHEREAS, the Engineer has confirmed the severity of the asphalt pavement joint conditions on Libby Road between Granger Road and the west bridge approach and recommended that the repair of these joints be included as part of any asphalt pavement repair work to be authorized for Raymond Street between Philip Street and Tatra Street; and

WHEREAS, Council deems it necessary and in the best interests of the health, safety and welfare of all of the City residents to perform routine repairs and preventative maintenance on various streets within the City of Maple Heights.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio that:

Section 1. The City Engineer is hereby authorized and directed to begin the preparation of plans and specifications and to provide advertising for bids for asphalt pavement repairs on Raymond Street, between Philip Street and Tatra Street, and on Libby Road, between Granger Road and the west bridge approach project in the City of Maple Heights.

Section 2. The Council of the City of Maple Heights hereby authorizes and directs the Finance Director to amend the appropriations as required for the expenditures outlined within this Resolution:

Section 3. 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 on the date indicated below, 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 4. This Resolution constitutes an emergency measure necessary for the health and general welfare of the residents of the City, and to begin the project in a timely manner before the winter months, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2019

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

RESOLUTION NO.: 2019-87

INTRODUCED BY: Mayor Annette M. Blackwell

MOTION FOR ADOPTION BY:

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH RWJ WIRING INCORPORATED TO PROVIDE SERVICES FOR THE STAFFORD PARK SITE LIGHTING IMPROVEMENTS PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the State of Ohio had notified the Mayor that funding in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) has been allocated to the City of Maple Heights for improvements to senior and youth recreational programs in the State of Ohio capital budget; and

WHEREAS, the City of Maple Heights had been directed by the State of Ohio to coordinate the expenditure of these capital budget funds through the Ohio Department of Natural Resources (ODNR); and

WHEREAS, the Service Director and City Engineer had determined that a significant portion of the lighting amenities at Stafford Park are inoperable or otherwise in a state of disrepair; and

WHEREAS, the Chief of Police had informed the Mayor that the inadequate lighting amenities at Stafford Park have little impact on discouraging and preventing loitering, vandalism, and other criminal behavior which are a direct threat to public safety; and

WHEREAS, the repair and/or replacement of the existing lighting amenities at Stafford Park would be a qualified expenditure of capital budget funds through the Ohio Department of Natural Resources (ODNR); and

WHEREAS, on June 5, 2019 Council passed **Ordinance No. 2019-45, As Amended** authorizing the Mayor and Engineer to take all actions necessary to fully utilize up to Fifty Thousand Dollars and No Cents (\$50,000.00) of state capital funds to implement LED lighting upgrades at Stafford Park, including advertising and seeking bids from contractors and suppliers, as deemed necessary; and

WHEREAS, the City Engineer sought five (5) price proposals and received two (2) price proposals for the Stafford Park Site Lighting Improvements Project and determined that RWJ Wiring Incorporated has submitted the lowest and best proposal for the work to be performed. Such proposal, including project contingency, is in the total amount of Thirty Four Thousand Eight Hundred Thirty Eight Dollars and Twenty-Eight Cents (\$34,838.28).

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

Section 1. The Mayor is authorized to enter into a contract with RWJ Wiring Incorporated in the amount not to exceed Thirty Four Thousand Eight Hundred Thirty Eight Dollars and Twenty Eight

Cents (\$34,838.28) for the Stafford Park Site Lighting Improvements Project, as more fully described in the price proposal on file in the Office of the City Engineer.

Section 2. The Council of the City of Maple Heights hereby authorizes and directs the Finance Director to amend the appropriations as required for the expenditures outlined within this Resolution:

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting on the date indicated below, 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 4. This Resolution constitutes an emergency measure necessary for the public peace, safety and general welfare of the City and to complete this project within the grant deadline, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2019

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

ORDINANCE NO.: 2019-88

INTRODUCED BY: Mayor Annette Blackwell and Council President Ron Jackson

MOTION FOR ADOPTION BY:

AN ORDINANCE ENACTING CHAPTER 819 "CIGARETTE AND TOBACCO VENDORS; SALES TO PERSONS UNDER 21" OF THE CODIFIED ORDINANCES OF THE CITY OF MAPLE HEIGHTS IN ORDER TO AMEND AND CREATE REGULATIONS INVOLVING LICENSING FOR AND SALES OF TOBACCO PRODUCTS, AND DECLARING AN EMERGENCY.

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States, responsible for nearly half a million deaths per year in the United States and costing the nation approximately \$300 billion in healthcare and lost worker productivity costs each year; and

WHEREAS, secondhand smoke exposure contributes to approximately 41,000 deaths among nonsmoking adults and 400 deaths in infants each year; and

WHEREAS, if smoking continues at the current rate among youth in the United States, 5.6 million of today's Americans younger than 18 will die early from a smoking-related illness; and

WHEREAS, ninety-five percent (95%) of all adult smokers begin smoking before they turn twenty-one (21) years old, and that adolescence is a critical period when many smokers move from experimental smoking to regular, daily use; and

WHEREAS, there is strong evidence that people who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age; and

WHEREAS, electronic nicotine delivery system use among minors has recently tripled, and use of these systems is associated with and may encourage the use of conventional tobacco products; and

WHEREAS, raising the minimum legal sales age for all tobacco products to twenty-one (21) will reduce access to these products by youth, as youth often acquire such products from older friends: over eighty percent (80%) of people purchasing tobacco for minors are between eighteen (18) and twenty (20) years old; and

WHEREAS, raising the age for tobacco sales to 21 and over in the City of Maple Heights would lessen the accessibility of tobacco to minors and would assist the City's interest in furthering the health, safety, and general welfare of the City's residents; and

WHEREAS, this Council has determined that these amended regulations shall be established in the Code as a matter of local self-government and a matter of local police powers; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government and the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio that:

Section 1. Chapter 819 Cigarette and Tobacco Vendors; Sales to Persons Under 21, of the Codified Ordinances of the City of Maple Heights is hereby adopted as follows:

CHAPTER 819

Cigarette and Tobacco Vendors: Sales to Persons Under 21

819.01 Definitions.

819.02 Sale to Persons Under 21 Prohibited.

819.03 Annual Permit Required.

819.04 Permit Revocation, Denial, o Suspension.

819.05 Non-Transferability.

819.06 Non-Retaliation.

819.07 Posting of Signs; Education; Outreach.

819.08 Enforcement; Appeals.

819.09 Injunction Relief.

819.10 Effective Date.

819.01 DEFINITIONS.

For the purpose of this Chapter:

(a) "Distribute" means to furnish, give or provide tobacco products to the ultimate consumer of the tobacco product.

b) "Permit" means an annual permit issued by the City of Maple Heights or the City's permitting agent for retail sale of tobacco products pursuant to Section 1727.03 herein.

(c) "Permittee" means the holder of a valid permit under this Chapter.

(d) “Permitting Agent” means an entity with which the City of Maple Heights has contracted to administer permit applications, enforcement, and/or provisions contained in this Chapter.

(e) “Person under 21” means a natural person who has not yet reached the age of 21 years.

(f) “Proof of age” means a driver’s license, a commercial driver’s license, a military identification card, a passport, or an identification card issued under R.C. 4507.50 to 4507.52 that shows that a person is 21 years of age or older and not a person under 21.

(g) “Tobacco product” means any product that is made from tobacco or derived from tobacco or that contains nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoke, heated, chewed, snorted, sniffed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, cigarettes, e-liquids, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus. “Tobacco product” also means electronic devices, including any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products, or e-hookahs. “Tobacco product” includes any component, part, or accessory used in the consumption of tobacco products, whether or not it contains nicotine including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. “Tobacco product” does not include any of the following:

(1) Any product that is a “drug” as that term is defined in 21 U.S.C. 321(g)(1); or

(2) Any product that is a “device” as that term is defined in 21 U.S.C. 321(h); or

(3) Any product that is a “combination product” as described in 21 U.S.C. 353(g).

819.02 SALE TO PERSONS UNDER 21 PROHIBITED.

(a) No permittee or agent of permittee shall sell or otherwise distribute to any person under 21 any tobacco product within the City.

(b) Before selling or otherwise distributing any tobacco product to another person, the person selling or distributing the tobacco product shall verify the age of any person who appears to be under 30 years of age by a proof of age.

(c) No person shall sell or otherwise distribute tobacco products by or from a vending machine except in an area within a business office, or other place not open to the general public or in an area to which persons under 21 are not permitted.

(d) It shall not be a violation of this Section to sell or otherwise distribute any product that has been approved as a tobacco cessation aid by the United States Food and Drug Administration.

819.03 ANNUAL PERMIT REQUIRED.

(a) No person shall engage in retail sales or distribution of tobacco products within the City without a valid permit issued by the City or its permitting agent.

(b) The following items shall be required in applying for a permit, or renewing a permit under this Section:

(1) A valid vendor's license from the Ohio Department of Taxation;

(2) If applicable, a license required by R.C. Chapter 5743;

(3) The location where the permit applicant proposes to engage in retail sales of tobacco products;

(4) A nonrefundable permit administration fee of \$100.00; and

(5) Such other information as determined by the City or its permitting agent to be necessary to administer the permitting system provided herein and to effectuate the purposes of this Chapter.

(c) A permit granted under this Section shall be valid from the date of issuance until December 31 of the year of issuance.

(d) Permit administration fees reinstatement fees, and civil penalties collected in administering this Chapter may be collected by the City or its permitting agent and shall be credited to the City's general fund to defray the costs of administration and enforcement of this Chapter. Alternatively, the City and its permitting agent may agree that the permitting agent will retain all or a portion of the fees as compensation for its services as the permitting agent.

(e) For purposes of this Section, "valid permit" means a permit issued under this Section that has not expired, that is not within a period of suspension or failure-to-reinstate status, and that has not been revoked under this Chapter or any provision of applicable law.

(f) A separate permit shall be required for each retail sales location regardless of whether or not a person owns or operates more than one retail sales location within the City.

(g) A penalty equal to 25 percent of the applicable permit fee shall be assessed and collected by the City or its permitting agent for permit fee renewal payments that are not received or postmarked by the first of January.

819.04 PERMIT REVOCATION, DENIAL, OR SUSPENSION.

(a) Application for a permit may be denied for any of the following reasons:

(1) The permit application had a permit revoked within the previous three years;

(2) The permit applicant is determined to have knowingly included false or misleading information in the permit application or renewal permit application;

(3) The applicant's current permit has been suspended and the period of suspension has not elapsed;

(4) A business owned or operated by the permit applicant engaging in the sale of tobacco products within the City is the subject of a court order or a city resolution or final order declaring such business to be a public nuisance, where said nuisance has not been abated, or where a court has ordered the sales of tobacco products shall cease pursuant to any temporary restraining order preliminary injunction, or permanent injunction issued by said court;

(5) The permit applicant is in arrears with respect to any fine imposed for violation of this Chapter; or

(6) The permit applicant has failed to provide any of the items required under Subsection 1727.03(b).

(b) For purposes of Subsection (a) of this Section, "applicant" shall include entities with common ownership or management to the entity or natural person listed on the application.

(c) A permit may be suspended for a definite period, not to exceed six months, as determined by the City or its permitting agent. Prior to reinstatement of the permit following expiration of the suspension, the permittee shall remit a \$100.00 permit reinstatement administration fee. A permit may be suspended for any of the following reasons:

(1) A business owned and operated by the permit applicant engaging in the sale of tobacco products within the City is the subject of a court order or city resolution or final order declaring such business to be a public nuisance where said nuisance has not been abated, or where the court has ordered that sales of tobacco products shall cease pursuant to any temporary restraining order, preliminary injunction, or permanent injunction issued by said court;

(2) Substantiated evidence that permittee or agent of permittee has sold or otherwise distributed any tobacco product to any person under 21 within the City more than one time in the past 12 months;

(3) The finding by a federal or state agency or court that the permit applicant has violated a federal or state rule or regulation governing the sale of tobacco products;

(4) Entry of a City or its permitting agent pursuant to Section 1727.08 is refused for inspection, or investigation is refused, hindered, or thwarted; or

(5) The permittee is in arrears with respect to any fine imposed for any civil penalty levied under this Chapter.

(d) A permit may be revoked for any of the following reasons:

(1) The permit applicant is determined to have knowingly included false or misleading information in the permit application or renewal permit application.

(2) Substantiated evidence that permittee or agent of permittee has sold or otherwise distributed any tobacco product to any person under 21 within the City more than one time in the past 12 months;

(3) Entry of a City or its permitting agent pursuant to Section 1727.08 is refused, or inspection or investigation is refused, hindered or thwarted;

(4) A period of suspension imposed under Subsection (c) herein has elapsed and the permittee remains in arrears of payment of such fine or penalty; or

(5) The permittee has been subject to three or more suspensions in the previous 24-month period.

819.05 NON-TRANSFERABILITY.

A permit is non-transferable. A new permit will be issued at no cost to the permittee who changes location. Any sale or transfer of ownership of permittee's business will require a new application and subsequent permit issuance.

819.06 NON-RETALIATION.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reported violations of any provisions of this Chapter.

819.07 POSTING OF SIGNS; EDUCATION; OUTREACH.

(a) A sign stating “Under 21 Sales of Tobacco and Nicotine Products and Devices is Prohibited by Law Pursuant to Chapter 819 of the Codified Ordinances of the City of Maple Heights shall be posted. The font for this signage text shall be no smaller than one-half of an inch in height. The sign shall be clearly and conspicuously posted at or near the tobacco product point of sale location within the business. The sign must be posted in a location that is clearly visible to any buyer attempting to purchase a tobacco product at each point of sale location within the business. Multiple signs shall be posted as deemed necessary by the City or its permitting agent to ensure proper visibility.

(b) The City or its permitting agent shall collaborate with the community to prepare and distribute education materials, required signage to all vendors, hold education events, implementation and compliance with this Chapter. The City or its permitting agent shall make all reasonable efforts to conduct such education efforts within the first six months of the program and at regular intervals as necessary thereafter.

819.08 ENFORCEMENT; APPEALS.

(a) The City and its permitting agent shall have authority to implement and enforce the provisions of this Chapter.

(b) The City or its permitting agent may conduct an inspection of a business prior to issuing a permit. The City or its permitting agent may inspect each business holding a permit upon proper identification and upon stating the purpose and necessity of an inspection. The City or its permitting agent may enter at reasonable times to inspect or investigate and examine or copy records to determine compliance with this Chapter. The City or its permitting agent may apply for and any judge of a court of record may issue an appropriate search warrant necessary to achieve the purpose of this Chapter within the

court's territorial jurisdiction. If entry is refused or inspection or investigation is refused, hindered or thwarted after the City or its permitting agent receives permission or a warrant to inspect, the City or its permitting agent may suspend or revoke the permit as set forth herein.

(c) In addition to the denial, suspension, or revocation of a permit, the City or its permitting agent may impose the following civil penalties for violations of this Chapter:

(1) For a first violation, a written warning shall be provided to violator.

(2) For a second violation within five years of the first violation, \$250.00.

(3) For a third violation within five years of the first violation, \$500.00.

(4) For a fourth violation within five years of the first violation, \$1,000.00.

(5) For a fifth violation within five years of the first violation, administrative permit review to determine if the permit should be suspended or revoked.

(d) When the City or its permitting agent determines to issue a civil penalty for a violation, to deny a permit application, or to suspend or revoke a permit, the City or permitting agent shall notify the permittee of said determination by sending written notice of said determination by U.S. first-class mail to the address provided on the permit application.

(e) The City or its permitting agent shall not be required to conduct an evidentiary hearing prior to issuing a determination provided for in Subsection (d) herein.

(f) The permittee may file a written notice of appeal with the City Director of Law within 14 calendar days after the date the determination was mailed. The process to request said appeal shall be provided in the notice of the determination set forth in Subsection (d) herein. The determination shall take effect following the expiration of time to file the notice of appeal.

(g) An appeal hearing shall be heard by the XXXX pursuant to Chapter XXXX, which shall follow the relevant hearing procedures established for appeals from orders of the XXXX. The burden of proof by preponderance of the evidence shall be upon the City or its permitting agent. The hearing board shall be the final, administrative decision maker.

819.09 INJUNCTION RELIEF.

(a) The provisions of **Sections 819.01 through 819.08** are health ordinances applicable to real property in the City and may be enforced by civil action pursuant to the Revised Code.

(b) Repeated violations of this Chapter may constitute a public nuisance. The law director may bring a cause of action to abate such nuisance and enjoin the recurrence of such violations and for such other relief may be available at law or in equity.

819.10 EFFECTIVE DATE.

Permits and other requirements set forth in this Chapter shall be effective as of XXXXXXXXXX.

Section 2. All former Ordinances or parts herein conflicting or inconsistent with the provisions of this Ordinance, or any part hereof, are hereby repealed.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all such 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 4. The Mayor is hereby authorized to enter into an agreement with the District Advisory Council of the Cuyahoga County Board of Health to serve as the permitting agent provided for under Chapter 819, on such terms as approved by the Director of Law.

Section 5. This Ordinance constitutes an emergency measure necessary for the public peace, safety and general welfare of the City and for the further reason to begin the permitting process, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2019

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

Ordinance No. 2019-88

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