

JACKSON CITY COUNCIL
Regular Session
December 14, 2009
7:00 p.m.

Call to Order..... President Speakman

Pledge of Allegiance..... Mr. Adams

Opening Prayer..... Mr. Wiggins

Roll Call

Approval of Minutes

November 23, 2009

VISITORS

COMMITTEE REPORTS:

- Utility - Eric Brown, Troy Adams, and Curt Wiggins
- Budget & Finance - Troy Adams, Curt Wiggins, and Tom Evans
- Police, Fire & Traffic - Tom Evans, Eric Brown, and Troy Adams
- Service - Randey Smith, Cary Brown and Jeff Elliott
- Railroad - Curt Wiggins, Randey Smith and Tom Evans
- Building/Recreation - Randey Smith, Cary Brown and Jeff Elliott
- City Auditor
- Law Director
- Mayor
- Service/Safety Director

ORDINANCES AND RESOLUTIONS

CORRESPONDENCE

OLD BUSINESS

NEW BUSINESS

ADJOURN

JACKSON CITY COUNCIL

Minutes from
November 23, 2009

Jackson City Council met in regular session on Monday, November 23, 2009 at 7:00 p.m. at the Jackson City Council chambers. President Ron Speakman called the meeting to order. The Pledge of Allegiance was given, led by Mr. Evans. The Prayer was given, led by Mr. Wiggins.

A roll call was taken as follows:

- Mr. Evans – present
- Mr. Adams – present
- Mr. Eric Brown – present
- Mr. Smith – present
- Mr. Cary Brown – present
- Mr. Elliott - present
- Mr. Wiggins – present

Mr. Wiggins made a motion to approve the minutes of November 9, 2009 regular session seconded by Mr. Adams. In a voice vote, all Council agreed.

VISITORS

COMMITTEE REPORTS

UTILITY

Mr. Eric Brown stated that two ordinances were being presented tonight Ordinance 107-09 referenced garbage reduction and Ordinance 108-09 suspended the increase put into effect last December.

BUDGET & FINANCE

Mr. Troy Adams stated the committee had met on November 12th and 18th with the Auditor and staff and the Administration, Mr. Speakman and Mr. Fain. The discussion involved the 2010 Budget, general fund, cost allocation, layoffs and job consolidations. There are two options, zero base budget, temporary and permanent budget with no carry over and cost allocations, built in to the fixed cost of each department, this will generate \$800,000 for the general fund and bring out of the red. The Administration took a new approach, giving the departments a number for their budget. The committee also requested to see the budget without capital improvements. Further stating this will be a true budget and enjoyed working with everyone.

POLICE, FIRE & TRAFFIC – No Report

Mr. Eric Brown stated that the Fire Fighters Dependency Fund Board will meet on November 25, 2009 at 6:30; they had nominated Newell, Vermillion and Anderson to the board.

Mr. Evans did speak on the golf cart issue, this is mentioned in Mr. Detty's report, they must be titled with license plate, seatbelts, etc., according to ORC, and it is just like a mini automobile. We can pass an ordinance to modify, allowing certain hours and streets. Mr. Detty stated they must meet the requirements of a motor vehicle. Mr. Cary Brown asked about Amish buggies. Mr. Detty stated they are not golf carts, I wasn't ask about those. Mr. Cary Brown asked if they could do just as much damage as a cart. Mr. Speakman asked about the motorized scooters. Mr. Detty stated they were exempted.

SERVICE – No Report

RAILROAD - No report

BUILDING/RECREATION – No report

CITY AUDITOR

Mr. Humphreys stated on January 25, 2010, there will be a local government meeting for all elected officials from 5:30 to 7:00. He requested that Resolution No. 22-09 not be read. He stated beginning in January invoices will be paid bi-weekly, should save approximately \$1000 a year on postage. We did receive a payment from US Rail in the amount of \$7,195.96.

LAW DIRECTOR

Mr. Detty gave his report, see attached. He requested an executive session to discuss US Rail and the potential litigation involving rents and right of ways.

MAYOR

Mayor Heath stated they are still collecting leaves, we encountered some problems with the machine, and it has seen better days. The administration is still compiling numbers for the 5 year comprehensive plan, comparing apples to apples is not easy. He thanked Mr. Woltz for the fine job of filling in for Mr. Sheward; hopefully he will be back by the next meeting. He wished citizens of Jackson a wonderful Thanksgiving. Mr. Wiggins complimented the Mayor and Mr. Woltz for their work on the budget.

SAFETY/SERVICE DIRECTOR

Mr. Woltz stated Resolution 23-09 was to show support of the broadband concept, this may generate revenue for our county, and there will be more after the county makes their decision. Mr. Woltz stated that with the help of Mrs. Sexton they have worked hard to have personal services in the full budget, providing debt services, and projected revenue.

Mr. Humphreys asked that Ordinance 103-09 be corrected before reading.

ORINANCES AND RESOLUTIONS

ORDINANCE NO. 93-09

AN ORDINANCE TO APPROVE THE FORM AND AUTHORIZE THE EXECUTION OF POWER SALES CONTRACTS WITH AMERICAN MUNICIPAL POWER, INC. AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH REGARDING MELDAHL AND GREENUP HYDROELECTRIC PROJECT PARTICIPATION.

Third Reading

In a roll call vote to adopt the ordinance, Council voted as follows:

- Mr. Evans – yes
- Mr. Adams – yes
- Mr. Eric Brown – yes
- Mr. Smith – yes
- Mr. Cary Brown – yes
- Mr. Elliott – yes
- Mr. Wiggins – yes

ORDINANCE NO. 93-09 DULY ADOPTED

ORDINANCE NO. 103-09

0AN ORDINANCE TO MOVE APPROPRIATIONS, AND DECLARING AN EMERGENCY.

First Reading

Mr. Evans made a motion to adopt the ordinance, seconded by Mr. Adams. In a voice vote, all Council agreed.

Mr. Adams a motion to suspend the rules, seconded by Mr. Eric Brown. In a roll call vote, Council voted as follows:

- Mr. Evans – yes

Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

ORDINANCE NO. 103-09 DULY ADOPTED

ORDINANCE NO. 104-09

AN ORDINANCE APPROVING ADDITIONAL APPROPRIATIONS IN THE STREET AND ALLEY FUND, WATER UTILITY OFFICE FUND, SEWER UTILITY OFFICE FUND, ELECTRIC UTILITY DEPARTMENT FUND, GARBAGE FUND, AND ELECTRIC FUND, AND DECLARING AN EMERGENCY.

First Reading

Mr. Eric Brown made a motion to adopt the ordinance, seconded by Mr. Elliott. In a voice vote, all Council agreed.

Mr. Evans a motion to suspend the rules, seconded by Mr. Eric Brown. In a roll call vote, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

ORDINANCE NO. 104-09 DULY ADOPTED

ORDINANCE NO. 105-09

AN ORDINANCE APPROVING ADDITIONAL APPROPRIATIONS IN THE WATER FUND AND SEWER FUND, AND DECLARING AN EMERGENCY.

First Reading

Mr. Eric Brown made a motion to adopt the ordinance, seconded by Mr. Adams. In a voice vote, all Council agreed.

Mr. Eric Brown a motion to suspend the rules, seconded by Mr. Wiggins. In a roll call vote, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

ORDINANCE NO. 105-09 DULY ADOPTED

ORDINANCE NO. 106-09

AN ORDINANCE TRANSFERRING APPROPRIATIONS, AND DECLARING AN EMERGENCY.

First Reading

Mr. Adams made a motion to adopt the ordinance, seconded by Mr. Elliott. In a voice vote, all Council agreed.

Mr. Wiggins a motion to suspend the rules, seconded by Mr. Eric Brown. In a roll call vote, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

ORDINANCE NO. 106-09 DULY ADOPTED

ORDINANCE NO. 107-09

AN ORDINANCE AMENDING JACKSON CODIFIED ORDINANCE SECTION 945.03(B)-GARBAGE-COLLECTION RATES FOR RESIDENCES, AND DECLARING AN EMERGENCY.

First Reading

Mr. Eric Brown made a motion to adopt the ordinance, seconded by Mr. Elliott. In a voice vote, all Council agreed.

Mr. Evans a motion to suspend the rules, seconded by Mr. Eric Brown. In a roll call vote, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

ORDINANCE NO. 107-09 DULY ADOPTED

ORDINANCE NO. 108-09

AN ORDINANCE TO MODIFY ELECTRIC RATES FOR THE MONTHS OF DECEMBER 2009 THROUGH MARCH 2010, AND DECLARING AN EMERGENCY.

First Reading

Mr. Eric Brown made a motion to adopt the ordinance, seconded by Mr. Wiggins. In a voice vote, all Council agreed.

Mr. Wiggins a motion to suspend the rules, seconded by Mr. Eric Brown. In a roll call vote, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes
Mr. Adams – yes
Mr. Eric Brown – yes
Mr. Smith – yes
Mr. Cary Brown – yes
Mr. Elliott – yes
Mr. Wiggins – yes

ORDINANCE NO. 108-09 DULY ADOPTED

RESOLUTION NO. 22-09

Intentionally Omitted

RESOLUTION NO. 23-09

A RESOLUTION SUPPORTING AND ENDORSING THE BROADBAND CONCEPT TO COME TO JACKSON COUNTY, OHIO, AND DECLARING AN EMERGENCY.

First Reading

Mr. Eric Brown made a motion to adopt the resolution, seconded by Mr. Wiggins. In a voice vote, all Council agreed.

Mr. Wiggins a motion to suspend the rules, seconded by Mr. Smith. In a roll call vote, Council voted as follows:

- Mr. Evans – yes
- Mr. Adams – yes
- Mr. Eric Brown – yes
- Mr. Smith – yes
- Mr. Cary Brown – yes
- Mr. Elliott – yes
- Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

- Mr. Evans – yes
- Mr. Adams – yes
- Mr. Eric Brown – yes
- Mr. Smith – yes
- Mr. Cary Brown – yes
- Mr. Elliott – yes
- Mr. Wiggins – yes

RESOLUTION NO. 23-09 DULY ADOPTED

CORRESPONDENCE

Letter from the Department of Liquor Control, see attached. This was turned over to the Police, Fire and Traffic for review.

OLD BUSINESS

NEW BUSINESS


Mr. Smith requested an executive session to discuss current litigation City vs. US Rail and possible/potential litigation rents and right of ways, requesting that the Administration, Auditor and staff; council clerk and newly elected officials are present, seconded by Mr. Eric Brown. In a roll call vote, all members agreed. Council went into executive session at 7:30 p.m.

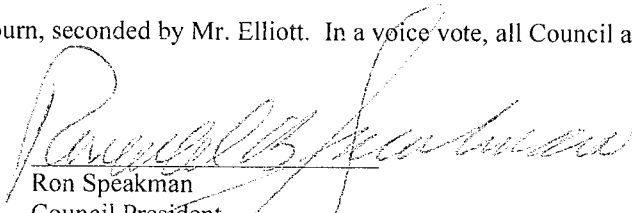
Mr. Smith made a motion to return to regular session, seconded by Mr. Eric Brown. In a voice vote, all members agreed. Council returned to regular session at 7:50 p.m.

Mr. Evans announced a Police, Fire and Traffic meeting to be held on 6:30 p.m., December 14, 2009 prior to the regular council meeting, to discuss the letter from Liquor Control and any and all matters that involve this committee.

ADJOURN

Mr. Smith made a motion to adjourn, seconded by Mr. Elliott. In a voice vote, all Council agreed. Council adjourned at 7:51 p.m.


 Tera Brown
 Clerk
 Date 12-14-09


 Ron Speakman
 Council President
 Date 12/14/09

JOHN L. "JACK" DETTY

Jackson City Law Director

145 Broadway Street

Jackson, Ohio 45640

Phone: 740-286-2201

Fax: 740-286-3492

jdetty@jacksonohio.us

Jackson City Council

November 23, 2009

REPORT OF THE LAW DIRECTOR

The following is the Report of the Law Director:

• **ORDINANCES AND RESOLUTIONS - NOTES**

- Ordinances 103-09, 104-09, 105-09, and 106-09 were prepared at the request of the Auditor's Office. Any questions can be addressed by the Auditor's Office.
- Ordinance 107-09 amends the Codified Ordinances to allow residences and businesses which are vacant to have reduced garbage rates for up to three months. This was requested at the last meeting.
- Ordinance 108-09 suspends the \$.075 electric increase for December '09 through March '10. This was requested at the last meeting.
- Resolution 22-09 is a Then and Now which was prepared at the request of the City Auditor's Office. Any questions can be addressed by the Auditor's Office.
- Resolution 23-09 was prepared at the request of Tom Woltz, and is a resolution supporting the broadband concept for Jackson County. Mr. Woltz can provide any information or answer any questions concerning this resolution.

• **RENTS AND RIGHT OF WAYS ORDINANCE**

- I would request an executive session to discuss this matter, as it is threatened litigation.

- **CITY v US RAIL SUIT**

- I would request an executive session to discuss this matter and bring you up to date in this pending litigation.

- **GOLF CARTS/FOUR WHEELERS**

- At the last council meeting I was requested to provide an opinion concerning the operation of golf carts and four wheelers upon the City streets. I have researched this matter and an opinion is attached to this report.

As always, thank you for your service, and if at any time you have any questions or would like to discuss any issues with me please feel free to stop by my office, or call me at 710-1214.

To each and all

HAVE A WONDERFUL THANKSGIVING...

John L. "Jack" Detty

City of Jackson

Phone: 740-286-1112
Fax: 740-286-8788
E-Mail: jdetty@jacksonohio.us

John L. "Jack" Detty
Law Director

Memorandum

TO: Randy Heath, Mayor
William Sheward, Safety/Service
Director
Tom Woltz, Acting Safety/Service
Director
Jim Humphreys, City Auditor
Ronald Speakman, Council President
Tom Evans, Council Member at Large
Troy Adams, Council Member at Large
Eric Brown, Council Member at Large
Randey Smith, 1st Ward Council
Member
Cary Brown, 2nd Ward Council Member
Jeff Elliott, 3rd Ward Council Member
Curt Wiggins, 4th Ward Council
Member

FROM: John L. "Jack" Detty

Cc: Tera King, City Council Clerk

DATE: November 23, 2009

SUBJECT: Golf Carts/Four Wheelers

Privileged and Confidential Communication

Dear Council Members and Administration:

At the November 9, 2009 Council meeting I was asked to research the law concerning the operation of golf carts and four wheelers upon public streets and rights-of-way. Pursuant to that request I have researched the applicable law of the State of Ohio and submit this memorandum.

BACKGROUND; DEFINITIONS:

Ohio Attorney General Opinion 90-043 has determined that a golf cart is a "motor vehicle" under the laws of the State of Ohio. Being a motor vehicle it is my opinion the licensing and operation of golf carts upon the public streets and highways must conform to Ohio law. This will be discussed in greater detail below.

Chapter 4519 of the Ohio Revised Code deals with snowmobiles and “all-purpose vehicles”. The definition of an “all-purpose vehicle” is “ * * * any self propelled vehicle designed primarily for cross-country travel on land and water, or more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof, including vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all-season vehicles, mini-bikes, and trail bikes. * * *” It is my opinion what we commonly refer to as four wheelers would meet the definition of “all-purpose vehicle”. As such, the laws for the licensing and operation of the four wheelers are different than those regulating golf carts.

GOLF CARTS:

Since a golf cart is a “motor vehicle” it is my opinion the operation and use of a golf cart upon the public streets and highways must be in compliance with Ohio law. A golf cart operating upon the public streets should be properly licensed through the Bureau of Motor Vehicles. The golf cart must display license plates the same as any other motor vehicle. In order to operate upon the public streets golf carts should be properly equipped with lighting as required by law, braking, and the like. I do not believe merely placing a slow moving vehicle on a golf cart would meet this requirement.

Further, under Ohio law, if a golf cart is properly licensed and meets all other equipment requirements, the operator must have a valid driver’s license.

Obviously the event that comes to mind where the City is inundated with golf carts is the annual Apple Festival. Perhaps the City should consider appropriate legislation to prohibit the use of golf carts that are not properly licensed, and set forth special exceptions for the Apple Festival.

FOUR WHEELERS:

The general rule is an “all-purpose vehicle” (i.e. four wheeler) cannot be operated upon the public streets and highways unless it is properly licensed and equipped. If the four wheeler is properly licensed, and if it has an adequate headlight and at least one taillight, and has adequate brakes, it may be operated upon the public streets and public highways by a person who has a valid operator’s license.

There are a few exceptions which may permit the operation of an all-purpose vehicle which is not properly licensed. This exception basically allows a person to unload an all-purpose vehicle, and then drive it a short distance upon a public roadway to reach an area where unlicensed operation is permitted (i.e. private property, public lands set aside and dedicated for use of such vehicles).

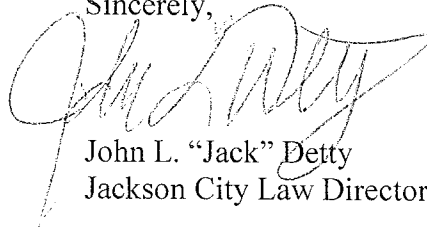
One must be at least 16 years of age to operate an all-purpose vehicle.

CONCLUSION:

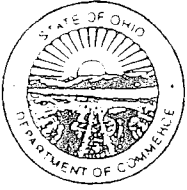
It is my opinion that golf carts and four wheelers may not be operated upon the public streets unless the vehicle is 1) properly licensed; 2) meets all equipment requirements of Ohio law; and 3) is operated by a person who has a valid operator's license.

If you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Detty". The signature is stylized and cursive, with a large initial "J" and "D".

John L. "Jack" Detty
Jackson City Law Director



Ohio Department of Commerce
Division of Liquor Control

6606 Tussing Rd., P.O. Box 4005
Reynoldsburg, OH 43068-9005
(614)644-2360 FAX(614)644-6968
<http://www.com.state.oh.us>

Ted Strickland
Governor

Kimberly A. Zurz
Director

NOTICE TO LEGISLATIVE AUTHORITIES
Re: Permit Renewal Objections

NOVEMBER 17, 2009

CLERK OF JACKSON MUNICIPAL COUNCIL
145 BROADWAY ST
JACKSON OHIO 45640-1656

Dear Clerk of Legislative Authority:

The purpose of this letter is to notify you that all permits to sell alcoholic beverages in your political subdivision will expire on February 1, 2010. In order to maintain permit privileges, every permit holder must file a renewal application.

Ohio Revised Code Section 4303.271(B) provides the legislative authority with the right to object to the renewal of a permit and to request a hearing. The hearing may be held in the county seat of the county in which the permit premises is located if that request is made in writing. This will be your only opportunity to object to the renewal of a liquor permit premises which might be a problem in your community.

In order to register a valid objection with this Division and obtain a hearing, the legislative authority must pass a resolution which specifies the reason for objecting. The reasons for the objection must be based upon the grounds set forth in Ohio Revised Code Section 4303.292(A). The Chief Legal Officer of your political subdivision must also submit a statement with the resolution that, in the Chief Legal Officer's opinion, the objection is based upon substantial legal grounds within the meaning and intent of Ohio Revised Code Section 4303.292(A). **The resolution and Chief Legal Officer's statement must be addressed to the Division of Liquor Control, Attn: Legal Section, 6606 Tussing Road, P.O. Box 4005, Reynoldsburg, Ohio 43068-9005 and postmarked no later than January 4, 2010.**

For your convenience, we have enclosed a brochure entitled "How to Object to the Issuance or Renewal of a Liquor Permit", which explains the process in more detail.

You may wish to contact the law enforcement agency for your jurisdiction to determine if it has any information which will aid in your decision whether or not to object and request a hearing. If you wish to obtain a list of permit holders in your jurisdiction, you may now access this list from our website at www.com.ohio.gov/liqr, and at the left click on Permit Holder Info." and then click on "ACTIVE Permit Holders By County,.....(In print image format)". If you do not have access to the internet, this list can be provided by this Division upon written request.

If you have any questions, please contact the Legal Section at (614)644-2489.

Very truly yours,

Terry Poole, Superintendent

What Type of Evidence Should Be Submitted at the Hearing?

Evidence must be pertinent to the advisability of granting or renewing the permit. Speculative testimony not supported by sufficient evidence is of little use because Ohio courts have ruled such testimony is insufficient reason not to allow a business to operate.

Although the safety and welfare of Ohio citizens is first priority, the division is guided by statutes, rules and legal cases in determining whether to overrule or sustain an objection. Evidence presented, therefore, should establish that one or more of the following conditions exist, or would exist if the permit is issued:

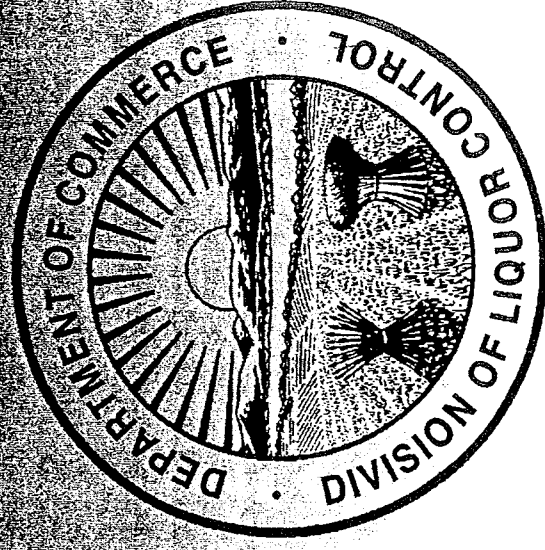
- Conviction for a crime relating to their ability to operate a liquor establishment of the applicant, any partner, member, officer, director, manager or shareholder owning 10 percent or more of the capital stock;
- An applicant's alcohol or drug addiction;
- An applicant's unfavorable enforcement record and/or operation in disregard for laws, regulations or local ordinances;
- An applicant's misrepresentation of a material fact when applying for the permit;
- Inability of law enforcement officers or authorized agents of the division to gain ready entrance to the premises;

- The location of the establishment substantially and adversely interfering with the public decency, sobriety, peace, or good order of the neighborhood, or the normal, orderly conduct of a public institution;

- Saturation in the neighborhood such that the permit applied for would be detrimental to and substantially interfere with the morals, safety or welfare of the public. Saturation means "too many." However, the same number of establishments resulting in saturation in a residential area may not result in saturation in a commercial area.

Because each case is unique, presentation of such evidence may result in the denial of a permit, but does not guarantee it. Additionally, a general objection based on location of an institution, moral beliefs, institutional policy, adequate number of permit premises currently in the neighborhood, inadvisability, or economic and social consequences of drinking do not constitute reasonable bases to reject a permit.

HOW TO... Object to the Issuance or Renewal of a Liquor Permit



Ohio Department of Commerce Division of Liquor Control

Bob Taft, Governor

Lt. Governor Jenette Bradley, Director

Rae Ann Estep, Superintendent

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