

JACKSON CITY COUNCIL  
*Minutes From*  
OCTOBER 30, 2017  
7:00 P.M.  
REGULAR SESSION

Jackson City Council met in Regular session on Monday, October 30, 2017 at 7:00 p.m. at Jackson City Council Chambers. President Eric Brown called the meeting to order. The Pledge of Allegiance was led by Mr. Queen. The Prayer was given by Mr. Hensler.

Roll call was taken as follows:

- Mr. Ondera-present
- Mr. Kitchen-present
- Mrs. Jones-present
- Mr. Hensler-present
- Mr. Queen-present
- Mr. Elliott-present
- Mr. Foster-present

#### **VISITORS**

Elizabeth Lamerson, who is a resident of Pike County, said the Piketon Uranium Enrichment Plant is planning to build a landfill to dispose of the demolition and the cleanup debris. It will contain radioactive waste and will be located about 25 miles from Jackson. The Department of Energy is in favor of this landfill. They said there were three options:

1. Do nothing.
2. To ship the waste off-site to an established facility.
3. To build an on-site landfill.

The option to do nothing at all is not an option due to the liability the Department of Energy would incur. The decision was made solely by the Department of Energy, at which time the public and EPA were notified of the decision. They were asked if the bedrock was cracked or fractured below 20 feet and the Department of Energy stated it was not. Another report requested by Village of Piketon shows it is cracked below, down to about 77 feet. The Department of Energy confirmed this later. There will be very little space between the landfill and ground water. Jackson County Water gets its water from the aquifer that will be close to this landfill.

The Department of Energy said there cannot be anything done to change this decision, but that is not true. They said shipping the waste off would be a better long term solution. The closest resident to this landfill is 1007 feet from the location. The only reason they chose this way was to save money. By shipping the waste off-site, they keep the high paying jobs longer and waste disposed of properly so it will not poison us.

Mr. Queen made a motion granting her more time to speak, seconded by Mr. Hensler. In a voice vote, all members agreed.

The Ohio EPA received a \$3.2 million payment from the Department of Energy, which influenced their decision. The Commissioners of Jackson, Pike, and Scioto counties have all signed a document in favor of the on-site disposal. The letter was also to continue funding for the facility. The Department of Energy is providing information that is partially correct, using it as a scare tactic. She is hoping that everyone will support fighting this decision and getting the waste moved off-site. They would like the elected officials to pass a resolution regarding this. They have already had some documents signed opposing the landfill. She will give Mr. Kirby a copy of a sample resolution for him to review.

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**APPROVAL OF MINUTES**

Mr. Elliott made a motion to approve the minutes from October 10, 2017 Special session, seconded by Mr. Hensler. In a voice vote, all members agreed.

**AUDITOR'S MONTHLY REPORT**

Mr. Hensler made a motion to approve the September 2017 Auditor's report, seconded by Mrs. Jones. In a voice vote, all members agreed.

**COMMITTEE REPORTS**

**UTILITY**-No Report.

**BUDGET & FINANCE**

Mr. Kitchen stated the minutes from the Budget & Finance committee meeting are the in the packets. It did not go as it was planned. He stated he did not mean to upset anyone, there was just a miscommunication. What he meant by Mr. Elliott being out of order according to Robert's Rules, was he did not address the Chairman. Mr. Kitchen said after the meeting ended, some of council and visitors stayed and had a question and answer session. If they had made a stipulation prior to the meeting, regarding people speaking, he would not have permitted it. This was not addressed in the minutes or Mr. Kitchen's notes.

**POLICE, FIRE, & TRAFFIC**-No report.

**SERVICE -(STREET & ALLEY, RECREATION, BUILDINGS & GROUNDS**-No report.

**JAIL COMMITTEE**-No report.

**CITY AUDITOR**-No report.

**LAW DIRECTOR**

Mr. Kirby stated everyone should have received the letter that was released after the audit was completed. If anyone has any questions, please let him know. He said everyone should also have a revised letter to the Tax Commissioner he sent out after the last meeting. From the time the petition was requested until the meeting, the law changed. They made a more streamlined version. It completely eliminates Common Pleas Court.

Mr. Elliott would like for the audit letter to be included as part of the minutes for this meeting.

Mr. Kitchen asked Mr. Kirby's office to seek an opinion from the Ohio Secretary of State's office regarding ORC 731.07. He thinks this law was violated when the Mayor's salary was raised. He said they might also want to contact the Attorney General's office and local Prosecutor. The salary should have been changed prior to the election so other people might want to run, instead of after the election. Mr. Kirby stated the Attorney General's office is not in business to give opinions to municipalities, etc. Mr. Kirby stated he did give an opinion to council regarding this. He said he thought there was a Supreme Court opinion on this also. It means what it says and it says to take effect before the term. Mr. Kitchen asked for a copy of this from the Supreme Court. Mr. Kirby said he thought there was also one from Carlile Patchen & Murphy who is well regarded. Mr. Kitchen said the only way to really know is through the court. Mr. Kirby said you can't stop anyone from filing suit.



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Mr. Brown asked Mr. Reed if any of the elected official's salaries were increased during their term. Mr. Reed said he asked our legal council that question and no it was not. Mr. Brown asked if the Mayor's benefit package changed during his term. Mr. Reed said it didn't change until the next term. Mr. Reed said it was more of an ethical question than legal and Mr. Kirby stated they gave an opinion on that also.

**MAYOR**

Mayor Heath stated tomorrow night is Trick or Treat is from 6-7:30 p.m. Everyone be extra cautious when driving.

On October 17<sup>th</sup>, Mayor Heath said he officially named the playground at Manpower Park, "The Glenna Reed Playground at Manpower Park." Glenna and Bryn Stepp started the playground. They have added some new equipment recently. The grant that was applied for was awarded for about \$14,000 with a 25% match. They will get with Ohio Department of Natural Resources to see what can be done. He would like to put in a sidewalk all around the park, so people will have a nice and safe place to walk. They are going to also try to take care of the drainage problem. Mr. Queen asked if they have any bricks left from the Main Street hill project. Mayor Heath said they do have some and hopefully they can incorporate them in some way.

Mr. Kitchen stated the Mayor is the top elected official in Jackson, Ohio. He is responsible for safety, maintenance, and well being of all of our city's facilities and equipment. The Mayor hires people to carry out these duties for the citizens of Jackson. The Service Director has for several years violated ORC 735.02, which charges the Service Director with the duty of managing the public buildings and property of the city not otherwise provided for. You can see this as with the Memorial Building, shelter houses, and Hammertown Lake.

Mr. Kitchen addressed the Mayor and asked him why, when the audit meeting was done on June 8<sup>th</sup>, was council not told of the findings for 3 months? Mayor Heath responded by saying the State Auditor deals mainly with is the City Auditor's office. The Administration is not involved, but they were asked to listen to the presentation. Mayor Heath said out of respect for the Auditor, it was not his responsibility to report it to council, it was the Auditor's. Mr. Reed did report it to council. The information was confidential until the Audit report was complete.

Mr. Brown addressed the first question Mr. Kitchen had regarding the Service Director. He asked if any council members had any questions or comments regarding this. Mr. Elliott stated he didn't think any money was appropriated for the things Mr. Kitchen had addressed.

Mr. Reed said in regards to the audit question, there was a meeting on June 12<sup>th</sup> that addressed what the findings were. The State did not want them doing the Rents and Right of Ways transfers, so they changed the way they were going to do it in the future.

Mr. Kitchen said council did not have to be excluded, because audit reports are exempt from the State of Ohio public information laws. There needs to be more transparency between council and the citizens of Jackson.

Mr. Kitchen said they should have been able to be at the State meeting that was held on June 8<sup>th</sup>. Mr. Reed stated it was by invitation only. It was not a City meeting.

It could not be discussed in Executive Session after the June 8<sup>th</sup> audit meeting, but it was discussed at the next council meeting. It did not meet the criteria for Executive Session.

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Mr. Ondera said it didn't really matter when the audit happened or how, the problem is that they are still going to be short in the General Fund. He doesn't feel there is any collusion regarding the audit. Mr. Brown said there was discussion about the shortfall last year and that is why the income tax issue was discussed.

Mr. Reed said the shortfalls that were discussed last year addressed the improvements for streets, building maintenance, etc. The shortfall for this year was caused by the State. Money was continuing to do down in the General Fund, but the biggest shortfall is being caused by the State saying starting June 8<sup>th</sup>, they can't do the Rents and Right of Ways transfer. It will have to be done by cost allocations. They are gaining about \$200,000 this year that can be charged to the police. It will be reach the amount to complete the budget for the police for next year. The transfer was Administration's idea and it is perfectly legal. That amount is what was in the Rents and Right of Ways and was approved by council at the end of last year for this year. It completes the budget for this year. There has never been a shortage for this year's budget. It was next year's budget that is the problem. They will have about \$600,000 to transfer forward instead of \$1.2 or 1.4 million. That is what makes it short.

In July, they looked the police logs and looked at the time they spent patrolling the different other departments, such as the water plant, etc. They turned it into Maximus for cost allocation.

**SERVICE DIRECTOR**

Mr. Sheward said he passed out the fire run reports.

He also gave a report on why it took so long to get the power back on safely when it went out on October 26<sup>th</sup>.

McCarty Lane project is moving along. They have not done the final paving. Hopefully, they can finish the paving on the rest of it in the next couple of weeks. Then next Spring they will finish the project and do the final paving.

**ORDINANCES AND RESOLUTIONS**

**ORDINANCE NO. 53-17**

**AN ORDINANCE AMENDING AND REPEALING ORDINANCE 01-17 AND REDUCING THE ANNUAL SALARY FOR THE SERVICE SAFETY DIRECTOR OF THE CITY OF JACKSON TO BE \$61,800.00.**

First Reading

Mr. Queen made a motion to adopt the ordinance, but there was no second. The ordinance died.

**ORDINANCE NO. 54-17**

**AN ORDINANCE REPEALING AND REVISING ORDINANCE 72-15 SO AS TO MAINTAIN THE CURRENT COMPENSATION PAID TO THE CITY AUDITOR EFFECTIVE JANUARY 1, 2020.**

First Reading

Mr. Queen made a motion to adopt the ordinance, but there was no second. The ordinance died.



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**ORDINANCE NO. 55-17**

**AN ORDINANCE REPEALING AND REVISING ORDINANCE 53-17 SO AS TO REDUCE THE COMPENSATION PAID TO THE CITY MAYOR EFFECTIVE JANUARY 1, 2020.**

First Reading

Mr. Queen made a motion to adopt the ordinance, but there was no second. The ordinance died.

**ORDINANCE NO. 56-17**

**AN ORDINANCE REPEALING AND REVISING ORDINANCE 74-15 SO AS TO MAINTAIN THE CURRENT COMPENSATION PAID TO THE CITY TREASURER EFFECTIVE JANUARY 1, 2018.**

First Reading

Mr. Queen made a motion to adopt the ordinance, but there was no second. The ordinance died.

**RESOLUTION 15-17**

**A RESOLUTION DECLARING THE NECESSITY FOR AND AUTHORIZING THE TRANSFER OF FUNDS BY THE CITY OF JACKSON FROM THE ELECTRIC FUND TO THE GENERAL FUND, PURSUANT TO O.R.C. SECTION 5705.15 AND DECLARING AN EMERGENCY.**

Second Reading

Mr. Kitchen asked what the balance would be in the Electric Fund after the transfer. Mr. Reed said he could get him the information.

Mr. Hensler said he is in favor of voting for the transfer in order to help the Police Dept., but he would like to see a line item budget for the coming year.

Mr. Queen asked if this can only be done once or just once a year. Mr. Kirby said he did not know of any limitations. He asked Mr. Reed if they did a temporary budget, would they still need to do the transfer. Mr. Reed stated yes.

Mr. Elliott stated he intends for it to be a one time thing. They need to come up with a solution.

Mayor Heath said their hands are tied until they know the result of this resolution passing or not. They cannot prepare the budget until they know the result of the passage.

Mr. Hensler said he would like to have the question answered regarding the line item budget, because that will effect how he votes. Mayor Heath said every line item is reviewed when they do the budget. They have 68 line item transfers this year. Mr. Brown said they have to prepare the budget as a line item budget. They can present it as a line item budget or an object budget, but council has the ability to request it however they want it. Mr. Kitchen asked if they can just do it with the General Fund. Mr. Reed said he wasn't sure, but he didn't see why not. Mr. Odera agreed with Mr. Hensler on this idea to help everyone get on the same page. Mr. Reed said whatever is attached to the ordinance is whatever council wants it to be line item or object. Mr. Brown said this can cause more meetings.

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Mr. Queen commented he has voted against the transfer all along, because it was not legal. Mayor Heath said the part that Mr. Queen is referring to they did not find to be illegal. Mr. Elliott asked council to refer to the letter Mr. Kirby wrote regarding this, because it explains the issue very well. Mr. Kirby stated the problem with the audit was there was not enough documentation. They have never said the transfers are illegal. Mr. Brown tabled the resolution until additional information was provided.

**RESOLUTION 16-17**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF JACKSON TO APPLY FOR, ACCEPT, AND ENTER INTO AN OHIO EPA/OWDA WATER POLLUTION CONTROL LOAN FUND AGREEMENT ON BEHALF OF THE CITY OF JACKSON FOR CONSTRUCTION OF THE PARKVIEW TO WEST MAIN STREET SANITARY SEWER IMPROVEMENT PROJECT, DESIGNATING A DEDICATED REPAYMENT SOURCE FOR THE LOAN, AND DECLARING AN EMERGENCY.**

Second Reading

Mayor Heath said this resolution needs to be passed tonight, so they don't miss the chance to get it. This is for a 0% interest loan needed to do the project. They have already turned in the application. It will still have to come back to council if it is awarded.

Mr. Ondera made a motion to suspend the rules, seconded by Mr. Elliott. In a roll call vote, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

In a roll call vote to adopt the resolution, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

Resolution No. 16-17 duly adopted.

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**RESOLUTION NO. 17-17**

**A ORDINANCE AUTHORIZING THE MAYOR TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION PROGRAM RELATIVE TO THE BACKUP POWER PROVISIONS FOR SANITARY LIFT STATIONS PROJECT, TO EXECUTE ALL AGREEMENTS AND CONTRACTS REQUIRED WITH REGARD THERETO, AND DECLARING AN EMERGENCY.**

Second Reading

Mr. Sheward said this reflects a requirement of the EPA to have the sewer lift stations to operate during a power outage. If the power goes out and the lift stations flow over, then they can get fined by the EPA. This is a system that if the power goes out, it will provide power to the lift stations so they can continue to run and prevent an overflow. Mr. Brown asked if this is something to keep us within the consent order or something different. Mr. Sheward said it is not. This is a loan that goes with the grant. Mr. Brown asked how many overflows would it take to make \$100,000. Mr. Sheward said that would depend on if the EPA got involved if they had one.

Mr. Ondera made a motion to suspend the rules, seconded by Mr. Elliott. In a roll call vote, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

In a roll call vote to adopt the resolution, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

Resolution No. 17-17 duly adopted.

**RESOLUTION 15-17**

Mr. Elliott made a motion to bring Resolution 15-17 back to the floor seconded by Mrs. Jones.

Mrs. Jones made a motion to amend Resolution 15-17 by attaching a revised Petition, seconded by Mr. Elliott.

Mrs. Jones made a motion to suspend the rules, seconded by Mr. Elliott. In a roll call vote, council voted as follows:

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Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-no  
Mr. Elliott-yes  
Mr. Foster-yes

In a roll call vote to adopt the resolution, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-no  
Mr. Elliott-yes  
Mr. Foster-yes

Resolution No. 15-17 duly adopted.

**RESOLUTION NO. 18-17**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF JACKSON TO SUBMIT AN APPLICATION FOR AN APPALACHIAN REGIONAL COMMISSION PROGRAM FUNDING FOR THE PARKVIEW TO WEST MAIN STREET SANITARY SEWER PROJECT.**

First Reading

Mr. Elliott made a motion to adopt the resolution, seconded by Mr. Ondera. In a voice vote, all members agreed.

This is a companion to Resolution No. 16-17. This one of the projects they are trying to get ARC funding for.

Mr. Ondera made a motion to suspend the rules, seconded by Mr. Elliott. In a roll call vote, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

In a roll call vote to adopt the resolution, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes



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Mr. Elliott-yes  
Mr. Foster-yes

Resolution No. 18-17 duly adopted.

**CORRESPONDENCE-None**

**OLD BUSINESS**

Mr. Kitchen passed out a copy of Ordinance No. 67-09 which was passed in 2009. He asked council to take time to see what they need to do to fix the police problem. He would like to have the legislation to be more detailed so they know exactly what it is supposed to do. Why was the Police Department omitted in Ordinance No. 67-09? Why wasn't there any funding for the items that are listed in the ordinance, such as streets, sidewalks, etc.?

Mr. Brown answered his question by saying back when this ordinance was written, there were many hours put into coming up with a legal way to fund the Police Department. The Law Director was in communication with the State, but the State never gave them an answer. They said to do whatever they came up with, then at the time of the Audit, they would let them know if it was ok or not. It saved the Police Department. He said he tried to explain that to him a couple of years ago, but since then Mr. Kitchen has called him a liar and said he was part of it. It is still legal as long as they have their documentation in order. Mr. Kitchen said he has talked to the Auditor and he doesn't feel they can take 35%. Mr. Brown said he feels they will find a way to use Rents and Right of Ways to fund other forms of General Fund, such a streets and alley, to free up money for the Police Department.

Mr. Kitchen said he is not in disagreement with ways to fix the problem, but his issue is with how council meetings are conducted. Anyone should be allowed to ask questions without being told they are out of order. Mr. Kitchen feels the council meetings need to be run in a more respectful manner.

Mayor Heath said the utility system primarily serves non-residential customers. Most of the utility income comes from non-residential customers. These transfers have been going on in one form one way or another since the 1960's. Mayor Heath's concern was how the State Auditors missed this error for 7 years. He had asked them for their opinion on it several years ago and they said they were not allowed to tell them how to do things, but they could review it at the next audit and tell them if it was ok or not. Every audit after that until this year, there was never an issue with it that he was aware of. Mr. Reed is trying to get an answer from them now on exactly what the money can be used for. After this is cleared up, they can move forward.

Mr. Reed mentioned the electric rates of Wal-Mart's study Mr. Hensler mentioned at the last meeting. He said they are different than residential. He compared some bills of some AEP, Buckeye Rural, and City of Jackson customers and cents per kilowatt hour were very close. He said the City of Jackson utility office is carrying \$300,000 of bad debt in the last 5 years. Another \$200,000 plus in people that are paying that they have to collect. They also pay for the all of the street lights. Mayor Heath stated they are looking into the Wal-Mart situation.

Mr. Kitchen said they need to get the city fixed up in order attract new businesses.

Mr. Kitchen said they need to find another solution to fund the Police Department.

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He said we need to get an Ohio Auditor's office efficiency study done. He asked Joe to prepare an ordinance for this. He also requested a study of the utilities, so they can make sure they are not overcharging.

Mr. Kitchen also requested an open meeting concept where any of the public can be allowed to speak if they so desire. Allow them to speak for about 3 minutes and thank everyone for coming.

He agrees with Mr. Hensler on the line item budget. The city has good employees, so we need to take care of them.

Mr. Queen asked if they have heard anything on the fine on the fish they lost. Mr. Sheward said not yet.

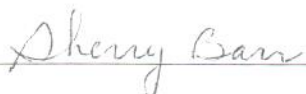
**NEW BUSINESS**

Mr. Queen made a motion to amend the council rules to let the public speak if they wish to for 3 minutes at the end of the meeting, seconded by Mr. Ondera. Mr. Kirby asked someone to send him details on how they want it.

Mr. Ondera made a motion to draw up a resolution to support the opposition of the landfill Ms. Lamerson spoke about, seconded by Mrs. Jones. In a voice vote, all members agreed.

Mayor Heath gave his pros and cons for the landfill. If they would move everything out, he would be in favor of that. Fluor is trying to cut their cost by building the landfill. Mayor Heath will see if he can get someone from the Department of Energy to speak about this project.

Mr. Hensler made a motion to adjourn at 9:39 p.m., seconded by Mr. Queen. In a voice vote, all members agreed.



Sherry Barr, Council Clerk

Date 11-13-17



Eric Brown, Council President

Date 11-13-17

# JOSEPH D. KIRBY

Attorney for the City of Jackson

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September 20, 2017

Jackson City Council Members  
Mayor and City Administration

RE: Rents and Right-of-ways

Dear Members of Council and Administration,

I have been requested to provide an opinion concerning the City's rents and right-of-ways plan. The question put to me has been a non-specific and broad question, basically "Is Ord. 67-09 (or more accurately, is the City Rents and Right-of-Way (ROW) plan for City Owned Utilities) legal?". For purposes of this letter, I am assuming the word "legal" is referencing the constitutionality of Ordinance 67-09 and Council's authority to enact it rather than the common usage of "legal" and "illegal" in the criminal sense. It should be noted that the validity of Ord. 67-09 or the ROW plan have never been seriously challenged by legal action or in prior audits provided to me.

The question raised includes: 1) whether the formalities to properly enact an ordinance were met; 2) the power of a municipality to adopt such an ordinance; and 3) the proper implementation of the ordinance. Council had been informed that my response would be provided after the completion of the State Audit for the reasons that the State Auditor required that the audit information be maintained as confidential until the official audit was released and for the further reasons as to not give the appearance of influencing or interfering with the State Audit and that the audit, once released, provided information not otherwise available to me. The State audit has now been released.

First, the question is whether the required formalities to adopt Ordinance 67-09 were met. Ordinance 67-09 was enacted by this Council on August 10, 2009. The City was represented by its attorney as well as outside council that assisted and advised council in preparing and adopting the rents and right-of-way policy. Based upon my review of the Ordinance and the minutes of the August 10, 2009 meeting, there was a quorum present, being all of the members of council. There is no indication that the meeting was not properly noticed to the public and, in fact, Council specifically stated that all of the formal requirements of the meeting were met and that the meeting and all deliberations were open and public. Ordinance 67-09 was adopted on the first reading. A motion to suspend rules was unanimously passed and Ordinance 67-09 was then unanimously adopted as an emergency. The meeting and the subsequent enactment of



Ordinance 67-09 does meet the requirements for being properly enacted in accordance with Ohio law.

As the technical requirements and formalities were met to enact an ordinance, the next issue is whether Ord 67-09 satisfies the Ohio Constitutional grant of authority to a municipality. The Ohio Constitution gives broad home rule powers to municipalities. O. Const. XVIII Section 3 states "municipalities shall have authority to exercise all powers of local government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The home rule amendment gives "municipalities the broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters of the statewide nature or interest". State Ex Rel Hackley v. Edmonds 150 Ohio St. 2003, 2012 (1948); State Ex Rel Morison v. Beck Energy Corp. 143 Ohio St. 3d 271, 275 (2015).

The State of Ohio has enacted laws governing rents and right of ways (see ORC section 4939.05). Ordinance 67-09 is not in conflict with State law nor does it, by itself, create the ability for Jackson to collect fees for rents and right of ways. Ord. 67-09 establishes a plan for the City to determine the amount of the fee levied so as to be in compliance with the State code. ORC Section 4939.05 (C), as effective in 2009, permits municipalities to levy fees regarding public ways. It reads:

*(B)(1) A municipal corporation may levy different public way fees based upon the amount of public ways occupied or used, the type of utility service provided by a public utility, or any different treatment required by the public health, safety, and welfare.*

*And*

*(C) Public way fees levied by a municipal corporation shall be based only on costs that the municipal corporation both has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of a public way. The costs shall be reasonably and competitively neutrally allocated among all persons occupying or using public ways owned or controlled by the municipal corporation, including, but not limited to, persons for which payments are waived as authorized by division (B) of this section or for which compensation is otherwise obtained. No public way fee shall include a return on or exceed the amount of costs reasonably allocated by the municipal corporation to such occupant or user or pursuant to any reasonable classification of occupants or users.*

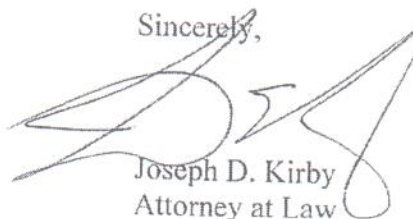
On its face, the City ROW plan does not contravene ORC section 4939.05. The City Plan was made in order to comply with ORC section 4939.05 by establishing the fair and reasonable fees for reimbursement to be up to 5% based upon a gross revenue methodology, a methodology already in use for other ROW fees in the City. The plan

was provided to the State Auditor after its enactment. There is no record of a response from the State Auditor.

It is my opinion that Ord. 67-09 is not in conflict with the general laws of the State of Ohio and that Ord. 67-09 met all of the formal requirements of a properly enacted ordinance that permits the City to levy fees for the use of its public ways. Having said that the City has the legal authority to charge such fees, it remains bound by the requirements of its own plan and ORC section 4739.05.

While the City plan and methodology has not been challenged or declared invalid by any Court or by the previous annual audits of the City, the recent State audit has concluded that, for its purposes, there was insufficient documentation to support the methodology used by the City so as to show compliance with ORC section 4939.05(C) for the year 2016. In addition, the State Auditor offers that ORC section 4939.05(D) required that the public way fees be maintained in a special fund. While Ord. 67-09 and the City ROW plan permitted that the fees "may be paid to the City's general fund" it did not prohibit the use of a special fund although a separate fund had not been maintained by the City. The latter issue has been addressed. As to the former, the City is not required to abandon its current methodology to determine ROW fees but it should be prepared to support the methodology in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph D. Kirby", written over a printed name and title.

Joseph D. Kirby  
Attorney at Law

From: **Joseph D. Kirby** joe@colekirbylaw.com

Subject: Request for statute

Date: Today at 4:12 PM

To: **George Kitchen** jgettles@roadrunner.com, **Brett Foster** bluegrt4@yahoo.com, **Eric Brown** egbrown@jacksonohio.us, **Jeff Elliott** jelliott@jacksonohio.us, **Jon Hensler** jphensler89@yahoo.com, **Jon Ondera** jondera@jacksonohio.us, **Loretta Jones** tomandloretta@roadrunner.com, **Ron Queen** queen7322@roadrunner.com

*Mayer pay increase 2/16  
Raise in Pay for officials after Election*

George,



Per your request, the following is a copy of the statute that governs change of salary of elected officials and officers in the City.

**731.07 Salaries shall not be changed during term.**

The salary of any officer of a city shall not be increased or diminished during the term for which he was elected or appointed. This section does not prohibit the payment of any increased costs of continuing to provide the identical benefits provided to an officer at the commencement of his term of office.

Unless otherwise provided, all fees pertaining to any office shall be paid into the city treasury.

Effective Date: 01-09-1981 .

Please let me know if you need any additional information.

Sincerely,

Joseph D. Kirby





**JOSEPH D. KIRBY**

Attorney for the City of Jackson

*city building maintenance*

227 E. Main Street  
P.O. Box 573  
Jackson, Ohio 45640  
Phone: (740) 286-3735  
Fax: (740) 288-2161

*Need copies*

April 14, 2014

George Kitchen  
Jackson City Council

Re: Maintenance of City Buildings

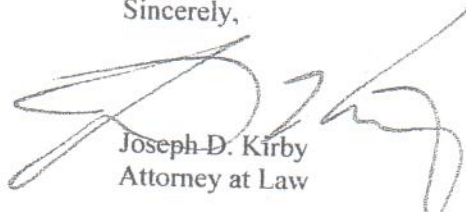
Dear George:

You have requested an opinion concerning the maintenance of City buildings. Specifically, you have asked whether it is proper for the Service Director to maintain buildings. The short answer is "yes" it is appropriate for the Director of Service to maintain the City's buildings. R.C. §735.02 charges the Service Director with the duty to manage the public buildings and other property of the City not otherwise provided for. The other component of your question concerned the use of appropriated funds. To that question, it is my opinion that it is not proper for the Service Director to use funds for the maintenance of buildings that are not appropriated for that purpose. For example, the Director of Service may not use the funds appropriated for the purchase of vehicles or salaries to maintain buildings.

The authority to appropriate funds falls within the scope of the duties of City Council. In establishing a budget, City Council may appropriate moneys in those areas that it sees fit for the maintenance of the City. The powers of the legislative authority, however, are limited to legislation only. (R.C. §731.05). City Council performs no administrative duties.

If this does not answer your questions, please feel free to contact me at your convenience.

Sincerely,



Joseph D. Kirby  
Attorney at Law

JDK/srb

*E Passed 2009*

SPONSOR: *Wiggins/E Brown*

**ORDINANCE NO. 67-09**

AN ORDINANCE ADOPTING AND ENACTING A RIGHT-OF-WAY MANAGEMENT ASSESSMENT PLAN AND POLICY FOR THE CITY'S UTILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jackson, Ohio is an Ohio municipal corporation which operates utilities which provide various services to customers of the City, said services including but not necessarily limited to, water service, sewer service, and electric service; and

WHEREAS, the General Fund of the City of Jackson is responsible for the maintenance, care, and upkeep of the streets, alleys, and other public grounds within the City of Jackson, Ohio; and

WHEREAS, in order to provide services to customers the City's utilities use and access the City's streets, alleys, and other public grounds to convey, among other services, water, sewer, and electric; and

WHEREAS, the City desires to adopt a plan and policy wherein the City's utilities may be assessed a fair charge for the use of the City's streets, alleys, and other public grounds, in order that the streets, alleys, and other public grounds may be properly maintained.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Jackson, Ohio, that:

**Section One.** Jackson City Council hereby accepts, adopts, and enacts the Right-of-Way Assessment Plan which is attached hereto which is attached hereto as Exhibit "A".

**Section Two.** This Council authorizes the City Auditor and the City Law Director to present this plan to the Ohio State Auditor. This Council further authorizes the City Law Director to take any and all actions, including any legal proceedings, the Law Director deems necessary, to enforce this Plan.

**Section Three.** This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

**Section Four.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of this City, and for the further reason that this Ordinance is required to be immediately effective in order to implement



Ohio Revised Code

audit Report

Section 121.22

TYPICAL OPEN MEETINGS QUESTIONS  
(As of March 1, 2014)

why wait  
3 months  
to sign  
Details of  
audit with council

By: Stanley J. Dobrowski, Esq.  
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Meetings  
to discuss  
AUDITS

Meetings of state and local government bodies must be held in accordance with proper notices and, generally, must be open to members of the public. Failure to comply with any of these requirements can cause government action to be invalidated and can cause liability for a \$500 forfeiture, attorneys fees and court costs under Section 121.22 of the Ohio Revised Code (the "Open Meetings Law"). Provisions of city charters relating to open meetings may supersede provisions of the Open Meetings Law.

1. WHAT CONSTITUTES A MEETING?

A meeting is any prearranged discussion of public business by a public body, or by any committee or subcommittee of a public body, by a majority of its members, no matter what it is called. A meeting may have several sessions and although a majority of members did not attend any individual session, the sessions may be aggregated to constitute a meeting. Hearings of quasi-judicial bodies are not meetings. Similarly, attendance by the majority of the members of a public body at a judicial hearing is not a meeting.

2. WHAT IS A PUBLIC BODY?

Essentially, a public body is any board, commission, committee, council, agency or authority of the state or a political subdivision. The term "public body" also includes a court of jurisdiction of a sanitary district for certain purposes. The term "public body" includes advisory bodies and bodies which were not created by statute or ordinance.

3. ARE THERE ANY EXCEPTIONS?

Yes, Ohio's Open Meetings Law does not apply to grand juries, audit conferences, certain meetings of child fatality review boards, the adult parole authority, organized crime investigations commissions, the "Jobs Ohio" board of directors, audit conferences with the Department of Jobs and Family Services and, in some cases, certain state boards, commissions, authorities and councils. The Collective Bargaining Act permits closure of collective bargaining meetings between public employers and employee organizations.

council could  
have been  
called  
to  
meet  
to review  
audit  
findings

4. CAN A MEMBER OF A PUBLIC BODY ATTEND A MEETING BY TELEPHONE?

No. A member of a public body must be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting. Similarly, secret ballots are prohibited, and a meeting may not be considered "open" if participants prevent the audience from hearing the business being conducted.