



# City of Jonesboro

900 West Monroe  
Jonesboro, AR 72401

## Meeting Agenda Finance & Administration Council Committee

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Tuesday, December 8, 2009

4:00 PM

Huntington Building

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### 1. Call To Order

### 2. Approval of minutes

[MIN-09:121](#) Minutes for the Finance Committee meeting on November 10, 2009.

**Attachments:** [Minutes 11/10/09](#)

[MIN-09:123](#) Minutes for the special called Finance Committee meeting on November 17, 2009.

**Attachments:** [Minutes 11/17/09](#)

### 3. New Business

#### *Ordinances To Be Introduced*

[ORD-09:104](#) AN ORDINANCE TO AMEND THE 2009 ANNUAL BUDGET AND THE CITY PAY PLAN FOR THE CITY OF JONESBORO TO ADD A POSITION OF COMPLIANCE OFFICER TO THE GENERAL ADMINISTRATION DEPARTMENT

**Sponsors:** Human Resources and Mayor's Office

**Attachments:** [Compliance Officer](#)

[ORD-09:107](#) AN ORDINANCE TO APPROPRIATE FUNDS TO PURCHASE THE LICENSES FOR PUBLIC PLAYING AND PERFORMANCE OF MUSIC, AUTHORIZING THE EXECUTION OF THE CONTRACTS, AND DECLARING AN EMERGENCY

**Sponsors:** Finance & Administration Council Committee

**Attachments:** [BMI Contract For Music Licensing](#)  
[SESAC Performance License for Municipalities](#)  
[ASCAP Licensing Contract](#)  
[Better Business Bureau Recommendation on Music in the Marketplace](#)

### 4. Pending Items

### 5. Other Business

Request to address the Finance Committee regarding the 2010 budget for the Retired Firefighters Actuary and an across the board increase

**6. Public Comments**

**7. Adjournment**



# City of Jonesboro

515 West Washington  
Jonesboro, AR 72401

## Legislation Details (With Text)

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**File #:** MIN-09:121    **Version:** 1    **Name:**  
**Type:** Minutes    **Status:** To Be Introduced  
**File created:** 11/20/2009    **In control:** Finance & Administration Council Committee  
**On agenda:**    **Final action:**  
**Title:** Minutes for the Finance Committee meeting on November 10, 2009.  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** [Minutes 11/10/09](#)

Date	Ver.	Action By	Action	Result
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title  
Minutes for the Finance Committee meeting on November 10, 2009.



# City of Jonesboro

900 West Monroe  
Jonesboro, AR 72401

## Meeting Minutes - Draft Finance & Administration Council Committee

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Tuesday, November 10, 2009

4:00 PM

Huntington Building

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### 1. Call To Order

*Mayor Perrin was also in attendance.*

**Present** 5 - Ann Williams; Jim Hargis; John Street; Darrel Dover and Mikel Fears

### 2. Approval of minutes

**MIN-09:108** Minutes for the special called Finance Committee meeting on October 13, 2009.

**Attachments:** [minutes 10/13/09](#)

**A motion was made by Councilman John Street, seconded by Councilman Darrel Dover, that this Minutes be Passed. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis; John Street; Darrel Dover and Mikel Fears

**MIN-09:111** Minutes for the Finance Committee meeting on October 20, 2009.

**Attachments:** [minutes 10/20/09](#)

**A motion was made by Councilman John Street, seconded by Councilman Jim Hargis, that this Minutes be Passed. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis; John Street; Darrel Dover and Mikel Fears

**MIN-09:114** Minutes for the special called Finance Committee meeting on November 3, 2009.

**Attachments:** [minutes 11/3/09](#)

**A motion was made by Councilman John Street, seconded by Councilman Jim Hargis, that this Minutes be Passed. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis; John Street; Darrel Dover and Mikel Fears

### 3. New Business

**COM-09:146** Presentation by Stephens, Inc. concerning the City's non-uniform pension plan

Attachments: [Stephens Group defined benefit plan portfolio summary](#)

*Finance Director Jim Barksdale explained the City previously approved separating the duties of investment advisor, management and actuarial services. He added Stephens, Inc. was awarded the investment advisory duties for the City's non-uniform pension plan. He noted as investment advisor, Stephens, Inc. will send out the RFP's for management for each fund.*

*Mr. Larry Middleton with Stephens, Inc., explained they manage more police, fire and non-uniform pension plans than any other company in the state. He noted they manage approximately \$4.5 billion and 90% of the assets are retirement assets.*

*He stated they will serve as direct interface for the City concerning the administration, actuary, investment managers and custodian duties. He added it is a pretty standard format across the country in regards to one person serving as investment advisor and assisting with reconciling accounts, statements, negotiating fees and being an interface.*

*Discussion was held concerning defined benefit plans statistics.*

*Mr. Middleton stated they use active managers who are in the top quartile and they are managed on a quarterly basis to see if they meet or exceeded their index. He added they intend on not hiring their own managers, but hiring money managers who meet all their requirements and if they do not perform they are then replaced. He noted they typically move \$50 to \$100 million to a money manager.*

*He explained after reviewing the City's plan they can save the City approximately 20% on the overall cost of the City's plan for services outlined in the RFP versus what the City is currently paying for. He stated they will send the City a explicate bill every 90-days, which will be deducted from the City's account. He noted the City could receive institutional pricing instead of retail pricing due to the City's account being over \$3 million.*

*Discussion was held concerning the company.*

*Councilman Mikel Fears inquired how often a money manager is terminated. Mr. Middleton answered in the last 15-years there has been approximately a 15% to 20% turnover rate. He added 70% of the City's funds are allocated to indexes, which leaves 30% allocated to money managers.*

*Councilman Dover asked what allocation models other cities use. Mr. Middleton answered Stephens, Inc. is strict about this and will draft a policy and set perimeters they are allowed to manager within. He stated it depends how the market looks, but the City could see a minimum 40% equity to a maximum of 60%. He added 85% to 90% of the fixed income in the portfolio will be direct obligations to the United States Government. He stated the City needs to stay in short and intermediate bonds for the time being.*

*Discussion was held concerning fixed equities.*

*Councilman Dover inquired how Stephens, Inc. would help the City determine where they need to be in terms of the economy, fixed assets and equities. Mr. Middleton answered if Stephens, Inc. does their job right the process will be easy. He added they will assist the City in determining the City's comfort level, but they already know the City's time line, size of accounts, cash flow and number of retirees so they can*

*already forecast with some high degree of certainty what the City's cash flow needs are.*

*Councilman questioned how often the City would have interaction with Stephens, Inc. Mr. Middleton answered some clients like to see them more in the beginning than during the later stages. He stated they will meet with the City again to show sample investment policies, sample ranges and portfolios and how the portfolio performed in the last 36 months. He noted meeting quarterly is too often. Mr. Barksdale stated it was previously discussed Stephens, Inc. would meet with the City on a quarterly basis due to the City not having developed policies in the past. Mr. Middleton stated they require at least one meeting annually.*

*Councilman Hargis asked if a monthly report would be provided. Mr. Middleton answered yes, which will include every trade and show their value. He noted they will provide a more detailed report every 90-days.*

*Councilman Hargis then questioned if Principal Group is holding the City to a contract where the City has to purchase annuities upon the termination of the contract. Mr. Middleton answered he reviewed the contract and saw nothing indicating the City has to purchase annuities upon the termination of the contract. He added if the City transfers the broker of record to Stephens, Inc. they will be the interface on the City's behalf in negotiating with Principal Group for the best way to transition the assets from Principal Group.*

*Councilman Dover inquired if Stephens, Inc. purchases individual equities and mutual funds. Mr. Middleton answered no, because indexes are considered an equity. He added they might buy an individual bond if it will add value.*

*Councilman Dover questioned what the difference is between a mutual fund and equities. Mr. Middleton answered equities are called exchanged traded funds (ETF) and mutual funds are a managed pool of securities. He added indexes are passive and operates at about 30% of the cost factor of a mutual fund.*

*Discussion was held concerning standard investment grades.*

*Mr. Middleton explained they are not an actuary, but can make recommendations concerning actuaries at the City's request. He noted they can work with any actuary in the country and they have 180 plans that they interface with the actuaries.*

*Councilman Dover asked if Stephens, Inc. would advise the City on what allocation model the City will need and what each particular investment would be. Mr. Barksdale answered yes, because they will pick the investment managers.*

*Discussion was held concerning the 3 functions of the retirement plan, which include the investment manager, investment advisory and actuarial services.*

*Councilman Dover stated Principal Group could do the check writing duties if the City chose. Chairwoman Williams stated the City is not leaving any functions with Principal Group. She noted the actuary will be Foster and Foster, who indicated they could help the City move away from Principal Group.*

*Councilman Dover inquired what is the status of the administration duties. Mr. Middleton answered they are working with numerous companies that could perform the administration duties and currently have \$400 million invested with those companies. He added Stephens' price point is ½ of what it would be if they had direct conservation due to having such a large amount of money with those*

companies. He stated he priced those functions into the savings and will pass the economies onto the City. Mr. Barksdale noted Assistant Finance Director Jim Eagan has prepared a cost analysis.

Councilman Dover asked if the City can move forward with whom to choose or does it need to be studied further. Mr. Eagan answered the City had sent out the RFPs for the investment portion, but questions arose concerning if the account was a fixed income mandate or balance fund mandate and why doesn't the City have an equity mandate. He added the City only received 3 responses for the managerial duties and each of those were narrow minded investment strategies, which did not achieve a more balanced strategy or fund to fund strategy. He added that would be detrimental on the pricing structure.

He explained he had Human Resources Director Gloria Roark obtain the cost summary from Principal Group, which the City previously didn't have. He added currently 1.32% of the City's planned assets is going to Principal Group regardless if the plan makes money or not. He noted Principal Group had a \$2.2 million actuary loss last year.

Councilman Fears asked if Mr. Eagan was recommending allowing Stephens, Inc. to handle the investment advisor duties. Mr. Eagan answered the City has already approved a resolution allowing Stephens, Inc. to be the investment advisor. He added the City will not choose separate investment managers due to it not being cost feasible.

Chairwoman Williams asked if the Finance Committee needs to take any further action concerning this matter. Mr. Eagan answered no.

Councilman Dover inquired if Stephens, Inc. would be picking the administrator. Mr. Eagan answered yes, they will be picking the money managers.

Councilman Hargis requested Mr. Eagan let him know when the City is completely free from Principal Group. Mr. Eagan stated he would do that.

Councilman Dover asked if a motion needs to be made allowing Stephens, Inc. to choose who the administrator will be. Mr. Eagan answered yes, it should be verified by resolution saying Stephens, Inc. as the City's investment advisors will be the entity that chooses the money manager in accordance with an investment strategy, which is to be formulated at their advice and adopted by the Finance Committee and ratified by full Council. He added a division of Stephens, Inc. will handle the writing of the checks.

Chairwoman Williams stated everyone needs to review the financial policy before the next meeting. She added it needs to be placed in Legistar as an ordinance.

Councilman Darrel Dover motioned, seconded by Councilman Mikel Fears, that the Finance Committee meeting convene for a short period so the Public Works Committee can hold their meeting. All voted aye.

**This item was Read.**

## **REVENUE ENHANCEMENT ORDINANCES AND RESOLUTIONS**

**ORD-09:087** AN ORDINANCE TO AMEND TITLE 14.44.06 NOW SEC. 177.35 INCREASING FEES FOR MULTIPLE FAMILY DWELLINGS; COMMERCIAL BUILDING



PERMITS; RESIDENTIAL ZONING DISTRICTS SINGLE AND MULTIPLE FAMILY;  
NON-RESIDENTIAL ZONING DISTRICTS; SPECIAL DISTRICT APPLICATIONS  
AND FOR OTHER PURPOSES

**Sponsors:** Planning

*Councilman Darrel Dover motioned, seconded by Councilman Mikel Fears, that all revenue enhancement ordinances and resolutions be approved in one motion. All voted.*

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:088**

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS TO AMEND ORDINANCE NO. 07-81; TECHNICAL CODE SEC.14.32.11 FOR THE PLANNING AND ZONING DEPARTMENT; ON/OFF PREMISE SIGNAGE (BILLBOARDS)

**Sponsors:** Planning

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:089**

AN ORDINANCE TO AMEND ORDINANCE # 05-231 INCREASING FEES FOR CEMETERY LOTS; BURIAL PERMITS; MONUMENT SETTING FEE AND FOR OTHER PURPOSES

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:090**

AN ORDINANCE TO AMEND ORDINANCE #3026 SEC.1 INCREASING FEES FOR STREET PLATES; BARRICADES; ASPHALT REPAIR; STREET CUTS AND FOR OTHER PURPOSES

**Sponsors:** Streets

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:091**

AN ORDINANCE TO AMEND ORDINANCE NO.783 INCREASING FEES FOR ENCROACHMENT PERMIT

**Sponsors:** Engineering

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion**

**CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:095**

AN ORDINANCE TO AMEND ORDINANCE 08-099 SETTING FEES FOR FLOODPLAIN PERMITS; DRAINAGE ALTERATION/MODIFICATION PERMITS; GRADING PERMITS; STORMWATER MANAGEMENT PLAN REVIEW; AND FOR OTHER PURPOSES

**Sponsors:** Engineering

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:096**

AN ORDINANCE TO AMEND ORDINANCE NO. 2779 INCREASING FEES FOR DRIVEWAY PERMITS

**Sponsors:** Engineering

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:097**

AN ORDINANCE BY THE CITY COUNCIL OF JONESBORO, AR ESTABLISHING NEW FEES FOR HVAC INSPECTIONS, AND FOR OTHER PURPOSES

**Sponsors:** Inspections

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:098**

AN ORDINANCE BY THE CITY COUNCIL OF JONESBORO, AR ESTABLISHING PERMITS FOR RE-ROOFING, INSULATION AND NEW CERTIFICATES OF OCCUPANCY, ESTABLISHING FEES FOR SAID PERMITS AND FOR OTHER PURPOSES

**Sponsors:** Inspections

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**ORD-09:099**

AN ORDINANCE BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, AR INCREASING FEES FOR NEW CONSTRUCTION, INSPECTIONS, AND FOR OTHER PURPOSES

**Sponsors:** Inspections

Attachments:     [Valuation Fees for Residential Permit](#)  
                          [Valuation Fees for Commercial Permit \(2\)](#)

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Ordinance be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:161**     RESOLUTION BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS TO ESTABLISH FEES FOR THE PLANNING AND ZONING DEPARTMENT

Sponsors:     Planning

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:162**     A RESOLUTION TO ESTABLISH FEES FOR THE ANIMAL CONTROL DIVISION, JONESBORO POLICE DEPARTMENT

Sponsors:     Animal Control

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:163**     A RESOLUTION TO ESTABLISH FEES FOR THE CEMETERY DEPARTMENT FOR DISINTERMENTS AND CREMATIONS

Sponsors:     Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:164**     A RESOLUTION TO ESTABLISH FEES FOR PARKS AND RECREATION DEPARTMENT FOR HOURLY RENTAL AND STRIPING AND DRAGGING OF NORTHSIDE BASEBALL FIELD

Sponsors:     Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:165**     A RESOLUTION TO ESTABLISH FEES FOR PARKS AND RECREATION DEPARTMENT RENTAL OF THE COMMUNITY CENTER AND THE COMMUNITY CENTER CLIMBING WALL

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:166**

A RESOLUTION TO ESTABLISH FEES FOR PARKS AND RECREATION DEPARTMENT FOR THE EARL BELL POOL PUNCH CARDS

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:167**

A RESOLUTION TO ESTABLISH FEES FOR PARKS AND RECREATION DEPARTMENT FOR JOE MACK CAMPBELL FIELD HOURLY RENTALS, BASEBALL & SOCCER STRIPING AND SOCCER LAYOUT

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:168**

A RESOLUTION TO ESTABLISH THE FEE FOR PARKS AND RECREATION DAILY RENTAL FEE FOR JOE MACK CAMPBELL FIELD

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:169**

A RESOLUTION TO ESTABLISH THE FEE FOR PARKS AND RECREATION RENTAL FEE FOR ALLEN PARK TENNIS COURT

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:170**

A RESOLUTION TO ESTABLISH THE FEE FOR PARKS AND RECREATION HOURLY RENTAL FEE FOR COMMUNITY CENTER ROOMS AND BASKETBALL COURTS

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:171** A RESOLUTION TO ESTABLISH THE FEE FOR PARKS AND RECREATION RENTAL FEE FOR CRAIGHEAD FOREST PARK CAMPGROUND

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:172** A RESOLUTION TO ESTABLISH THE FEE FOR PARKS AND RECREATION DAILY RENTAL FEE FOR EARL BELL POOL

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:173** A RESOLUTION TO ESTABLISH THE FEE FOR PARKS AND RECREATION DAILY RENTAL FEE FOR NORTHSIDE BASEBALL FIELD

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:178** A RESOLUTION TO ESTABLISH FEES FOR PARKS AND RECREATION DEPARTMENT; AND

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:179** A RESOLUTION TO ESTABLISH FEES FOR PARKS AND RECREATION DEPARTMENT; AND

**Sponsors:** Parks & Recreation

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**MILLAGE RESOLUTIONS**

**RES-09:174** RESOLUTION TO LEVY .5 MILL TAX ON ALL REAL AND PERSONAL PROPERTY FOR THE POLICE PENSION FUND

**Sponsors:** Finance & Administration Council Committee

*Chairwoman Williams noted the millage resolution is routine business and is done on a yearly basis.*

**A motion was made by Councilman John Street, seconded by Councilman Jim Hargis, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:175** RESOLUTION TO LEVY 2 MILL TAX ON ALL REAL AND PERSONAL PROPERTY FOR THE PUBLIC LIBRARY TAX

**Sponsors:** Finance & Administration Council Committee

**A motion was made by Councilman John Street, seconded by Councilman Jim Hargis, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:176** RESOLUTION TO LEVY .5 MILL TAX ON ALL REAL AND PERSONAL PROPERTY FOR THE FIRE PENSION FUND

**Sponsors:** Finance & Administration Council Committee

**A motion was made by Councilman John Street, seconded by Councilman Jim Hargis, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**OTHER RESOLUTIONS TO BE CONSIDERED**

**RES-09:180** A RESOLUTION TO ACCEPT INSURANCE PROPOSALS FROM BLUE CROSS BLUE SHIELD AND DELTA DENTAL TO PROVIDE INSURANCE COVERAGE FOR CITY EMPLOYEES

**Sponsors:** Human Resources

**A motion was made by Councilman John Street, seconded by Councilman Darrel Dover, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:183** A RESOLUTION APPROVING THE, YEAR 14 2010 COMMUNITY DEVELOPMENT BLOCK GRANT BUDGET AND AUTHORIZING THE SUBMISSION OF THE FY 2010 ACTION PLAN AND FOR OTHER PURPOSES

**Sponsors:** Community Development

**Attachments:** [Coun.Com.-Res.-Table](#)  
[2010 ACTION PLAN](#)

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

#### **4. Other Business**

**COM-09:144** Discussion concerning Mr. Randal Gerdes' property at 510 East Thomas Avenue.

**Attachments:** [Mr. Randal Gerdes' property details](#)

*Councilman Street explained the Gerdes' met with the Public Works Committee twice concerning the flooding damage to their home. He added the Public Works Committee approved and recommended the purchase of the Gerdes' home.*

*City Clerk Donna Jackson asked if the resolution concerning this property was in Legistar. Operations Director Gary Harpole answered no.*

*Mayor Perrin stated the City needs to follow their own policy and procedures concerning items being placed on the agenda. He added if the items are not in Legistar they will have to wait till the next committee meeting. He noted he spoke with City Attorney Phillip Crego concerning this resolution.*

*Councilman Street inquired if the resolution needs to go to the City Council meeting on November 17. Mr. Harpole answered he understood that the resolution needed to go to Council on November 17.*

*Mr. Barksdale noted the auditor wants to be informed of the outcome of this resolution.*

*Councilman Hargis stated it was represented to the Finance Committee that this matter was time sensitive due to the mold in the home.*

**This item was Read.**

**RES-09:191** RESOLUTION TO AUTHORIZE PURCHASE OF REAL PROPERTY LOCATED AT 510 EAST THOMAS AVENUE IN JONESBORO FOR CONSTRUCTION OF DETENTION POND AS RECOMMENDED BY THE CITY ENGINEERS

**Sponsors:** Engineering

**Attachments:** [Gerdes - Mayors Letter](#)  
[Gerdes - Offer and Acceptance](#)

**A motion was made by Councilman Darrel Dover, seconded by Councilman John Street, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:189** A RESOLUTION OF THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID, CHANGE ORDER #1, AND ENTER INTO A CONTRACT WITH BAILEY CONTRACTORS, INC FOR THE CONSTRUCTION OF THE CITY OF JONESBORO - NEW FACILITY FOR JETS - JOB NO. 2009:41

**Attachments:** [Agreement](#)  
[Change order](#)  
[Bid sheet](#)

**A motion was made by Councilman Jim Hargis, seconded by Councilman Darrel Dover, that this Resolution be Recommended to Council. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**COM-09:145** Financial reports

**Sponsors:** Finance

**Attachments:** [Finance Committee Meeting 11-10-2009](#)  
[Grants Financial Management Policy](#)  
[Accounting, Auditing & Financial Reporting Policy](#)  
[Capital Improvements Policy](#)  
[Cash & Investments Management Policy](#)  
[Fixed Assets, Vehicles & Equipment Records Policy](#)  
[General Financial Management Policy](#)  
[Fund Balance Reserves Policy](#)  
[2009 Principal Actuarial Report](#)  
[OCT-09 Budget Report - Summary by Department & Fund](#)  
[Oct-09 Receipts, Disbursements & Changes in Fund Balances YTD](#)  
[Required Reserves 2009 = Calculated Amounts](#)  
[Oct-09 Comparison of Reserve Requirement Methods](#)  
[Required Reserves 2009 = RES-03-705](#)  
[Sep-09 BUDGETING - Appropriate Fund Balance GFOA](#)  
[Sep-09 BUDGETING - Appropriate Reserves AML](#)  
[Oct-09 Report - Effects of Change in Reserve Requirements](#)  
[Non-uniform pension plan objectives](#)  
[Required reserves at 30%](#)  
[Example resolution concerning minimum financial reserve](#)  
[Example resolution concerning capital improvement fund](#)

*Chairwoman Williams requested all Finance Committee members review the financial polices packet before the next Finance Committee meeting.*

*Assistant Finance Director Jim Eagan explained the City currently requires 30% to be in the required reserves in the General Fund. He added the analysis showed that amount to be rather restrictive and limits the City's flexibility. He stated the Government Finance Officers Association (GFOA) recommends the unreserved fund balance be between 5% to 15% of the regular General Fund operating revenues or no less than 1 to 2 months of the regular General Fund operating expenditures. He noted the Municipal League recommends maintaining 2 months of the General Fund*



revenue in reserves. He added changing the required reserve percentage will be approximately a \$4 million difference.

Mr. Eagan noted if the City changed the required reserves to 15% it would leave the City with excess reserves. He added the auditor stated in some cases the City is violating its own resolutions and ordinances, which is reviewed by the Legislative Audit. He stated lowering the required reserve amount will keep the City from having audit findings and will provide the flexibility in going forward.

Finance Director Jim Barksdale discussed a resolution addressing Sec.26-75-203, which allows the City to move 50% of the sales tax money from the Capital Improvement Fund back into the General Fund in order to pay for vehicles and equipment. He noted the ordinance was more restrictive than state law. He explained the City is trying to make the ordinance not has restrictive. He added the City could have paid approximately \$3 to 4 million out of the Capital Improvement Fund instead of the General Fund based on the ordinance being less restrictive.

Chairwoman Williams asked if the reserves are not governed by state statutes, but are compared to the Municipal League rules. Mr. Barksdale answered yes. He stated state law only requires the City to have reserves, but not a percentage. He noted the auditors mentioned the City's reserves are 3 times higher than other cities the same size.

**This item was Read.**

## **5. Public Comments**

## **6. Adjournment**

**A motion was made by Councilman Jim Hargis, seconded by Councilman Mikel Fears, that this meeting be Adjourned. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears



# City of Jonesboro

515 West Washington  
Jonesboro, AR 72401

## Legislation Details (With Text)

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**File #:** MIN-09:123    **Version:** 1    **Name:**  
**Type:** Minutes    **Status:** To Be Introduced  
**File created:** 11/20/2009    **In control:** Finance & Administration Council Committee  
**On agenda:**    **Final action:**  
**Title:** Minutes for the special called Finance Committee meeting on November 17, 2009.  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** [Minutes 11/17/09](#)

Date	Ver.	Action By	Action	Result
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title

Minutes for the special called Finance Committee meeting on November 17, 2009.



# City of Jonesboro

900 West Monroe  
Jonesboro, AR 72401

## Meeting Minutes - Draft Finance & Administration Council Committee

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Tuesday, November 17, 2009

6:00 PM

Huntington Building

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### Special Called Meeting

#### 1. Call To Order

*Mayor Perrin was also in attendance.*

**Present** 5 - Ann Williams; Jim Hargis; John Street; Darrel Dover and Mikel Fears

#### 2. New Business

##### *Ordinances To Be Introduced*

**ORD-09:103**

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF COMPELLENT SAN SYSTEM FOR THE INFORMATION SYSTEMS DEPARTMENT

**Sponsors:** Information Systems

*Councilman Hargis asked what the necessity is for waiving competitive bidding. Mayor Perrin answered OPTUS is the sole source for the equipment.*

**A motion was made by Councilman Mikel Fears, seconded by Councilman Darrel Dover, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis; John Street; Darrel Dover and Mikel Fears

##### *Resolutions To Be Introduced*

**RES-09:186**

A RESOLUTION TO ESTABLISH THE REQUIRED MINIMUM FINANCIAL RESERVES IN THE GENERAL FUND

**Sponsors:** Finance and Mayor's Office

**Attachments:** [Oct-09 Report - Effects of Change in Reserve Requirements](#)  
[Oct-09 Required Reserves Report](#)  
[Oct-09 Comparison of Reserve Requirement Methods](#)  
[Required Reserves 2009 = RES-03-705](#)  
[Sep-09 BUDGETING - Appropriate Fund Balance GFOA](#)  
[Sep-09 BUDGETING - Appropriate Reserves AML](#)

*Chairwoman Williams explained Assistant Finance Director Jim Eagan handed out information at the last Finance Committee meeting concerning the minimum required*

reserve amount in the General Fund. She noted the percentage amount is higher than the recommendation by the Municipal League.

Councilman Fears asked if this resolution needs to be placed on tonight's Council agenda. Chairwoman Williams answered all of these items need to be placed on tonight's Council agenda.

**A motion was made by Councilman Mikel Fears, seconded by Councilman Darrel Dover, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:187**

A RESOLUTION TO ESTABLISH CRITERIA FOR THE USE OF THE CAPITAL IMPROVEMENTS FUND

**Sponsors:** Finance and Mayor's Office

**A motion was made by Councilman Darrel Dover, seconded by Councilman Jim Hargis, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:188**

A RESOLUTION TO ADOPT A POLICY FOR FINANCIAL MANAGEMENT OF GRANTS

**Sponsors:** Finance and Mayor's Office

**Attachments:** [Grants Financial Management Policy](#)

*Mayor Perrin stated this policy will have all grant funded departments run through a central source. He noted he is meeting with the grant auditors, Freeman and Company on Friday. He stated this policy will enable and maintain a viable relationship with granting entities and ensure compliance with internal control procedures on all grants the City applies for.*

**A motion was made by Councilman Darrel Dover, seconded by Councilman Mikel Fears, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:190**

A RESOLUTION TO ADOPT CERTAIN POLICIES FOR MANAGEMENT OF CITY FINANCES

**Sponsors:** Finance

**Attachments:** [Accounting, Auditing & Financial Reporting Policy](#)  
[Capital Improvements Policy](#)  
[Cash & Investments Management Policy](#)  
[Fixed Assets, Vehicles & Equipment Records Policy](#)  
[Fund Balance Reserves Policy](#)  
[General Financial Management Policy](#)

*Chairwoman Williams explained this policy was discussed by the Finance Committee for the past 3 months. She added the Finance Committee directed the Finance Department to draft a policy based on the recommendations from the Municipal*

*League and other organizations.*

*Finance Director Jim Barksdale stated the City will monitor the cash flow on a month to month basis.*

*Mayor Perrin noted when the City has a policy they are required to follow the policy. He added the Finance Committee will be required to approve these policies on an annual basis. He explained the City Council should approve all the policies on a annual basis, which they work under so the record will reflect they reviewed the audit and finance reports, Capital Improvements policy and the Cash Investment policy. He stated he will give a report concerning the policies on a month to month basis.*

**A motion was made by Councilman John Street, seconded by Councilman Mikel Fears, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**RES-09:194**

A RESOLUTION AUTHORIZING ACCEPTANCE OF AN AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) GRANT FROM THE FEDERAL AVIATION ADMINISTRATION (FAA)

**Sponsors:** Municipal Airport Commission

**Attachments:** [ARRA Grant No. 3-05-0033-017-2009](#)

*Mayor Perrin explained Grants Administrator Tony Thomas is hand delivering the grant for the Airport Commission today in St. Louis. He noted the grant is a 100% grant in the amount of \$292,040.50, which requires no cost from the City.*

**A motion was made by Councilman Darrel Dover, seconded by Councilman John Street, that this matter be Recommended to Council . The motion PASSED by an unanimous vote**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears

**3. Pending Items**

**4. Other Business**

**5. Public Comments**

**6. Adjournment**

**A motion was made by Councilman Mikel Fears, seconded by Councilman Darrel Dover, that this meeting be Adjourned. The motion CARRIED by a Voice Vote.**

**Aye:** 4 - Jim Hargis;John Street;Darrel Dover and Mikel Fears



# City of Jonesboro

515 West Washington  
Jonesboro, AR 72401

## Legislation Details (With Text)

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**File #:** ORD-09:104    **Version:** 1    **Name:**  
**Type:** Ordinance    **Status:** To Be Introduced  
**File created:** 11/17/2009    **In control:** Finance & Administration Council Committee  
**On agenda:**    **Final action:**  
**Title:** AN ORDINANCE TO AMEND THE 2009 ANNUAL BUDGET AND THE CITY PAY PLAN FOR THE CITY OF JONESBORO TO ADD A POSITION OF COMPLIANCE OFFICER TO THE GENERAL ADMINISTRATION DEPARTMENT  
**Sponsors:** Human Resources, Mayor's Office  
**Indexes:**  
**Code sections:**  
**Attachments:** [Compliance Officer](#)

Date	Ver.	Action By	Action	Result
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title

AN ORDINANCE TO AMEND THE 2009 ANNUAL BUDGET AND THE CITY PAY PLAN FOR THE CITY OF JONESBORO TO ADD A POSITION OF COMPLIANCE OFFICER TO THE GENERAL ADMINISTRATION DEPARTMENT

body

WHEREAS, Ordinance number ORD-09:005 adopted the 2009 annual budget for the City of Jonesboro and:

WHEREAS, Resolution number 2004:02 adopted the City Pay Plan and:

WHEREAS, it is recommended by the Finance Committee that the position of Compliance Officer be added:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS THAT:

SECTION 1: The 2009 annual budget of the City of Jonesboro is amended to include a Compliance Officer in the General Administration Department.

SECTION 2: The City Pay Plan is amended to include the position of Compliance Officer as a Grade 21, the General Administration Department.

SECTION 3: For the financial and operational continuity of the City of Jonesboro, it is hereby found and declared that an emergency exists and that this ordinance shall take effect from and after its passage and approval.





## Legislation Details (With Text)

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**File #:** ORD-09:107    **Version:** 1    **Name:**

**Type:** Ordinance    **Status:** To Be Introduced

**File created:** 12/1/2009    **In control:** Finance & Administration Council Committee

**On agenda:**    **Final action:**

**Title:** AN ORDINANCE TO APPROPRIATE FUNDS TO PURCHASE THE LICENSES FOR PUBLIC PLAYING AND PERFORMANCE OF MUSIC, AUTHORIZING THE EXECUTION OF THE CONTRACTS, AND DECLARING AN EMERGENCY

**Sponsors:** Finance

**Indexes:**

**Code sections:**

**Attachments:** [BMI Contract For Music Licensing](#)  
[SESAC Performance License for Municipalities](#)  
[ASCAP Licensing Contract](#)  
[Better Business Bureau Recommendation on Music in the Marketplace](#)

Date	Ver.	Action By	Action	Result
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title  
AN ORDINANCE TO APPROPRIATE FUNDS TO PURCHASE THE LICENSES FOR PUBLIC PLAYING AND PERFORMANCE OF MUSIC, AUTHORIZING THE EXECUTION OF THE CONTRACTS, AND DECLARING AN EMERGENCY

body  
WHEREAS, the City of Jonesboro has many facilities in which music is played and performed; and

WHEREAS, most of the music played and performed in Jonesboro city facilities is copyrighted music; and

WHEREAS, the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc (BMI) and SESAC are organizations formed to represent artists and legally license the rights for the use of their music; and

WHEREAS, licenses with all three organizations are necessary to show Jonesboro's due diligence in complying with copyright law; and

WHEREAS, in addition the City of Jonesboro can enhance its festivals, concerts, grand openings, tournaments, parades and other special events with the legal performance and playing of licensed music;

WHEREAS, 75% of the funds for the purchase of the licenses shall come from the Parks and Recreation Subscription and Dues account; 25% of the funds for the purchase of the licenses shall come from the General Administration Dues and Subscriptions account;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: The City of Jonesboro shall amend the 2009 budget and appropriate \$2,089.00 to purchase the licenses; \$608.00 to the American Society of Composers Authors and Publishers (ASCAP), \$608.00 to Broadcast Music, Inc (BMI) and \$873.00 to SESAC.

Section 2: The City of Jonesboro shall pay the annual fees required by the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc (BMI) and SESAC for the right to play and perform music in City venues.

Section 3: The Mayor, Harold Perrin and the City Clerk, Donna Jackson are authorized by the City Council of the City of Jonesboro sign all documents necessary to effectuate these agreements.

Section 4: Emergency Clause. It is found and declared by the City Council for the City of Jonesboro, Arkansas that this ordinance being necessary to show Jonesboro's due diligence in complying with copyright law an emergency is declared to exist and shall take effect and be in full force from and after its' passage and approval.



www.bmi.com/lge  
Username: 1872177  
Password: 675883

November 23, 2009

Jason Wilkie  
Jonesboro Arkansas  
410 W Washington Ave  
Jonesboro AR 72401

EMAIL

Visit Us On The Web About Your Licensing Needs: [www.bmi.com/lge](http://www.bmi.com/lge)  
Call BMI: (888) 689-5264  
Email: [glentgroup@bmi.com](mailto:glentgroup@bmi.com)

Dear Mr. Wilkie:

Thank you for speaking with our representative regarding music licensing. We appreciate the opportunity to clarify a subject that is often misunderstood. I understand that you requested that BMI provide a reference to verify our authority to act on behalf of our songwriters and composers. BMI is a recognized licensor of music by the U. S. Copyright Law, Title 17, United States Code Subsection 114(d)(3)(E)(ii).

For a direct source, you may contact the **U.S. Copyright Office** at (202) 707-3000 or view their web site at [www.copyright.gov](http://www.copyright.gov). You may also find additional information on BMI at the **Better Business Bureau's** web site: [www.us.bbb.org/music](http://www.us.bbb.org/music).

In addition to the Better Business Bureau, BMI is a member of many governmental and business organizations. We recommend contacting the local business bureaus and chambers of commerce within your area as well as regional and national trade associations. Please call us directly if you would like a complete list of trade associations that BMI belongs to.

In addition to these references, there have been many articles on music licensing in trade publications, regional, and national press as well. Since public performance fees are a critical component of a songwriter or composer's income, BMI would be happy to refer you to specific articles on the subject of music licensing and how music creators earn their living.

Enclosed is BMI's agreement. **You can also license online. Just go to the web address in the upper right hand corner of this letter, click "Apply for a License" and enter your Username & Password.** Many trade associations have discount programs with BMI. Contact your association to see if you qualify for a discount!

Sincerely,

Linda Mitchell  
Director  
General Licensing

Encl: LGE1 MPA 06/09, BRE  
1872177/g/Premise State: AR

P.S. Did you know that BMI distributes all music licensing fees, less operating expenses, to our affiliated songwriters, composers, and music publishers? This is just one of the reasons more than 400,000 copyright owners have entrusted BMI with their music.





**NOTICE REGARDING ARKANSAS  
COPYRIGHT ROYALTY COLLECTION PRACTICES ACT**

Under an Act of the State of Arkansas known as the Copyright Royalty Collection Practices Act, Broadcast Music, Inc. (BMI) is recognized as a performing rights society that licenses the public performance of nondramatic musical works on behalf of copyright owners pursuant to the United States Copyright Law.

As the proprietor of a business in the State of Arkansas where music is publicly performed, you are required to obtain authorization from the copyright owners of that music in order for your performances to be legal.

BMI represents more than 400,000 songwriters, composers and music publishers ("affiliates") and more than 6.5 million musical works. For a single annual fee, a BMI Music Performance Agreement will authorize you to legally perform at your place of business all of the musical works in the BMI repertoire created and owned by our affiliates, and you will avoid the necessity of having to contact each one individually to obtain permission.

In connection with our offering you a Music Performance Agreement, please be advised of the following:

**THE BMI MUSIC PERFORMANCE AGREEMENT**

- The BMI Music Performance Agreement is the contract that describes the rates and terms of royalties required to be paid by you to BMI for authorization to perform the music which we license.
- The schedule of rates can be found within the Music Performance Agreement under the heading License Fee Schedule.
- The Music Performance Agreement, including the schedule of rates and terms of royalties, which BMI has offered you is the same agreement BMI offers throughout the United States for your class and category of music use. Please read the Agreement carefully and call us at the tollfree number which appears on the enclosed letter if you have any questions. BMI complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.

**ACCESS TO AFFILIATE AND REPERTOIRE LIST**

Using a PC and a modem, you can electronically access the most current list of the affiliates we represent and the works in our repertoire which are licensed under your Music Performance Agreement. You should log onto the Internet and access the Repertoire Section of the bmi.com domain on the World Wide Web. Our URL address is <http://www.bmi.com>. Access to the Internet can be obtained through many commercial on-line services, as well as from specialized Internet access providers, often for the cost of a local telephone call. If you have questions about any song title or affiliate listing that you locate on our Internet domain, please call **1-800-800-9313** for assistance.

In addition to on-line access, a list of works in the BMI repertoire as of the last printing also is available in book form or on CD-ROM. To obtain a copy in either of those forms, please remit your check or money order in the indicated amount payable to BMI at the address below, with a letter specifying which you desire. The cost is as follows (prices include shipping and handling):

- (a) Printed list, approximately 17-20 vols, \$1,200
- (b) CD-ROM version, 1 disk, \$25

If you do not have the equipment to electronically access BMI's affiliate list, we will give you the opportunity to review the most currently available printed list of our affiliates. A refundable security deposit of \$10 is required for the book. Please send your check or money order for \$10 to the address below, with a letter indicating that you would like the affiliate book sent to you for review. We will not deposit your check unless you fail to return the book to us within 10 business days. Upon BMI's receipt of the book, your check or money order will be returned.

For the most current information about any affiliate or work listed in print or on CD-ROM, you should access our Internet domain or call **1-800-800-9313**.

**BROADCAST MUSIC, INC.**  
Attn: Marketing/Fulfillment  
10 Music Square East  
Nashville, Tennessee 37203

Arkansas  
LL-07/09-24

BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



**1. DEFINITIONS**

- (a) **LICENSEE** shall include the named entity and any of its constituent bodies, departments, agencies or leagues.
- (b) **Premises** means buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities, including, but not limited to, community centers, parks, swimming pools, and skating rinks owned and/or operated by LICENSEE and any site which has been engaged by LICENSEE for use by LICENSEE.
- (c) **Recorded Music** means music which is performed at the Premises by means other than by live musicians who are performing at the Premises, including, but not limited to (1) compact disc, audio record or audio tape players (but not including "jukeboxes"); (2) videotape, videodisc or DVD players; (3) music performed as an accompaniment to karaoke; (4) the reception and communication at the premises of radio or television transmissions which originate outside the Premises, and which are not exempt under the Copyright Law; or (5) a music-on-hold telephone system operated by LICENSEE at the Premises.
- (d) **Live Entertainment** means music that is performed at the Premises by musicians, singers and/or other performers.
- (e) **BMI Repertoire** means all copyrighted musical compositions written and/or published by BMI affiliates or members of BMI-affiliated foreign performing rights societies, including compositions written or published during the Term of this Agreement and of which BMI has the right to license non-dramatic public performances.
- (f) **Events and Functions** means any activity conducted, sponsored, or presented by or under the auspices of LICENSEE. Except as set forth in Paragraph 2 (d) below, "Events" and "Functions" shall include, but are not limited to, aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of, or sponsored or promoted by, LICENSEE on the Premises.
- (g) **Special Events** means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" (as defined in Schedule B) of such Special Event exceeds \$25,000.

**2. BMI GRANT**

- (a) BMI grants and LICENSEE accepts a non-exclusive license to perform, present or cause the live and/or recorded public performance on the "Premises" and at "Events" and "Functions", and not elsewhere or otherwise, non-dramatic renditions of the separate musical compositions in the "BMI Repertoire". The performances licensed under this Agreement may be by means of "Live Entertainment" or "Recorded Music".
- (b) This license does not authorize (1) the broadcasting, telecasting or transmission or retransmission by wire, Internet, website or otherwise, of renditions of musical compositions in BMI's Repertoire to persons outside of the Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Premises; and (2) performances by means of background music (such as *Muzak*) or other services delivered to the Premises. Nothing in this Paragraph shall be deemed to limit LICENSEE's right to transmit renditions of musical compositions in the BMI Repertoire to those who attend Events or Functions on the Premises by means of teleconferencing, videoconferencing or similar technology.
- (c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this Agreement, a dramatic performance shall include, but not be limited to, the following: (1) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety; (2) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; (3) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation; and (4) performance of a concert version of a "dramatico-musical work" (as hereinafter defined). The term "dramatico-musical work" as used in the Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.
- (d) This license does not authorize performances: (1) at any convention, exposition, trade show, conference, congress, industrial show or similar activity presented by LICENSEE or on the Premises unless it is presented or sponsored solely by and under the auspices of LICENSEE, is presented entirely on LICENSEE's Premises, and is not open to the general public; (2) by or at colleges and universities; (3) at any professional sports events or game played on the Premises; (4) at any permanently situated theme or amusement park owned or operated by LICENSEE; (5) by any symphony or community orchestra; and (6) by means of a coin operated jukebox.

**3. REVIEW OF STATEMENTS AND / OR ACCOUNTINGS**

- (a) BMI shall have the right to require such reasonable data necessary in order to ascertain the Annual License Fee.
- (b) BMI shall have the right, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as a result of any such examination of books and records as completely confidential.
- (c) BMI shall have the right to adjust LICENSEE's Annual License Fee based upon the most recently available revised population figures provided by the U. S. Census Department.

#### 4. LATE PAYMENT AND SERVICE CHARGES

BMI may impose a late payment charge of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI may impose a \$25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI.

#### 5. BMI COMMITMENT TO CUSTOMER / INDEMNITY

So long as LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend LICENSEE and its officers, and employees, from and against any and all claims, demands, or suits that may be made or brought against them with respect to the performance of any musical works which is licensed under this Agreement at the time of performance. LICENSEE agrees to give BMI immediate notice of any such claim, demand, or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand, or suit.

#### 6. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues for thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement with the terms of this Paragraph.

#### 7. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel the Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

#### 8. ASSIGNMENT

This license is not assignable or transferable by operation of law or otherwise. This license does not authorize LICENSEE to grant to others any right to perform publicly in any manner any of the musical compositions licensed under this Agreement, nor does it authorize any public performances at any of the Premises in any manner except as expressly herein provided.

#### 9. ARBITRATION

All disputes of any kind, nature, or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County, and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so

appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon a third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but not need be, entered in any court having jurisdiction. Such award shall include the fixing of the costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

#### 10. NOTICES

Any notice under this Agreement will be in writing and deemed given upon mailing when sent by ordinary first-class U.S. mail to the party intended, at its mailing address stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, General Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

#### 11. MISCELLANEOUS

The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. This Agreement constitutes the entire understanding between the parties and cannot be waived or added to or modified orally and no waiver, addition and modification shall be valid unless in writing and signed by both parties.

#### 12. FEES

- (a) In consideration of the license granted herein, LICENSEE agrees to pay BMI a license fee which includes the total of the "Base License Fee" and any applicable "Special Events License Fees", all of which shall be calculated in accordance with the Rate Schedule on Page 3. For purposes of this Agreement,
- (i) "Base License Fee" means the annual fee due in accordance with Schedule A of the Rate Schedule and based on LICENSEE's population as established in the most recent published U.S. Census data. It does not include any fees due for Special Events.
  - (ii) "Special Events License Fees" means the amount due in accordance with Schedule B of the Rate Schedule when Special Events are presented by or on behalf of LICENSEE. It does not include any Base License Fee due.
  - (iii) LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be required to pay only the fee under the Schedule C of the Rate Schedule. Such leagues or associations are not subject to Schedule A or Schedule B of the Rate Schedule. Fees paid by such leagues or associations do not cover performances of the municipality, county, or other local government entity represented by the league or association. Schedule C fees are not applicable to municipal, county or other government entities.

## 2009 RATE SCHEDULE FOR LOCAL GOVERNMENTS

SCHEDULE A			
Check Population Range (√)	LICENSEE's Population	Base License Fee	Enter Fee Based Upon Population
<input type="checkbox"/>	1 - 50,000	\$305	
<input checked="" type="checkbox"/>	50,001 - 75,000	\$608	\$608
<input type="checkbox"/>	75,001 - 100,000	\$731	
<input type="checkbox"/>	100,001 - 125,000	\$975	
<input type="checkbox"/>	125,001 - 150,000	\$1,219	
<input type="checkbox"/>	150,001 - 200,000	\$1,584	
<input type="checkbox"/>	200,001 - 250,000	\$1,949	
<input type="checkbox"/>	250,001 - 300,000	\$2,317	
<input type="checkbox"/>	300,001 - 350,000	\$2,682	
<input type="checkbox"/>	350,001 - 400,000	\$3,049	
<input type="checkbox"/>	400,001 - 450,000	\$3,414	
<input type="checkbox"/>	450,001 - 500,000	\$3,780	
<input type="checkbox"/>	500,001 - plus	\$5,133 plus \$500 for every 100,000 population increment or portion thereof above 500,000 up to a maximum annual fee of \$60,950	
	If 500,001 or more, enter population _____		
		<b>SCHEDULE A FEE</b>	\$608.00

SCHEDULE B Special Events Fee (to be reported 90 days after each event*, see Par. 13(d))	
<b>The rate for Special Events shall be 1% of Gross Revenue</b>	
<ul style="list-style-type: none"> <li>▪ <b>"Special Events"</b> means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Events exceeds \$25,000.00 .</li> <li>▪ <b>"Gross Revenue"</b> means all monies received by LICENSEE or on LICENSEE's behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from the sponsors or other payments received by LICENSEE for each Special Event.</li> </ul>	
<b>SCHEDULE B FEE</b>	<i>BMI will provide a report form to report your events*</i>

SCHEDULE C State Municipal and/or County Leagues or State Associations of Attorneys (to be completed if you are a State Municipal and/or County Leagues or State Associations of Attorneys)	
The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues, or state associations of municipal and/or county attorneys shall be <b>\$305.00</b> . No Special Events fee applies to LICENSEES qualifying under this schedule.	
<b>SCHEDULE C FEE</b>	

### 13. REPORTING

- (a) Upon the execution of this Agreement, LICENSEE shall submit:
  - (i) a report stating LICENSEE's population based on the most recent published U.S. Census data. The population set forth in the report shall be used to calculate the Base License Fee under this Agreement; and
  - (ii) a report containing the information set forth in Paragraph 13 (d) below for all Special Events that were presented between the effective date of this Agreement and the execution of this Agreement.
- (b) The Base License Fee for the first year of this Agreement and any license fees due for Special Events that were presented between the effective date of this Agreement and the execution of this Agreement shall be payable upon the execution of this Agreement.
- (c) Base License Fees for subsequent years shall be due and payable within 30 days of the renewal date of this Agreement and shall be accompanied by a statement confirming whether any Special Events were presented during the previous calendar year.
- (d) Ninety (90) days after the conclusion of each Special Event, LICENSEE shall submit to BMI payment for such Special Event and a report in printed or computer readable form stating:
  - (i) the date presented;
  - (ii) the name of the attraction(s) appearing;
  - (iii) the "Gross Revenue" of the event (as defined above);
  - (iv) the license fee due for each Special Event.
- (e) If LICENSEE presents, sponsors or promotes a Special Event that is reportable under Rate Schedule B with another person or





## SESAC PERFORMANCE LICENSE for MUNICIPALITIES

Agreement made in New York by and between SESAC LLC ("SESAC"), a Delaware limited liability company, with offices at 55 Music Square East, Nashville, TN 37203 and

The City of Jonesboro, Arkansas ("LICENSEE")

Billing Address 515 W Washington

City Jonesboro State AR ZIP 72401

Telephone: 870-933-4604 Fax: 870-933-4641 E-mail: Jwiltke@jonesboro.org

SESAC and LICENSEE hereby mutually agree as follows:

<sup>December 15, 2010</sup>  
1. **GRANT OF RIGHTS:** Effective as of January 1 2009, (the "Effective Date") SESAC grants to LICENSEE the non-exclusive right and license to publicly perform live or "recorded" non-dramatic renditions of the musical compositions, the performance rights to which SESAC controls and/or is empowered to license (the "Compositions") solely on and in connection with the following:

Name: The City of Jonesboro

Location: Jonesboro, Arkansas (the "Municipality")

As used herein, Municipality shall include those locations owned, operated, and/or leased by LICENSEE which are used as governmental offices or for related purposes; those locations at which events are held under LICENSEE's sole control and attended by LICENSEE's employees, their families, social acquaintances, citizens, and other members of the public; and those areas owned, operated, and/or leased by LICENSEE which are under LICENSEE's sole control.

2. **LIMITATIONS OF RIGHTS:** The Rights granted pursuant to Paragraph 1 above shall specifically exclude:

A. the right to perform, broadcast, televise or otherwise transmit the Compositions to any location (unless and to the extent otherwise expressly permitted in Schedule "A");

B. the right to grant the Rights to any third party;

C. "Grand Rights" in and to the Compositions ("Grand Rights" include, but are not limited to, the right to perform in whole or in part, dramatico-musical and dramatic works in a dramatic setting);

D. performances of the Compositions (i) which are part of a background music service originating from any location including the Municipality, for which performance license fees are otherwise paid, regardless of the means by which such performances are transmitted on or to the Municipality, (ii) by coin-operated phonorecord players ("jukeboxes"), as defined in 17 U.S.C. § 116, and/or (iii) transmitted by computer on-line services or electronic bulletin boards and received on the Municipality (unless and to the extent otherwise expressly permitted in Schedule "A").

E. This license shall specifically exclude concerts. "Concerts" are those performances by an entertainer, group, or performer for which an admission or other fee is charged and which are not solely promoted by LICENSEE.

F. This license shall specifically exclude "Sporting events." "Sporting events" are professional, semi-professional, major or minor league athletic competitions.

G. This license shall specifically exclude Colleges and/or Universities.

### **3. TERM OF LICENSE:**

A. The term of the Agreement shall be for an initial period that commences upon the Effective Date and continues for a period of one (1) year (the "Initial Period"). Thereafter, the Agreement shall automatically continue in full force and effect for successive additional periods of one (1) year ("Renewal Period(s)"). SESAC and /or LICENSEE shall have the right to terminate this Agreement as of the last day of the Initial Period or as of the last day of any Renewal Period(s) upon giving written notice to the other party by certified mail, return receipt requested, at least thirty (30) days prior to the commencement of any Renewal Period(s). The Initial Period and Renewal Period(s) are sometimes collectively referred to herein as the "Term."

B. Notwithstanding anything to the contrary contained herein, SESAC shall have the right to terminate this Agreement upon thirty (30) days written notice by reason of any law, rule, decree, or other enactment having the force of law, by any authority, whether federal, state, local, territorial or otherwise, which shall result in substantial interference in SESAC's operation or any substantial increase in the cost of conducting its business.

### **4. LICENSE FEE:**

A. As consideration for the Rights granted herein, LICENSEE shall pay to SESAC the annual "License Fee" then in effect in accordance with the "Fee Schedule" set forth in Schedule "A" attached hereto.

B. In the event that SESAC is determined by the taxing authority or courts of any state, territory, or possession in which LICENSEE conducts its operation to be liable for the payment of a gross receipts, sales, use, business use or other tax which is based on the amount of SESAC's receipts from LICENSEE, then LICENSEE shall reimburse SESAC, within thirty (30) days of notification therefor, for LICENSEE's pro rata share of any such tax derived from receipts received from LICENSEE, unless by constitution or statute, LICENSEE is exempt from any such tax whether applied directly or indirectly to LICENSEE.

C. SESAC shall have the right to impose a late payment charge of one and one-half percent (1.5%) per month for any License Fee payment that is more than thirty (30) days past due. In the event that SESAC incurs any costs or fees in connection with the collection of any amounts past due to SESAC hereunder, including without limitation reasonable attorney's fees, then LICENSEE shall be responsible for paying such amounts to SESAC unless by constitution or statute, LICENSEE is exempt from any such charge whether applied directly or indirectly to LICENSEE.

D. Effective January 1 of each calendar year the License Fee may be increased by five percent (5%), rounded to the nearest dollar. In the event that the percent increase in the Consumer Price Index - All Urban Consumer (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor, between the most recent October and the preceding October exceeds five percent (5%), then the License Fee may be increased by that amount.

### **5. MISCELLANEOUS:**

A. In the event LICENSEE fails to pay the License Fee when due or is otherwise in default of any other provision of this Agreement, then SESAC shall have the right to terminate this Agreement in addition to pursuing any and all other rights and/or remedies available if LICENSEE has not cured such breach within thirty (30) days following SESAC's written notice of such default.

B. SESAC shall have the right to withdraw from the scope of this License, upon written notice, the right to perform any musical composition licensed hereunder as to which any action has been threatened, instituted, or a claim made that SESAC does not have the right to license the performance rights in such composition.

C. This Agreement shall be binding upon and inure to the benefit of SESAC's and LICENSEE's legal representatives, successors, and assigns, but no assignment shall relieve SESAC or LICENSEE of their obligation under this Agreement.

D. This Agreement supersedes and cancels all prior negotiations and understandings between SESAC and LICENSEE in connection with the Municipality. No modification of this Agreement shall be valid or binding unless in writing and executed by SESAC and LICENSEE. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect. No waiver of any breach of this Agreement shall be deemed a waiver of any preceding, continuing or succeeding breach of the same, or any other provision of this Agreement.

IN WITNESS THEREOF, the parties have caused this Agreement to be duly signed as of 11/20/2009  
(Please insert today's date)

**LICENSEE**

BY: \_\_\_\_\_  
(please sign here)

(Type or print name)

TITLE:

**SESAC LLC**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Schedule "A"  
MUNICIPALITY - 2009**

I. **Municipality.** "Municipality," as used in the SESAC Performance License effective January 1 2009

(the "Agreement") to which this Schedule "A" is attached, shall be defined as the following Municipality:

Name: The City of Jonesboro  
 Location: Jonesboro, AR (the "Municipality")

**II. Fee Schedule/License Fee.**

A. The annual License Fee shall be based upon the Population of the Municipality as noted below:

<u>Population</u>		<u>License Fee for calendar year 2009</u>
Under	25,000	\$ 269
25,001	- 50,000	\$ 536
50,001	- 100,000	\$ 873
100,001	- 150,000	\$1,274
150,001	- 250,000	\$1,742
250,001	- 500,000	\$2,277
500,001	And over	\$2,883 + \$269 for each additional 100,000 population

Population 55,515

This license will authorize **audio and/or audio/visual musical performances** (radio, records, tapes, compact discs, videocassettes, laser discs, television, and similar media), and **live musical performances**. This license will also authorize performances via **music on hold** systems operated by LICENSEE.

B. As used herein, "Population" shall mean the total population of the Municipality as of the most recent United States Census.

C. LICENSEE shall pay the license fee to SESAC upon execution of this Agreement, with license fees due and payable in advance. The initial license fee payment shall be a pro-rated amount calculated using the then current license fee rate(s) from the Effective Date through the end of the current billing period. Subsequent payments shall be made annually in one (1) payment on or before the first day of January, for the billing period of January 1 through December 31 of each calendar year of the Term.

D. Upon execution of this License, LICENSEE shall provide SESAC with a report detailing the Population as of the Effective Date. Thereafter, on or before October 1 of each calendar year, in the event that a change in the Population results in a change in fee category, LICENSEE shall submit an updated report of the Population. License fees will be adjusted effective the following January 1. SESAC retains the right to obtain these figures through United States Census Data and make appropriate adjustments to the license fee.

E. Notwithstanding anything to the contrary contained in this Agreement, upon written notice to LICENSEE, SESAC shall have the right to adjust the rates set forth in the Fee Schedule. In the event that LICENSEE's License Fee increases as a result of such adjustment to the Fee Schedule, LICENSEE shall have the right to terminate this Agreement as of the date such increase is to take effect. LICENSEE must give SESAC written notice of such termination by certified mail, return receipt requested, not later than thirty (30) days after written notice of such increase is sent to LICENSEE by certified mail. This paragraph shall not apply to paragraph 4.D of the Agreement.

III. **This Schedule** is incorporated and made part of the Agreement. Unless otherwise indicated, all capitalized terms in this Schedule "A" shall have the same meaning as set forth in the Agreement.

## NOTICE TO ARKANSAS PROPRIETORS

Arkansas law (Act 648 of 1997 "An Act relating to certain business practices used in the collection of copyright royalties; and providing penalties; and for other purposes") requires SESAC, Inc. (one of the "performing rights societ[ies]" defined under the law) to provide you with the following information, in writing, at least seventy-two (72) hours prior to the execution of any contract requiring you to pay royalties to SESAC:

(1) A schedule of the rates and terms of royalties under the contract;

Be advised that the rates and terms of SESAC's performance rights license are contained in paragraphs 1, 3, 4, 5 and/or 7 of the contract and the rate schedule attached thereto and made a part thereof.

(2) The opportunity, at your request, to review the most current available list of the affiliates represented by SESAC;

Any request for the most current list of SESAC's affiliates should be addressed to SESAC, Inc, 55 Music Square East, Nashville, TN 37203. The most current list of SESAC's affiliates may be accessed at <http://sesac.com>.

(3) Notice that SESAC will make available, upon your written request and at your sole expense, the most current available listing of the copyrighted musical works in SESAC's repertory.

Any request for the most current list of the SESAC repertory should be addressed to SESAC, Inc, 55 Music Square East, Nashville, TN 37203. The cost of a printed listing is \$613.32. Alternatively, the SESAC repertory may be accessed at <http://sesac.com>.

(4) A toll free telephone number from which you may obtain answers to inquiries concerning SESAC's repertory:

SESAC's toll-free information hotline is 800-826-9996.

## LICENSE AGREEMENT - LOCAL GOVERNMENTAL ENTITIES

# Agreement

between American Society of Composers, Authors and Publishers ("SOCIETY"), located at 2675 Paces Ferry Road, SE, Suite 350, Atlanta, GA 30339

and City of Jonesboro, AR

("LICENSEE"), located at

3911 Asbury Dr. Jonesboro AR 72404

as follows:

### 1. Grant and Term of License

(a) ASCAP grants and LICENSEE accepts a license to perform publicly on the "Premises" and at "Events" and "Functions," and not elsewhere or otherwise, non-dramatic renditions of the separate musical compositions in the "ASCAP repertory." The performances licensed under this Agreement may be by means of "Live Entertainment" or "Mechanical Music". For purposes of this Agreement,

- (i) "LICENSEE" shall include the named entity and any of its constituent bodies, departments, agencies or leagues.
- (ii) "Mechanical Music" means music which is performed at the Premises by means other than by live musicians who are performing at the Premises, including, but not limited to (A) compact disc, audio record or audio tape players (but not including "jukeboxes"), (B) videotape, videodisc or DVD players; (C) the reception and communication at the premises of radio or television transmissions which originate outside the Premises; and which are not exempt under the Copyright Law; or (D) a music-on-hold telephone system operated by LICENSEE at the Premises.
- (iii) "Live Entertainment" means music that is performed at the Premises by musicians, singers or other performers.
- (iv) "Premises" means buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities, including, but not limited to, community centers, parks, swimming pools, and skating rinks owned or operated by LICENSEE and any site which has been engaged by LICENSEE for use by LICENSEE.
- (v) "ASCAP repertory" means all copyrighted musical compositions written or published by ASCAP members or members of affiliated foreign performing rights societies, including compositions written or published during the term of this Agreement and of which ASCAP has the right to license non-dramatic public performances.
- (vi) "Events" and "Functions" means any activity conducted, sponsored, or presented by or under the auspices of LICENSEE. Except as set forth in paragraph 2.(d) below, "Events" and "Functions" shall include, but are not limited to, aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of or sponsored or promoted by LICENSEE on the Premises.
- (vii) "Special Events" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Event exceeds \$25,000 (as defined in paragraph 4.(d) below).

(b) This Agreement shall be for an initial term of one year, commencing December 15, 2009, which shall be considered the effective date of this Agreement, and continuing thereafter for additional terms of one year each. Either party may give notice of termination to the other no later than thirty (30) days prior to the end of the initial or any renewal term. If such notice is given, the agreement shall terminate on the last day of the term in which notice is given.

### 2. Limitations On License

(a) This license is not assignable or transferable by operation of law or otherwise. This license does not authorize LICENSEE to grant to others any right to perform publicly in any manner any of the musical compositions licensed under this agreement, nor does it authorize any public performances at any of the Premises in any manner except as expressly herein provided.

(b) This license does not authorize (i) the broadcasting, telecasting or transmission or retransmission by wire, Internet, website or otherwise, of renditions of musical compositions in ASCAP's repertory to persons outside of the Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Premises; and (ii) performances by means of background music (such as *Muzak*) or other services delivered to the Premises. Nothing in this paragraph shall be deemed to limit LICENSEE's right to transmit renditions of musical compositions in the ASCAP repertory to those who attend Events or Functions on the Premises by means of teleconferencing, videoconferencing or similar technology.

(c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this agreement, a dramatic performance shall include, but not be limited to, the following:

- (i) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety;
- (ii) performance of one or more musical compositions from a "dramatico-musical work (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken;

- (iii) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation;
- (iv) performance of a concert version of a “dramatico-musical work” (as hereinafter defined).  
The term “dramatico-musical work” as used in this Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.
- (d) This license does not authorize performances:
  - (i) at any convention, exposition, trade show, conference, congress, industrial show or similar activity presented by LICENSEE or on the Premises unless it is presented or sponsored solely by and under the auspices of LICENSEE, is presented entirely on LICENSEE'S Premises, and is not open to the general public;
  - (ii) by or at colleges and universities;
  - (iii) at any professional sports event or game played on the Premises;
  - (iv) at any permanently situated theme or amusement park owned or operated by LICENSEE;
  - (v) by any symphony or community orchestra;
  - (vi) by means of a coin operated phonorecord player (jukebox) for which a license is otherwise available from the Jukebox License Office.

### 3. License Fee

- (a) In consideration of the license granted herein, LICENSEE agrees to pay ASCAP a license fee which includes the total of the “Base License Fee” and any applicable “Special Events License Fees”, all of which shall be calculated in accordance with the Rate Schedule attached to and made part of this Agreement. For purposes of this Agreement,
  - (i) “Base License Fee” means the annual fee due in accordance with Schedule A of the Rate Schedule and based on LICENSEE’s population as established in the most recent published U.S. Census data. It does not include any fees due for Special Events.
  - (ii) “Special Events License Fees” mean the amount due in accordance with Schedule B of the Rate Schedule when Special Events are presented by or on behalf of LICENSEE. It does not include any Base License Fees due.
  - (iii) LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be required to pay only the fee under Schedule C of the Rate Schedule. Such leagues or associations are not subject to Schedule A or Schedule B of the Rate Schedule. Fees paid by such leagues or associations do not cover performances of the municipality, county or other local government entity represented by the league or association. Schedule C fees are not applicable to municipal, county or other local government entities.

Unless otherwise limited by law, LICENSEE shall pay a finance charge of 1.5% per month from the due date, or the maximum amount permitted by law, whichever is less, on any required payment that it is not made within thirty days of its due date.

### 4. Reports and Payments

- (a) Upon the execution of this Agreement, LICENSEE shall submit:
  - (i) a report stating LICENSEE’s population based on the most recent published U.S. Census data. The population set forth in the report shall be used to calculate the Base License Fee under this Agreement; and (ii) a report containing the information set forth in paragraph 4.(d) below for all Special Events that were presented between the effective date of this Agreement and the execution of this Agreement.
- (b) The Base License Fee for the first year of this Agreement and any license fees due for Special Events that were presented between the effective date of this Agreement and the execution of this Agreement shall be payable upon the execution of this Agreement.
- (c) Base License Fees for subsequent years shall be due and payable within 30 days of the renewal date of this Agreement and shall be accompanied by a statement confirming whether any Special Events were presented during the previous calendar year.
- (d) Ninety days after the conclusion of each Special Event, LICENSEE shall submit to ASCAP payment for such Special Event and a report in printed or computer readable form stating:
  - (i) the date presented;
  - (ii) the name of the attraction(s) appearing;
  - (iii) the “Gross Revenue” of the event. “Gross Revenue” means all monies received by LICENSEE or on LICENSEE’S behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, “Gross Revenue” shall mean contributions from sponsors or other payments received by LICENSEE for each Special Event;
  - (iv) the license fee due for each Special Event.
- (e) If LICENSEE presents, sponsors or promotes a Special Event that is reportable under Rate Schedule B with another person or entity licensed under an ASCAP License Agreement, LICENSEE shall indicate the name, address, phone number and ASCAP account number of the other person(s) or entity(ies) and the party responsible for payment for such Special Event. If the other party is not licensed by ASCAP, LICENSEE shall pay the license fee due hereunder, notwithstanding any agreement to the contrary between LICENSEE and the other party.

(f) LICENSEE agrees to furnish to ASCAP, where available, copies of all programs of musical works performed, which are prepared for distribution to the audience or for the use or information of LICENSEE or any department thereof. The programs shall include all encores to the extent possible. LICENSEE shall be under no obligation to furnish programs when they have not been otherwise prepared.

(g) ASCAP shall have the right to examine LICENSEE'S books and records at LICENSEE's place of business during normal business hours to such extent as may be necessary to verify the reports required by paragraph 4.(d) above. ASCAP shall have the right to adjust LICENSEE's Base License Fee based upon the most recently available revised population figures and Population Estimates Program provided by the U.S. Census Department.

### 5. Breach or Default

Upon any breach or default by LICENSEE of any term or condition herein contained, ASCAP may terminate this license by giving LICENSEE thirty days notice to cure such breach or default, and in the event that such breach or default has not been cured within said thirty days, this license shall terminate on the expiration of such thirty-day period without further notice from ASCAP. In the event of such termination, ASCAP shall refund on a pro-rata basis to LICENSEE any unearned license fees paid in advance.

### 6. Interference in Operations

ASCAP shall have the right to terminate this license upon thirty days written notice if there is any major interference with, or substantial increase in the cost of, ASCAP's operations as the result of any law in the state, territory, dependency, possession or political subdivision in which LICENSEE is located which is applicable to the licensing of performing rights. In the event of such termination, ASCAP shall refund to LICENSEE on a pro-rata basis any unearned license fees paid in advance.

### 7. Non-Discrimination

LICENSEE recognizes that ASCAP must license all similarly situated users on a non-discriminatory basis. LICENSEE agrees that any modifications to this Agreement by ASCAP, which are required by local, state or federal law for other municipalities, counties and other governmental entities shall not constitute discrimination between similarly situated users. Examples of such modifications are statements of equal employment opportunity or nondiscrimination on the basis of race, creed, color, sex or national origin.

### 8. Notices

ASCAP or LICENSEE may give any notice required by this Agreement by sending it by certified United States Mail, by generally recognized same-day or overnight delivery service or by electronic transmission (i.e., Mailgram, facsimile or similar transmission) to the appropriate person/office as listed herein. Each party agrees to notify the other of any change in contact information, such as change of address, change of person/office responsible, etc. within 30 days of such change.

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

By \_\_\_\_\_

LICENSEE City of Jonesboro, AR

By \_\_\_\_\_

TITLE \_\_\_\_\_

(Fill in capacity in which signed: (a) If corporation, state corporate office held; (b) If partnership, write word "partner" under signature of signing partner; (c) If individual owner, write "individual owner" under signature.)





# LOCAL GOVERNMENT ENTITIES

## 2009 Rate Schedule

### SCHEDULE A: Base License Fee

Population Size			Base License Fee
1	to	50,000	\$305.00
50,001	to	75,000	\$608.00
75,001	to	100,000	\$731.00
100,001	to	125,000	\$975.00
125,001	to	150,000	\$1,219.00
150,001	to	200,000	\$1,584.00
200,001	to	250,000	\$1,949.00
250,001	to	300,000	\$2,316.00
300,001	to	350,000	\$2,682.00
350,001	to	400,000	\$3,047.00
400,001	to	450,000	\$3,412.00
450,001	to	500,000	\$3,779.00
500,001	and over		*** \$4,631.00

\*\*\* \$4,631 plus \$500 for each 100,000 of population above 500,000 to a maximum fee of \$60,938

### SCHEDULE B: Special Events

The rate for Special Events shall be 1% of Gross Revenue.

"Special Events" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Event exceeds \$25,000.

"Gross Revenue" means all monies received by LICENSEE or on LICENSEE'S behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from sponsors or other payments received by LICENSEE for each Special Event.

### SCHEDULE C: State Municipal and/or County Leagues or State Associations of Attorneys

The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be \$305.

### License Fee for Year 2009 and Thereafter

For each calendar year commencing 2009, all dollar figures set forth in Schedules A, B and C above (except for \$500 add-on for populations of 500,001 or more) shall be the license fee for the preceding calendar year, adjusted in accordance with the increase in the Consumer Price Index - All Urban Consumers (CPI-U) between the preceding October and the next preceding October. Any additional license fees due resulting from the CPI adjustment shall be payable upon billing by ASCAP.



# American Society of Composers, Authors and Publishers

2675 Paces Ferry Road, SE, Suite 350 Atlanta, GA 30339

## INVOICE

City of Jonesboro, AR  
3911 Asbury Dr.  
Jonesboro, AR 72404

December 2, 2009

Re: City of Jonesboro, AR  
3911 Asbury Dr.  
Jonesboro, AR 72404

Billing Period: December 15, 2009 Thru December 14, 2010

Annual Rate: \$608.00

Amount Due \$608.00

The only credit cards ASCAP accepts are MasterCard and VISA

Payment Amount: \$ \_\_\_\_\_

\*Check No: \_\_\_\_\_

Credit Card No: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

VISA \_\_\_\_\_ Mastercard \_\_\_\_\_

Name exactly as on Card: \_\_\_\_\_

Signature: \_\_\_\_\_

Cardholder acknowledges receipt of good and/or services in the amount of the total shown herein and agrees to perform the obligations set forth in the Cardholder's Agreement with the Issuer.

**\*Please note:** "When you provide a check as payment, you authorize ASCAP to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. However the transaction will appear on your bank statement. If we cannot post the transaction electronically, we may present a copy of your check for payment."

**License fees due and payable in advance. Retain bottom portion for your records.**

City of Jonesboro, AR  
3911 Asbury Dr.  
Jonesboro, AR 72404

Billing Period: December 15, 2009 Thru December 14, 2010

Annual Rate: \$608.00

Amount Due \$608.00



## DISCLOSURE STATEMENT

This is notice that, in compliance with Section 3 of the 1997 Arkansas Copyright Royalty Collection Practices Act, Ark. Stat., §4-76-103:

- (1) The performing rights license agreement you have been offered by the American Society of Composers, Authors and Publishers (ASCAP) contains the schedule of the rates and terms of royalties under that contract;
- (2) At your request, you have the opportunity to review the most current available list of the members of ASCAP;
- (3) ASCAP will make available, upon your written request and at your sole expense, the most current available listing of the copyrighted musical works in the ASCAP repertory; and
- (4) ASCAP has established a toll-free telephone number, 1-800-450-4223, which can be used to obtain answers to your specific questions concerning the ASCAP repertory.

In addition, information about ASCAP's members and the musical works in the ASCAP repertory can be obtained in a variety of other ways. Separate databases of works that have been registered with ASCAP since January 1, 1991, or identified in ASCAP's surveys of performed works since January 1, 1978, are available online at the ASCAP Web Site, [www.ascap.com](http://www.ascap.com) (access the "ACE Database of Musical Titles" to determine whether particular songwriters or specific songs are in the ASCAP repertory). Data similar to that contained in the ACE Database is also available on DVD-ROM and is available free of charge by written request to ASCAP, One Lincoln Plaza, New York, NY 10023, attn: Director of Repertory. More comprehensive records of the titles, dates of U.S. Copyright registration (if any), writers and current publishers or other copyright owners of all known works in the ASCAP repertory are available for public inspection at ASCAP's New York office during regular business hours. A printed current list of ASCAP members can be obtained *gratis* by written request to ASCAP, 2675 Paces Ferry Road, SE, Suite 350, Atlanta, GA 30339, attn: Phil Skinner. A computer-generated listing of copyrighted musical works in the ASCAP repertory may also be obtained by written request addressed to Mr. Skinner at a cost of \$2200.00 plus shipping and handling (the listing is over 10,000 pages in length). You can also call or write to our Repertory Department (Clearance Section) at our New York address for additional information (the toll-free telephone number is (800) 95-ASCAP).

# BBB Brochure- Music in the Market Place

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## Music in the Marketplace

12/14/2007

### Preface

This advisory is intended as a general explanation of the nature and functions of music performing rights organizations. It is designed to help businesses that use music in any way in their dealings with the public to understand their rights and obligations under the copyright law. Information presented here is not intended to be legal advice and should not be considered as a substitute for legal counsel on specific copyright issues.

### *Performing Rights Organizations*

In order to effectively and efficiently enforce their rights under the copyright laws, American composers, lyricists, and publishers usually join one of three performing rights organizations. These groups grant licensees the right to publicly perform the works of all their members or affiliates, for whom the societies collect and distribute fees for the licenses granted. More than 85% of the fees collected by the two largest organizations are paid to composers and publishers as royalties for the performance of their copyrighted works.

Foreign writers and publishers are also represented by these organizations. Under this system, composers and publishers are relieved of the burden of monitoring their copyrights throughout the world. Moreover, those who wish to publicly perform copyrighted works need not negotiate royalties with each composer or publisher whose works they want to use.

Three organizations license performance rights for most of the music copyright holders in the United States. They are: the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); and SESAC, Inc.

### *American Society of Composers, Authors, and Publishers (ASCAP)*

ASCAP is headquartered in New York City, with offices in Nashville, Atlanta, Chicago, Los Angeles, Miami, London & Puerto Rico and licensing managers located throughout the country. It is the oldest performing rights organization in the U.S. founded in 1914 by a visionary group of songwriters including Victor Herbert, Irving Berlin, John Philip Sousa, Jerome Kern and James Weldon Johnson. ASCAP is a not for profit membership association owned by its members who are songwriters, composers and music publishers. ASCAP collects royalties on behalf of its 310,000 members and their 8.5 million copyrighted musical works, representing virtually every musical genre.

In addition, ASCAP has agreements with every performing rights organization in the world that licenses the right to perform copyrighted works in their countries. Consequently, ASCAP customers can use the works of foreign societies' members as well through an all-inclusive ASCAP blanket license.

### *Broadcast Music, Inc. (BMI)*

BMI was formed in 1939. It is a non-profit making organization, headquartered in New York City with offices in Atlanta, Los Angeles, London, Miami, Nashville, and Puerto Rico. Its roster includes more than 350,000 songwriters, composers and publishers. BMI's repertory includes more than 6.5 million copyrighted musical works which run the gamut of musical types from pop, rock, country, and folk to gospel, Broadway, jazz, rhythm and blues, and popular ballads. BMI acts as a clearinghouse for its affiliates' music performances. In addition, BMI has reciprocal agreements

with virtually every performing rights organization in the world, enabling BMI license holders to perform foreign works from around the globe.

### **SESAC**

SESAC, a for-profit corporation headquartered in Nashville, Tennessee, with offices in Atlanta, Los Angeles, New York City and London, and licensing representatives and consultants throughout the country, was founded in 1930. SESAC tracks music usage in several different ways; most recently by utilizing the state-of-the-art monitoring technology of Broadcast Data Systems. SESAC has international agreements with many foreign performing rights organizations. In recent years SESAC's repertory has grown substantially, with performing artists and songwriters in virtually every genre of music.

The above performing rights organizations serve as clearinghouses for the royalties collected on their writers' and publishers' copyrighted works. A composer or publisher who owns copyrights to musical works grants these organizations the right to license performances of the works, and the right to prevent others from doing so without permission. The organization, SESAC, ASCAP, or BMI, will issue, for a fee, a license to individuals and organizations that use music in public places. Whether music is performed live, recorded, or broadcast, a license allows a licensee to use such copyrighted music in their repertory.

### **Performance rights**

ASCAP's, SESAC's, and BMI's performance rights are non-exclusive; individuals or entities that wish to may negotiate separate royalty agreements with individual composers and/or publishers to perform their music. However, when faced with the prospect of expending time, effort, and money in trying to negotiate separate licenses directly with each composer or publisher whose music will be performed, most businesses using publicly performed music will choose to get a blanket license from one or more of the performing rights organizations.

A blanket license permits the license holder to perform any or all the works in the performing rights organization's repertory. If a choice is made to publicly perform only music that is in the public domain—that is, music that is no longer or never was protected by copyright—no license is necessary.

### **Why Do I Have to Pay Royalties?**

The short answer to the question above is: Because the law says you do. But, clearly, some further explanation is needed as to why, for example, a merchant has to pay to play radio music in his or her store, when playing the radio or listening to tapes at home or in one's car is "free."

The long answer starts with the United States Constitution, which gives Congress the power to grant patents and copyrights. The Copyright Law of the U.S. today gives copyright owners the exclusive right to publicly perform or authorize performance of their works.

Generally speaking, public performances are very broadly interpreted under the law and are defined as performing "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." This has been interpreted to mean that most performances at so-called private clubs and fraternal organizations are "public" under the copyright law.

Early versions of the copyright law limited the exclusive right to performances given "publicly for profit." Today, however, the "for profit" limitation has been repealed and only an explicit list of exempt performances do not require a license from the copyright owner. These include performances by instructors or students during face to face teaching activities of nonprofit educational institutions, performances of music in the course of religious services at a place of worship, and performance by the public communication of a radio or television transmission by eating, drinking, or retail establishments of a certain size which use a limited number of speakers or televisions and if no charge is made to see or hear the transmission (See Section 110(5) of the Copyright Act as revised. See [www.lcweb.loc.gov/copyright/](http://www.lcweb.loc.gov/copyright/)).

Performances at charitable functions are exempt from license or royalty requirements only if the performances have no direct or indirect commercial advantage and if no one involved with the performance, including any of the events' performers, organizers, or promoters, is paid, and there is no direct or indirect admission charge.

Given the broad scope of the protection given copyright holders and those assigned their rights, anyone whose business in one way or another performs music for its customers or members should be aware that they may be called upon by one or more of the major performing rights organizations to license the performance of copyrighted works in their respective repertoires. Buying a license from one performing rights organization, say BMI, does not protect a business from liability for unauthorized performance of songs in ASCAP's or SESAC's repertoires.

A list of places and events at which licensing could be required includes, but is not necessarily limited to: restaurants, bars, clubs and hotels where live or recorded music is played; shopping malls; stores that play broadcast or recorded music; spas, gyms or other sites that offer exercise to music; trade shows; conventions; dance studios; skating rinks; private clubs or fraternal organizations; offices and stores that use "music on hold" for telephone customers; sports teams; colleges and universities; amusement parks; bowling centers; and the Internet.

In addition, licensing is also required for those businesses traditionally associated with the performance of music such as radio and television networks and stations, concert promoters, and the like. The organizations license only the "non-dramatic" performance of their writers' and publishers' music. They do not have the right to license public performance of "dramatico-musical works" such as operas, musical comedies, or other forms of musical theatre, which are licensed directly through publishers or other copyright holders. A business person should consult with an attorney about any questions as to whether the music he or she plans to play publicly is exempt from liability for royalty payments.

#### ***Who Is Responsible for the License?***

The proprietor of the business in which the copyrighted music is performed is liable for any infringement of copyrighted music in his or her place of business. Technically, everyone responsible for an infringing performance can be sued as an infringer, including musicians and independent contractors. However, when copyright owners sue, they often go after the owner of the establishment rather than anyone who actually gave the unauthorized performance.

Federal courts have rejected a wide range of defenses in copyright infringement cases brought against music users. Courts have held that it is no defense in an infringement suit to claim that performers were hired as independent contractors; or were not paid by the club owner and worked only for tips; or that the owner specifically instructed the musicians not to play copyrighted music; or not to play specific songs; or not to play music in the repertory of a particular performing rights organization; or even that the owner did not know the music actually performed was copyrighted.

If a business contracts for a service that "pipes in" background music, either by providing tapes or transmitting to subscribers' premises through radio or satellite special equipment, the service, which collects its fees from subscribers, is responsible for obtaining the appropriate licenses; unless the establishment itself charges for admission, in which case the owner must obtain the licenses.

#### ***How Are License Fees Determined?***

ASCAP and BMI operate under federal consent decrees that prevent them from charging discriminatory fees for licenses. While an organization's fee schedules and methods of fee computation may differ, each treat like entities alike. BMI, SESAC, and ASCAP maintain standard fee schedules for different classes of businesses and organizations that set out the basis for fees and from which businesses can determine their cost of an annual license. These organizations have different rate schedules for various industries. For specific information, contact them at the addresses listed on the back of this brochure.

#### ***Are There Alternatives to Getting ASCAP, BMI, and SESAC Licenses?***

Proprietors who wish to may negotiate separate licenses with the individual owners of the copyrights, i.e., the composers or publishers, for each piece of music they want to use. Businesses may also limit music performed to works in the public domain (where the copyright has expired or the works were never copyrighted). This alternative, which avoids the playing of copyrighted music, is not as easy to achieve as one might think. While classical symphonic pieces or traditional folk songs may be in the public domain, arrangements of the pieces may have copyrights in effect. Using a copyrighted arrangement requires the payment of royalties.

Another option often considered by businesses seeking recorded music for use in an advertising message or at meetings is to license music from a company that represents one or more music libraries. A music library is a collection of copyrighted works owned or controlled by the music library company, just as any publisher owns or controls the copyrighted songs in its catalog. Most music libraries are affiliated with one or more of the PROs. It is a common misconception to think that using themes from a music library will avoid the performing rights issue. Unless a business owner has negotiated a separate license with the library that owns the copyrights, he or she will still have to obtain a performance license from the organization that represents the library.

#### ***What Happens If I Don't Get a License?***

Failure to obtain a license to perform copyrighted music publicly is copyright infringement under the copyright law. The infringer is subject to a civil suit in federal court. Sanctions against an infringer can include an injunction and the copyright owner's actual damages, as well as the infringer's profits, or "statutory damages" of up to \$30,000 for each copyrighted song performed without a license (up to \$150,000 if the infringement is willful). The infringer can also be required to pay the copyright owners' legal fees. The law further provides for criminal sanctions against those who willfully infringe on a copyright for commercial advantage or private gain.

#### ***Will BMI, ASCAP, or SESAC Contact Me If I'm Playing Music?***

New technologies, pastimes, and merchandising techniques have been accompanied by the performance of music in nontraditional places such as malls, aerobic studios, restaurants and all types of retail establishments. Performance rights organizations have responded to this development by contacting more and more businesses that regularly use music in an effort to educate them to the rights of copyright holders and to assure that their members are paid for the playing of their copyrighted works.

It is true that, because of the difficulty of monitoring the millions of performances of copyrighted music taking place every day, royalties are not paid by every small and large business. But, given the changes in the commercial use of music, business owners should not be surprised if they are contacted and offered music licensing agreements by ASCAP, BMI, and SESAC representatives—either by mail, phone or in person.

#### ***Why Businesses "Pay to Play"***

Whether played as background or used to impart a special ambiance, music has become an essential part of many modern retail and service businesses. But the use of such music programming is almost never free. Below are important points regarding why businesses buy a license from a performing rights organization:

1. The majority of music a business plays is protected by copyright law;
2. Music copyright holders have the constitutionally created and federally protected right to demand royalties for public performances of their music, whether by live musicians, recordings, or broadcasts;
3. The legal rights given to music copyright holders under the copyright law are substantially the same as those given to authors or creators of literary works, dramas, choreographic works, films, pictures, graphics, and sculptures;



4. More than 85% of all fees collected by the two largest performing rights organizations are paid to composers and publishers as royalties for the performance of their copyrighted works.

***For More information***

Anyone with questions about performing rights organizations, their license agreements, or rights and responsibilities under the United States Copyright Law should contact their attorney or the following organizations of the offices below:

**BMI**

10 Music Square East  
Nashville, TN 37203  
800.925.8451  
www.bmi.com

**SESAC**

55 Music Square East  
Nashville, TN 37203  
800.826.9996  
www.sesac.com

**AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS**

2675 Paces Ferry Road, SE, Suite 350  
Atlanta, GA 30339  
800.505.4052  
www.ascap.com

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www.lcweb.loc.gov/copyright